

SB3099

LATE

TESTIMONY

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
JUDICIARY AND LABOR**

**Friday, January 31, 2014
10:30 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 3099
RELATING TO PUBLIC EMPLOYMENT**

Senate Bill 3099 proposes to amend various sections of Hawaii Revised Statutes ("Haw. Rev. Stat.") pursuant to Act 253, Session Laws of Hawaii (SLH) 2000. Act 253 1) restricted the creation of exempt positions, and 2) required annual review of exempt positions to determine whether they should remain exempt or be converted to civil service. **The Department of Land and Natural Resources ("Department") recommends this bill be held.**

The Department appreciates the intent of this bill to place more positions in the civil service system, where appointments and promotions are presumed to be made on a more uniform basis of established qualifications and independent interview panels, and to decrease the use of exempt appointments. Pursuant to earlier legislation, the Department has converted a number of its exempt positions to civil service.

The Legislature has also recognized that: 1) many jobs are only for a short or intermediate term and will not be permanent; and 2) many jobs require people with unique skills who are difficult to recruit or retain. Accordingly, the Legislature has established exempt positions in many state departments.

Nonetheless, this bill will force the Department to convert virtually all the exempt positions to tenured civil service positions. Not only does this increase the cost of supporting state government and place a permanent tax burden on state taxpayers, it freezes jobs and job descriptions which may in fact disappear in 5-6 years. In many instances, it will impose a **pay cut** on current exempt employees who were recruited and only took positions because of a slightly higher salary.

The issues facing the Department are complex and change at a faster rate than in the past. Position descriptions and structures created 10 years ago are often obsolete or just irrelevant. The ways in which we manage natural resources has moved on. Meeting these responsibilities requires more flexible skills and work arrangements.

The majority of employees in the exempt positions are selected and employed because they have unique and specialized qualifications. For example, the State Commission on Water Resources Management (“Commission”) was granted the discretion to hire under Haw. Rev. Stat. Chapter 76. . . *or to hire exempt employees*. And for good reason. The Commission’s work requires unique and specialized qualifications to implement the State Water Code (Haw. Rev. Stat. Chapter 174C). There is no comparable agency in the State tasked with the protection, planning and regulation of water resources. The Commission requires geological, hydrological, engineering, legal, and regulatory knowledge related to water resources and must offer salaries commensurate with the education, skills, experience, judgment, and knowledge. This is a very small universe of talent.

Finding and recruiting people (especially mid-career lateral hires with management skills) is very difficult. The City pays up to 20% more than the State for similar work. The Federal government pays more than the City and adds a COLA. The private sector pays even more than the Federal government. Flexibility is essential to recruit and retain highly skilled people. The economic cycle creates a perverse consequence: when the economy is bad there are many applicants, but there is a hiring freeze; when the economy improves, the hiring freeze is lifted, but there are few applicants because everyone else is paying much more.

The Department’s State Historic Preservation Division faces similar issues in recruiting and retaining highly skilled personnel.

This bill also imposes a three year limitation on the exemption from civil service under Haw. Rev. Stat. §76-16(b)(17). The repeal of exempt positions every three years is unnecessary, cumbersome, and disruptive. Specialized positions are difficult to recruit. The pool of applicants is extremely limited. The Department would lose a trained employee and disrupt projects and services for an arbitrary deadline.

This bill does not help the Department. We strongly recommend that the bill be held without action.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
January 31, 2014

S.B. 3099 – RELATING TO PUBLIC EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B. 3099. This legislation mandates the conversion of exempt positions to civil service in several different departments consistent with Act 253, SLH 2000 and Act 300, SLH 2006. The problems and challenges created by exempt positions are that while most are included in HGEA bargaining units, and the union collects dues from them, they are not protected under the discipline and reduction-in-force articles for bargaining units 3, 4 and 13. Exempt employees do not receive step movements and are precluded from earning overtime if they are in bargaining unit 13. This creates serious inequities between exempt and civil service employees that have become worse over time as their numbers have grown. In essence, we have a two-tiered system of state employment, one for civil service employees and another for exempt employees despite the State Constitutional mandate for civil service in Article XVI, Section 1 and the statement of purpose in Section 76-1, HRS. This statement of purpose is reiterated in Section 76-16, HRS.

According to information from DHRD as of December 2013, there are 1,525 exempt employees in HGEA bargaining units under the two largest exemptions contained in Section 76-16, HRS (Sections 76-16 (b) 12 and (b) 17). These two exemptions adversely affect employees primarily in bargaining units 3 and 13. There are approximately 100 statutory exemptions from civil services under Section 76-16 (b) (17), HRS. Some of the exemptions are mandatory while others are permissive. This is the primary reason we are suggesting an amendment to Section 76-16 (b) (17), HRS that would limit these exemptions to three years and require any extension beyond that time frame to be approved by the Legislature.

