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HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL, ROOM 027
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

House Bill No. 362

Tuesday, February 12, 2019
9:20 a.m., Conference Room 309

TO: Chair Aaron Ling Johanson
Vice-Chair Stacelynn K.M. Eli
Members of the House Committee on Labor & Public Employment

FROM: Brian L. Takeshita
Chief Clerk, Hawaii State House of Representatives

As the Chief Clerk of the Hawaii State House of Representatives, I **SUPPORT** House Bill No. 362.

Hawaii Revised Statutes Chapter 92F-12(a)(14) requires disclosure of the names and compensation (among other information) of most state and county employees. However, while civil service employees and certain others may only have a salary range disclosed, other employees, including those of the Legislature, must have their exact salaries disclosed. This inconsistency must be addressed for several reasons.

First, this discrepancy puts legislative employees at a disadvantage relative to their civil service counterparts by requiring the release of more detailed information about one group over another. Where all are public servants, it is unreasonable to discriminate amongst the groups.

Second, the requirement to automatically disclose the exact salaries of specific individuals serves no reasonable purpose that couldn't be achieved by disclosing a salary range instead. Additionally, salary is in certain cases considered personally identifiable information, and disclosable only when a requesting entity has a legitimate reason for doing so. Employees in the private sector have a reasonable expectation that their salary is not given out upon just any request, and there is no reason public sector employees such as those employed by the Legislature should not have the same expectation.

Third, a local news organization has made a regular feature of obtaining the names and salaries of state and county employees and publishing this information on their website for all to access. Without even needing to submit a request to the House

or Senate, anyone from marketers to creditors to curious neighbors may access the exact salary of our legislative employees for whatever purposes they desire. Additionally, the easy availability of salary information can cause great disruption within an office when employees look up each other's pay levels, driving ill feelings among coworkers and causing difficulties for management.

Finally, Hawaii Revised Statutes §378-2.4 (enacted last year as Act 108) prohibits employer inquiries regarding the salary history of an applicant for employment. Making the salaries of legislative employees public information, and further allowing outside entities to make that information freely available increases the likelihood of a potential employer obtaining an employee's salary history. Furthermore, legislative intent behind this statute was to facilitate closing the gender pay gap, as the ability of employers to consider a job applicant's salary history is a contributing factor to gender pay disparity. Easy availability of salary information undermines that effort.

I acknowledge the public expects transparency from their government, and disclosure of a reasonable amount of information regarding government employees is necessary. However, the disclosure of the names and exact salaries of legislative employees is unreasonable, unnecessary, and in conflict with another section of HRS, which is why I support H.B. No. 362. This measure will both address the aforementioned problems and provide a sensible level of disclosure.

Thank you very much for the opportunity to provide this testimony.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Labor & Public Employment

From: Cheryl Kakazu Park, Director

Date: February 12, 2019, 9:20 a.m.
State Capitol, Conference Room

Re: Testimony on H.B. No. 362
Relating to Information Practices

Thank you for the opportunity to submit testimony on this bill, which would amend the Uniform Information Practices Act ("UIPA") to provide that for legislative employees, only their salary range would be disclosable, as is the case for union or civil service employees, and not the exact salary, as for exempt employees. The Office of Information Practices ("OIP") takes **no position** on the question of whether the category of employees for whom only salary range is disclosable should be expanded. **OIP is concerned, however, that making such a change only for legislative employees would lead to differential treatment of salary information for legislative employees versus government employees in general. Therefore, OIP suggests an amendment to the bill that would bring the law back to its original intent.**

The substance and the legislative history of the UIPA's salary disclosure provision suggest that the Legislature adopted the recommendations of the Governor's Committee on Public Records and Privacy regarding how best to balance employee privacy with the public interest in government employee salaries, as discussed at length in OIP Opinion Letter Number 93-10. The Governor's

Committee intended the focus for exact salary disclosure to be on "the salaries of appointed or high level positions." Vol. I Report of the Governor's Committee on Public Records and Privacy (1987), 106, 109, *quoted in* OIP Op. Ltr. No. 93-10 at 4. More specifically, the intent was that "providing the actual salaries of all 'exempt and/or excluded employees' would mean that the salaries of all appointed positions and all managerial positions would be public," with only salary ranges disclosed for other employees. Id.

OIP recognizes that in the decades since that report was written, the number of exempt and excluded employees has grown to include many employees who are not managerial or high level, or are not appointed (except in the sense of being appointed by the head of the office or agency), and thus are not the type of employee the Governor's Committee and the Legislature originally envisioned as appropriate for disclosure of exact salaries. For this reason, **OIP is not conceptually opposed to amending the UIPA's mandatory disclosure provision to bring the category of government employees for whom exact salary must be disclosed more into line with the Legislature's original intent. However, this issue is not limited to legislative staff and legislative agencies**. **OIP is concerned that this bill as written would increase the differential treatment of government employee salary information under the UIPA,** by providing that **all** legislative staff (including **even directors of legislative agencies** whose salaries are set by statute) would have only salary ranges disclosed, while clerical and other lower level exempt employees in the executive branch and elsewhere would continue to have exact salaries disclosed.

