

GOV. MSG. NO. 801

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB982 HD3 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB982 HD3 SD1 CD1

A BILL FOR AN ACT
RELATING TO FAMILY LEAVE.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 982

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 982, entitled "A Bill for an Act Relating to Family Leave."

This bill provides for the development and maintenance of a family leave data collection system designed by the University of Hawaii Center on Aging and funded by a \$10,000 appropriation from the Department of Labor and Industrial Relations' Special Fund for Disability Benefits.

This bill is objectionable because it creates a new data collection system, using funds that fall outside the scope and intent of the Special Fund. Hawaii Revised Statutes Chapter 37-523 requires special funds to be used only for the purposes originally established, the uses must reflect a clear nexus between the benefits sought and the expenditures to be made, must provide an appropriate means of financing an activity, and must demonstrate that the program can be financially self-sustaining. Using funds from the Department of Labor and Industrial Relations' Special Fund for Disability Benefits for family leave purposes does not meet the statutory criteria.

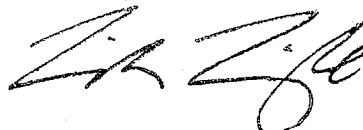
This bill is also objectionable because all of the provisions in this bill take effect on the same day, July 1,

2009, irrespective of whether the contemplated database has been completed and is operational. Consequently, because the new "family leave data collection system" is not yet in existence as a web-based data system, employees seeking family leave benefits will be unable to enter pertinent data on the circumstances and need for family leave benefits, will be unable to print out a form to be submitted to the employer certifying that required data have been entered, and will be unable to comply with the new statutory requirements in section 398-5, Hawaii Revised Statutes, to provide to their employers evidence of having submitted the data in order to request family leave benefits.

Finally, this bill appears to suggest that a new paid family benefit should be developed and implemented for employees in Hawaii. Public sector employees already earn generous paid vacation and sick leave that can be used for family leave purposes. As I have stated in the past, any system that mandates employer-paid wage replacement benefits will increase the already high cost of doing business in the State and I caution the Legislature from recommending such mandates in the future.

For the foregoing reason, I am returning House Bill No. 982 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

1 SECTION 1. The legislature finds that over twenty-five per
2 cent of Hawaii's households have at least one individual
3 providing informal, unpaid care to an adult aged sixty or older
4 with physical or cognitive disabilities. This percentage is
5 expected only to increase. Projections indicate that by the
6 year 2020, more than one in four individuals will be aged sixty
7 or older, and an individual's need for personal care assistance
8 due to physical, sensory, cognitive, and self-care disabilities
9 increases with age.

10 The legislature finds that the average age of family
11 caregivers is fifty-four years of age, which is well below the
12 age of retirement. Over fifty-five per cent of the family
13 caregivers are employed, and of this group, over twenty-six per
14 cent indicate that their employment is affected by their
15 caregiving responsibilities. Reduction in work hours was an oft
16 cited effect, followed by turning down promotions and taking
17 leaves of absence. Nearly all of the family caregivers surveyed
18 stated that they frequently rearrange their work schedules, and



1 over seventy-seven per cent take time off from work to deal with
2 caregiving responsibilities.

3 The legislature finds that approximately ten per cent of
4 the Hawaii workforce, or over eighty thousand employees, may
5 currently seek or need to take some form of leave to address
6 family caregiving issues.

7 The legislature further finds that in seeking to analyze
8 and develop improvements to the family leave system there is
9 inadequate data about the use of and need for family leave.

10 The purpose of this Act is to create a family leave data
11 collection system to:

- 12 (1) Create a data collection system that is capable of
13 analyzing and reporting family caregiving data for
14 public and private-sector employees;
- 15 (2) Ensure that information about uncovered employees is
16 captured by the data system; and
- 17 (3) Create the basis for development of a data-driven paid
18 family leave system that can complement other
19 caregiver services, especially for elder family
20 members.



