

JAN 25 2017

A BILL FOR AN ACT

RELATING TO SERVICES PERFORMED BY CIVIL SERVICE EMPLOYEES.

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

1 SECTION 1. The purpose of this Act is to seek
2 authorization of permanent civil service position counts and
3 appropriate out of the general and non-general funds of the
4 State of Hawaii for these positions to support state agency
5 operations.

6 SECTION 2. In 1997, the Hawaii supreme court ruled in
7 Konno v. Hawaii County that Hawaii county violated civil service
8 laws and merit principles when it hired private contractors to
9 perform landfill operations work. The court ruled that state
10 civil service laws allowed only civil service employees to
11 perform work historically and customarily done by civil service
12 employees.

13 In response to Konno, Act 90 was enacted in 2001. Act 90,
14 part II, allowed the State of Hawaii to contract for services
15 historically and customarily performed by civil service
16 employees if equivalent or better services could be provided at

1 lower cost. However, Act 90, part II, was repealed on June 30,
2 2007.

3 After Act 90 was repealed, the United Public Workers filed
4 class grievances as well as lawsuits in circuit court arguing
5 that the State of Hawaii and the counties should cease the
6 practice of contracting for services historically and
7 customarily performed by civil service employees. Over time,
8 the counties reached settlements with the United Public Workers,
9 leaving only the claims against the State of Hawaii.

10 Through court-ordered mediation, an agreement was reached
11 between the United Public Workers and the State of Hawaii
12 executive branch relating to services historically and
13 customarily performed by civil service employees as it relates
14 to the United Public Workers. This agreement reflected the
15 State's commitment to comply with the Hawaii supreme court's
16 ruling in Konno, while concurrently recognizing the State's duty
17 to provide services to the public.

18 Without a sufficient number of civil service positions and
19 employees to perform services historically and customarily
20 performed by United Public Workers-type employees, state
21 agencies have had to resort to contracting for these services.
22 In order to address this situation and enable state agencies to
23 comply with the Konno ruling, it is estimated that the State

1 will need an additional 599 permanent positions and
2 approximately \$105,091,764 (for positions and associated
3 equipment) in general and non-general funds in order to provide
4 necessary services to the public through civil service employees
5 rather than through contractors.

6 SECTION 3. In an effort to facilitate the provision of
7 housing opportunities for homeless individuals and others in
8 need, and in order to fulfill operational needs with regard to
9 work historically and customarily performed by civil service
10 personnel, a total of 34 permanent positions are requested for
11 the Hawaii public housing authority for multi-skilled worker
12 teams, as follows:

- 13 (1) Three (3) general construction and maintenance
14 supervisor I positions;
- 15 (2) Three (3) building maintenance worker II positions;
- 16 (3) Five (5) building maintenance worker I positions;
- 17 (4) Four (4) building maintenance helper positions;
- 18 (5) Three (3) general laborer I positions;
- 19 (6) Three (3) carpenter I positions;
- 20 (7) Four (4) plumber I positions;
- 21 (8) Two (2) plumber helper positions;
- 22 (9) Five (5) electrician I positions;
- 23 (10) One (1) painter I position; and

S.B. NO. 968

1 (11) One (1) welder I position.

2 Only permanent position counts are being requested; funding
3 is not required.

4 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *M.M.D. W.*

7

BY REQUEST

8

Report Title:

Civil Service; Establish Positions

Description:

Authorizes establishment of permanent civil service positions for the Hawaii Public Housing Authority to provide services historically and customarily performed by civil service employees in connection with creating housing opportunities for homeless individuals and others in need.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: HUMAN RESOURCES DEVELOPMENT

TITLE: A BILL FOR AN ACT RELATING TO SERVICES PERFORMED BY CIVIL SERVICE EMPLOYEES.

PURPOSE: To comply with the Konno decision and a letter of understanding with the United Public Workers. The goal is to obtain authorization and funding to establish United Public Workers (UPW)-type positions needed to perform services that are currently being contracted out by the Executive Branch departments. Specifically, the bill seeks authorization for the Hawaii Public Housing Authority (HPHA) to establish civil service positions needed to perform services that will facilitate the creation of housing opportunities for the homeless and others in need, and that will perform maintenance services for facilities managed by HPHA. For these particular positions, no appropriation of funds is being requested.

MEANS: Legislative authorization to establish positions for HPHA. No statutory changes required.

JUSTIFICATION: In 1997, the Hawaii Supreme Court ruled in the case Konno v. Hawaii County that the county violated civil service laws and merit principles when it hired private contractors to perform landfill operations work. The Court held that civil service laws required that only civil service employees perform work historically and customarily performed by civil service employees.

Subsequent to the Konno case, the Legislature enacted Act 90 (SLH 2001). Act 90, part II, allowed the State to contract for services historically and customarily performed by civil service employees if

equivalent or better services could be provided at lower cost. Act 90, part II, however, was repealed on June 30, 2007.

Shortly after Act 90, part II, was repealed, the United Public Workers sought to have the State and all other jurisdictions terminate all of their contracts. The United Public Workers later filed class grievances in 2007 and prohibited practice complaints in 2009 against the State and other jurisdictions, thereby initiating years of litigation.

In June 2015, the State Executive Branch and the United Public Workers entered into a letter of understanding through court-ordered mediation which placed a moratorium on all pending litigation. In compliance with the letter of understanding, the Department of Human Resources Development has implemented a process of reviewing departmental contracts for work historically and customarily performed by United Public Workers-type employees to confirm that there is a valid basis for exemption from civil service. The letter of understanding also contemplates that departments will identify positions and/or other resources needed in order to enable contracted work to be done by civil service employees, and to seek such positions and/or other resources from the legislature. This bill is an effort to comply with this requirement.

In addition to providing estimates regarding the overall positions and/or resources needed by the State Executive Branch departments, the bill specifically seeks authorization for the establishment of a total of 34 permanent civil service positions for the HPHA to facilitate the creation of housing opportunities for the homeless and others in need.

Impact on the public: It is anticipated that increased personnel for HPHA will enable the agency to more quickly renovate or repair

public housing units, thereby increasing the housing available for homeless individuals and others in need.

Impact on the department and other agencies:
None expected.

GENERAL FUND: None requested.

OTHER FUNDS: None requested.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.