If this Committee is inclined to return to the original intent of the UIPA to provide only salary ranges for positions that are non-managerial and not appointed by the Governor or Legislature, then **OIP recommends that it make**

such an amendment applicable to all non-managerial employees, not just those in the legislative branch. Consequently, OIP suggests the following amendment in section 1 to paragraph (14):

> (14) The name, [~~compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to 302A-639, and 302A-701, or bargaining unit (8))~~] salary range within $15,000 (provided that the exact salary shall be disclosed for employees whose exact salary is set by statute or ordinance or for managerial employees appointed by the Governor, the Legislature, the Mayor or the County Council of a political subdivision of the State, the Chief Justice, the Board of Trustees of the Office of Hawaiian Affairs, or the University of Hawaii Board of Regents), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not [~~require~~]:
>
> (A) Require the creation of a roster of employees; and [~~provided further that this paragraph shall not apply~~]
>
> (B) Apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency.

Thank you for considering OIP's testimony and proposed amendment that would bring this provision of the UIPA back to its original intent.

LEAGUE OF WOMEN VOTERS®

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HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Tuesday, February 12, 2018, 9:20 AM, Conference Room 309
HB 362 Relating to Information Practices
TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Johanson and Committee Members:

The League of Women Voters opposes HB 362. This bill substitutes disclosure of a $15,000 salary range to replace disclosure of the exact salary paid to legislative officers and employees.

We do not object to disclosure of a salary range for a legislative employee or officer whose selection and compensation is not determined by a single legislator. However, this bill would also apply to "political hires" whose compensation is set by the legislator who selected them. Several decades ago, some elected officials used to adjust the salaries of their "political hires" to encourage donations of money and time for political campaigns. For that reason, the League opposes enactment of legislation which might:

- preclude the public and news media from comparing the salaries of "political hires" (which would discourage unethical and/or capricious adjustment of the salaries of "political hires") and
- preclude the public and news media from evaluating whether "political hires" are appropriately compensated.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Labor & Public Employment
Honorable Aaron Ling Johanson, Chair
Honorable Stacelynn K.M. Eli, Vice Chair

RE: Testimony Opposing H.B. 362, Relating to Information Practices
Hearing: February 12, 2019 at 9:20 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **opposing the broad definition of "legislative employees" in H.B. 362**.

The original intent of the salary/salary range distinction distinguished "high level" and "managerial" employees from civil service employees with defined salary ranges. *See* Report of the Governor's Committee on Public Records and Privacy at 109 (Dec. 1987). H.B. 362 sweeps too broadly by exempting all legislative employees from the salary disclosure requirement without respecting the original intent to distinguish employees with managerial authority.

For example, the bill improperly exempts individuals who are more equivalent to Executive Branch directors and deputy directors. The public interest in monitoring the compensation of high-level staff (*e.g.*, chief clerks, sergeants-at-arms, legislative service agency directors, and others in senior positions) is much greater, and they should not be exempt.[1] Many of these individuals are paid in excess of $100,000, and the public deserves greater access to information about their taxpayer-funded salaries.

The Law Center respectfully requests that the Committee amend H.B. 362 as follows:

> As used in this paragraph, "legislative employees" means staff of the legislative branch of the State and non-managerial employees of legislative service agencies as defined by section 21E-1.

Thank you again for the opportunity to testify.

[1] Withholding the auditor, LRB director, and ombudsman salaries also does not make sense because their salaries are tied to the DOH director's salary, which is public record.

LATE

OFFICE OF INFORMATION PRACTICES

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OIP recognizes that in the decades since that report was written, the number of exempt and excluded employees has grown to include many employees who are not managerial or high level, or are not appointed (except in the sense of being appointed by the head of the office or agency), and thus are not the type of employee the Governor's Committee and the Legislature originally envisioned as appropriate for disclosure of exact salaries. For this reason, **OIP is not conceptually opposed to amending the UIPA's mandatory disclosure provision to bring the category of government employees for whom exact salary must be disclosed more into line with the Legislature's original intent. However, this issue is not limited to legislative staff and legislative agencies**. **OIP is concerned that this bill as written would increase the differential treatment of government employee salary information under the UIPA,** by providing that **all** legislative staff (including **even directors of legislative agencies** whose salaries are set by statute) would have only salary ranges disclosed, while clerical and other lower level exempt employees in the executive branch and elsewhere would continue to have exact salaries disclosed.

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Thank you for considering OIP's testimony and proposed amendment that would bring this provision of the UIPA back to its original intent.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

February 12, 2019

H.B. 362 – RELATING TO INFORMATION PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO conceptually supports the intent of H.B. 362 which amends a section of the Uniform Information Practices Act by allowing the disclosure of a legislative employee's salary range rather than the exact compensation, with a proposed amendment.

Under the current Uniform Information Practices Act, each agency must allow public access to employee information, including an employee's name, bargaining unit, job title, business address and telephone number, education and training background, and previous work experience, in addition to an agency's present and former officers. While we understand and agree with the need for government accountability and transparency, and acknowledge that tax payers want to know how and where their money is being spent, publishing any employee's exact dollar amount salary does not adequately capture the State's expenses. Every employee is entitled to a measure of privacy, and should be afforded basic dignity and respect in the performance of their job. Being a government employee does not necessitate one to be subject to the degradation, embarrassment and anxiety that a dollar-specific disclosure may cause.

Therefore, while we support the intent of H.B. 362 to amend statute specific to legislative officers, we respectfully request an amendment to equally extend the same provisions for all employees, including those who are exempt from civil service.

Thank you for the opportunity to testify in support of H.B. 362 with a proposed amendment.

Respectfully submitted,

fv Randy Perreira
Executive Director

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