1 SECTION 2. Chapter 398, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§398- Family leave data collection system;

5 establishment. (a) There is established a family leave data
6 collection system to:

7 (1) Ensure that all employees covered by the benefits of
8 this chapter are informed of their rights under this
9 chapter and their names are entered into the data base
10 upon application for benefits;

11 (2) Collect pertinent data, consistent with state and
12 federal privacy statutes, on the use and potential
13 demand for family leave benefits for both public and
14 private-sector employees, including information on who
15 and under what circumstances employees are using
16 family leave benefits, the nature and duration of
17 family members' needs, and the adequacy of current
18 family leave benefits;

19 (3) Provide analysis of the data to assist in the
20 development and implementation of an efficient system
21 of family leave, including potential paid family
22 leave, for employees in Hawaii; and



1 (4) Provide analysis of data to assist in the future
2 development of caregiver services for senior citizens
3 in Hawaii.

4 (b) The department shall work with the University of
5 Hawaii center on aging to create a web-based data system with
6 the following capabilities:

7 (1) The capacity for all employees seeking family leave
8 benefits under this chapter to log into the data
9 system and enter pertinent data on the circumstances
10 and need for family leave benefits;

11 (2) The ability to secure confidential information,
12 consistent with state and federal privacy statutes,
13 available only in aggregate form for managers and
14 analysts of the data system;

15 (3) The ability of the employee to print out a simple form
16 to be submitted to the employer certifying that
17 required data has been entered;

18 (4) The ability of data managers and analysts to
19 manipulate and query the data base to achieve the
20 purpose of this chapter;

21 (5) A back-up paper system that can be used when computer
22 access or printing is unavailable; and



1 (6) A user-friendly format that can be translated into
2 multiple languages for employees.

3 (c) The state auditor shall be provided access to the data
4 base and shall prepare annual reports to the legislature, the
5 department, and the University of Hawaii center on aging."

6 SECTION 3. Section 392-61, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§392-61[+] **Establishment of special fund for**
9 **disability benefits.** There is established in the treasury of
10 the State, separate and apart from all public moneys or funds of
11 the State, a special fund for disability benefits which shall be
12 administered by the director exclusively for the purposes of
13 this chapter; and for the establishment and maintenance of a
14 family leave data collection system under section 398- .

15 All contributions pursuant to this part shall be paid into the
16 fund and all benefits payable under this part shall be paid from
17 the fund. The fund shall consist of (1) all contributions
18 collected pursuant to this part, together with any interest
19 thereon; (2) all fines and penalties for the fund pursuant to
20 this chapter; (3) all moneys collected by way of subrogation;
21 (4) interest earned on any moneys in the fund; (5) any property
22 or securities acquired through the use of moneys belonging to



1 the fund; (6) all earnings of such property and securities; and
2 (7) all other moneys received for the fund from any source."

3 SECTION 4. Section 398-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§398-5[+] **Notice.** In any case in which the necessity
6 for family leave is foreseeable, the employee shall provide the
7 employer with prior notice of the expected birth or adoption or
8 serious health condition in a manner that is reasonable and
9 practicable. Requests for family leave shall include evidence
10 that the employee has submitted the request and provided
11 required data in accordance with section 398- ."

12 SECTION 5. There is appropriated out of the disability
13 benefits special fund established under section 392-61, Hawaii
14 Revised Statutes, the sum of \$10,000 or so much thereof as may
15 be necessary for fiscal year 2009-2010 and the same sum or so
16 much thereof as may be necessary for fiscal year 2010-2011 for
17 the University of Hawaii center on aging to cover the estimated
18 costs of the:

- 19 (1) Development of a web-based data system as provided by
20 this Act;
- 21 (2) Purchase of hardware, software, servers, and other
22 necessary elements of the system; and



1 (3) Costs of personnel required to maintain the system.

2 The sums appropriated shall be expended by the department
3 of labor and industrial relations for the purposes of this Act.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2009.