The number of voluntary conversions from exempt to civil service by DHRD and the various line departments has been small. Here are the numbers of conversions over the past several years: 24 – 2013, 50 – 2012, 20 – 2011 and 4 – 2010. The process of voluntary conversion is not effective. Many exempt employees have been employed by the State of Hawaii for years and provide valuable service to their respective departments, yet they are not treated fairly by the employer. Under all 27 exemptions listed in Section 76-16, HRS, there are 2,894 exempt employees within the state Executive Branch. We estimate that between 8-9% of all state employees are exempt from civil service. In contrast, the State of California, limits exempt employees in Executive Branch departments to just one-half of one percent. Despite having more than 195,000 full time state employees, there less than 1,000 exempt employees in California's executive branch. We appreciate the opportunity to testify in support of S.B. 3099.

Respectfully submitted,


for Randy Perreira
Executive Director

The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

January 31, 2014

S.B. 3099- RELATING TO PUBLIC EMPLOYMENT

As an exempt employee in the Department of Land and Natural Resources-Historic Preservation Division, I strongly support S.B. 3099. Although relatively new to the department I have been aware of the issue concerning the conversion of exempt employees from the first day of work here at the department. I have since learned that it has been pending issue since the passage of Act 253, SLH 2000. Exempt employees who are within collective bargaining units do not have the same rights and benefits as civil service employees. We are not protected by several articles in our collective bargaining agreements, including discipline and reduction-in-force. Exempt employees are not eligible for step movements and if they are in Unit 13, they are not eligible for overtime. These are important issues that relate to my own need to be able to support my family sufficiently and do so with relative security.

Act 253, SLH 2000, required the Director of Human Resources Development to review exempt positions and determine whether these positions should remain exempt permanently. If DHRD determines that a position should no longer be exempt, they are supposed to consult with the appointing authority and remove the exemption from civil service.

Act 300, SLH 2006, required additional reporting requirements about exempt positions to the Legislature. It also set forth a fair process to convert positions from exempt to civil service, and enabled HGEA to negotiate a supplemental agreement with DHRD to facilitate the conversion of exempt positions to civil service through compensation incentives.

Despite these improvements, progress in converting exempt positions to civil service has been too slow and unfortunately, voluntary conversion has not worked very well.

Section 76-16 (b) (17), HRS contains the largest and most varied group of exempt employees. It refers to positions exempted by other statutes. There are approximately 100 separate statutes that provide mandatory or permissive exemption from civil service. The only way exempt positions will be converted to civil service is through legislation. I hope that you will consider this important measure.

As an employee of the Historic Preservation Department, I believe that the work we do is of the utmost importance in assuring that our future generations have the same opportunity to enjoy the places, people, and things on the land that make these islands so special. As a person of this place, where my family has been here for several generations and has taken on the responsibility of caring for our lands and all that it encompasses, I hope that you will take into account our commitment to these resources and provide us the same commitment in the form of legislative approval. Thank you for the opportunity to present testimony in support of S.B. 3099.

Sean Naleimaile

The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

January 31, 2014

S.B. 3099 – RELATING TO
PUBLIC EMPLOYMENT

As an exempt employee in the Department of Budget and Finance, Office of the Public Defender, I strongly support S.B. 3099. The issue of converting exempt employees has been pending since the passage of Act 253, SLH 2000. Exempt employees who are within collective bargaining units do not have the same rights and benefits as civil service employees. We are not protected by several articles in our collective bargaining agreements, including discipline and reduction-in-force. Exempt employees are not eligible for step movements and if they are in Unit 13, they are not eligible for overtime.

Act 253, SLH 2000, required the Director of Human Resources Development to review exempt positions and determine whether these positions should remain exempt permanently. If DHRH determines that a position should no longer be exempt, they are supposed to consult with the appointing authority and remove the exemption from civil service.


Act 300, SLH 2006, required additional reporting requirements about exempt positions to the Legislature. It also set forth a fair process to convert positions from exempt to civil service, and enabled HGEA to negotiate a supplemental agreement with DHRH to facilitate the conversion of exempt positions to civil service through compensation incentives.

Despite these improvements, progress in converting exempt positions to civil service has been too slow. Exempt employees still represent about 8%-9% of employees in the state Executive Branch. The primary obstacle to converting exempt employees to civil service is the unwillingness of line departments to take such action. Unfortunately, voluntary conversion has not worked very well.

Section 76-16(b)(17), HRS contains the largest and most varied group of exempt employees. It refers to positions exempted by other statutes. There are approximately 100 separate statutes that provide mandatory or permissive exemption from civil service.

The only way exempt positions will be converted to civil service is through legislation. The growth in the number of exempt positions over the past several decades is undermining the civil service system. Thank you for the opportunity to present testimony in support of S.B. 3099.

Sincerely,


Beryl K. Makalena