

SB 1271



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Written Testimony of
Barry Fukunaga
Chief of Staff to the Governor

Before the
SENATE COMMITTEE ON WAYS AND MEANS
Tuesday, March 3, 2009, 9:30 a.m.
Room 211, State Capitol

SB 1271 SD1 RELATING TO PUBLIC EMPLOYEES

Chair Mercado Kim, Vice Chair Tsutsui and Members of the Committee:

SB 1271 SD1 requires managerial employees in the Executive and Legislative Branches who are exempt from civil service to use, donate or forfeit vacation allowance accrued during their employment with the State. This bill also requires that if a managerial employee is discharged, the employee is not entitled to reemployment by the same department from which they were discharged. This bill takes effect on July 1, 2009.

The Administration strongly opposes SB 1271 SD1 for a number of reasons:

The legislation is inappropriate due to its narrow, selected application to a specific category of employees and adversely impacts a right that is currently accorded to them under Chapter 78, Hawaii Revised Statutes (HRS). The option to accumulate earned leave was expressly offered as an alternative to employees and should not be removed on a retroactive basis for a specific class of employees.

While we believe it is important to identify various options that can be considered in the State's effort to address our budgetary shortfall, we oppose any measure that is not uniformly and equitably applied toward employees as a whole. As a matter of fairness, we believe any sacrifice made by state employees should apply to all employees, regardless of the branch of government in which they work or their terms of employment.

The specific provisions of SB 1271 SD1 limit its application only to managerial employees of the Executive Departments and the Legislative Branch who are exempt from Chapter 76, HRS. There is no provision for inclusion of employees of the Judiciary

or counties, thereby making its application selective and disproportionate in nature. Such a limited application may be deemed discriminatory.

We have always advocated the importance of consistency and the necessity for shared sacrifice in dealing with adjustments to the budget and find that the burden on managerial employees brought about by SB 1271 SD1 fails to meet this standard as it is not shared, is selectively applied and does not have uniform application to all employees.

Currently, the Executive Branch has over 1,000 managerial employees who are exempt from Chapter 76, including those in the Department of Education, the University of Hawaii and the Hawaii Health Systems Corporation. The total may include both exempt included managerial employees who have union representation and exempt managerial employees who do not have collective bargaining union representation.

The measure prescribed in this bill will affect a variety of managerial employees of the State, including those who are professors, engineers, attorneys, surgeons and physicians; yet will have no effect on exempt managerial employee within the Judiciary. The bill does not provide a reason or rationale for an exclusion that amounts to disparate treatment between employees within the same exempt group, the only difference being the branch of government in which they are employed.

The proposed legislation may be in conflict with the rights of the managerial employees affected because it is applied against accumulated leave earned and retained under the current provision of Chapter 78. It essentially removes the right they currently possess that allows them to convert accumulated earned leave to cash compensation after these hours were accumulated with the explicit understanding that employees had the ability to retain and redeem these accumulated hours after they left government service. This change is a retroactive application of restrictions against actions that were taken under the reliance of the current law.

Additionally, the provision that prohibits managerial employees from returning to state employment with the same department is detrimental to government operations. Given that both specialized skill and experience is needed to fill these exempt managerial positions, this provision is counterintuitive. As an example, given our current physician shortage, prohibiting physicians and surgeons who were exempt managerial employees of the HHSC from returning to the system would only exacerbate the State's health care issues.

With the large number of managerial employees that will be affected, any enactment of SB 1217 SD1 will result in employees of the affected groups having to expend accumulated leave in addition to annual earned leave or face the loss of the hours in their possession. This situation will compel these managerial employees to use the vacation leave, which creates an adverse staffing impact on the state government workforce, while also affecting services at a time when they are especially needed. Moreover, extended absence, in addition to creating manning shortages, will

require in most instances coverage through temporary assignments. Such coverage requires compensation of lower ranked employees that will add costs and take from savings that the bill is attempting to realize.

For these reasons we feel SB 1271 SD1 is inappropriate and unwarranted and the Administration opposes this measure.



STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
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March 1, 2009

COMMENTS TO THE
SENATE COMMITTEE ON WAYS & MEANS
For Hearing on March 3, 2009
9:30 a.m., Conference Room 211
BY
MARIE C. LADERTA, DIRECTOR

**Senate Bill 1271, SD1
Relating to Public Employees**

TO CHAIRPERSON KIM AND MEMBERS OF THE COMMITTEE:

This bill requires state managerial executive department and state managerial legislative branch employees who are exempt from Chapter 76, HRS (civil service law) to use or donate accumulated and accrued vacation allowance prior to discharge, or to forfeit remaining vacation allowance and any compensation in lieu of retaining vacation allowance upon discharge. It also bars such managerial employees from reemployment by the same department that they were employed in prior to discharge.

The Department of Human Resources Development is **strongly opposed** to this measure for the following reasons:

1. This proposal is discriminatory in nature because it targets a specific group of more than 1,000 public service employees and imposes an inequitable treatment upon them, as compared to all other State employees. In addition, this group of exempt managerial employees would be treated unfairly as compared to other exempt managerial employees of the Judiciary and the counties.
2. This proposal would be tantamount to taking away an accrued benefit that these managerial employees had come to expect since the time of their hire.
3. From a management perspective, this proposal could negatively impact public service by compelling exempt managerial employees of the Executive and Legislative branches to take vacation time off from their jobs in lieu of forfeiture. For example, if the effective date of the bill is changed to be July 1, 2009, those exempt managers

who plan to retire from State employment this December and who will have 100 days of accrued vacation leave by July would likely start taking their vacation leave from early August all the way through December (approximately 4-3/4 months) so as not to forfeit their vacation benefit. This could leave their programs without leadership during this lengthy period of time because their positions cannot be filled prior to their retirement date. Notably, the employees that will be affected by this measure are responsible for managing and directing such critical programs as civil defense, criminal justice, corrections, education, public health, energy, consent decree, social services, and deputy public defenders.

4. This measure will also bar exempt managerial employees from reemployment by the same department which appears unfair and punitive to take away their right for equal opportunity in a public service agency. Further, it could also be detrimental to the State's best interests. For example, if a highly skilled/valued Supervising Deputy Attorney General is lured to the private sector and so leaves the Attorney General's Office, then shortly thereafter wishes to return, the AG would not be able to reemploy that individual, even if that individual is expert and needed, such as to handle difficult court proceedings which could expose the state to multi-million dollar judgments.

With regard to the provision that would require departments to deposit with the Director of Finance such compensation that would have been paid to the employee upon discharge prior to enactment of that section (see page 5, lines 4 – 10), we are unclear as to its purpose. If this provision is intended to require departments to give up funds equivalent to the exempt managers' forfeited vacation allowance, we question the need to do so when the benefit has been forfeited by the employees and so should have no value.

Because of the above concerns, we recommend that the Committee **hold** this bill.

Thank you for the opportunity to provide our comments.