

STAND. COM. REP. NO.

563

Honolulu, Hawaii

MAR 04 2011

RE: S.B. No. 1076  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 1076 entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES,"

begs leave to report as follows:

The purpose and intent of this measure is to make it an  
unlawful practice for any employer or labor organization to bar or  
discharge from employment, withhold pay from, or demote an  
employee solely because the employee uses accrued and available  
sick leave.

Your Committee received testimony in support of this measure  
from the Hawaii Laborers' Union, the International Brotherhood of  
Electrical Workers, and the Hawaii State AFL-CIO. Your Committee  
received testimony in opposition to this measure from Hawaiian  
Electric Company, Inc., and its subsidiaries Hawaii Electric Light  
Company, Inc., and Maui Electric Company, Limited; First Hawaiian  
Bank; Hawaiian Telcom; Hawaii Credit Union League; and one  
individual. Your Committee received comments on this measure from  
the Department of Labor and Industrial Relations.

Your Committee finds that this measure is intended to protect  
employees who legitimately use accrued and available sick leave  
benefits from being harassed, intimidated, suspended, terminated,  
or penalized. As noted by The Chamber of Commerce of Hawaii in  
oral testimony to your Committee, sick leave is an entitlement.  
Promising sick leave benefits to an employee as part of an  
employment package and then penalizing the employee for using



those benefits is incongruous and in essence creates a bait-and-switch situation for the employee.

Your Committee notes, however, that there are concerns from employers that employees may abuse sick leave policies, essentially making sick leave paid vacation time. Under this measure, an employer would be unable to discipline employees who misuse their sick leave. In 2010, the Legislature considered and passed a similar measure, S.B. No. 2883, C.D. 1 (2010), which was vetoed by the Governor. S.B. No. 2883, C.D. 1, struck a balance between ensuring that employees could use the sick leave benefits promised by their employers and the ability of employers to protect themselves from employees' misuse of those benefits.

Accordingly, your Committee has amended this measure by:

- (1) Revising the amendment to section 378-32(b) by clarifying that it is unlawful to punish an employee who legitimately uses a negotiated sick leave policy;
- (2) Including provisions from S.B. No. 2883, C.D. 1 (2010), which provides exemptions to employers and labor organizations regarding unlawful practices, as described in this measure, under circumstances in which an employee abuses the use of sick leave or is unable to fulfill the essential job functions or requirements of the employee's position;
- (3) Inserting an effective date of July 1, 2050, to allow for further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1076, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1076, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,




CLAYTON HEE, Chair



The Senate  
Twenty-Sixth Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 1076</b>	Committee Referral: <b>JDL</b>	Date: <b>2/8/11</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike				✓
IHARA, Jr., Les	✓			
SLOM, Sam			✓	
<b>TOTAL</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes