



GOV. MSG. NO. 1061

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

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

Dear Madam President and Members of the Senate:

I am transmitting herewith HB1818 HD2 SD1, without my approval, and with the statement of objections relating to the measure.

HB1818 HD2 SD1

A BILL FOR AN ACT RELATING TO GOVERNMENT
EMPLOYEES.

Sincerely,

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

LINDA LINGLE

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1818, entitled "A Bill for an Act Relating to Government Employees," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1818 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1818 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1818

Honorable Members
Twenty-Fourth 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. 1818, entitled "A Bill for an Act Relating to Government Employees."

The reported purpose of this bill is to "close a loophole that could potentially allow a department head of an executive department to remain in a holdover capacity indefinitely." This bill amends section 26-31, Hawaii Revised Statutes, to provide that the single executive head of a principal department, who is not renominated during the regular session of the Legislature immediately following the expiration of the executive's term, shall cease to hold office, including in the capacity of a holdover, upon the end of the legislative session. This bill also amends section 26-33, Hawaii Revised Statutes, to insert a proviso stating that, if the Governor does not designate an officer or employee, the "highest ranking and most senior" officer as specified in the proviso shall perform the duties of the vacant office. Furthermore, this bill amends section 26-33 to exclude from its application boards and commissions, unless the chair of the board or commission is the executive of a department.

This bill is objectionable because it goes beyond its reported purpose by depriving the Governor of the power, under section 26-33, Hawaii Revised Statutes, to designate a state

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officer or employee to temporarily perform the duties of a member of a board or commission to which the Governor has the power of appointment or nomination if a vacancy occurs on the board or commission. The bill appears to be drafted under the mistaken belief that section 26-33 is to be used for the vacant offices of only department heads. However, there are other offices for which the Governor has the power of appointment or nomination, including positions on boards and commissions that are not executive heads of departments. Section 26-33 has, for example, been used to designate state employees to temporarily perform the duties of members of the three-member Hawaii Paroling Authority when two of the authority's members resigned in close succession during the 2003 legislative session. If the temporary designations had not been made, the operation of the Hawaii Paroling Authority would have come to a halt until the process for appointing and confirming members to fill the vacancies was completed or until the legislative session ended and the Governor could make interim appointments. The Governor's power to make temporary designations when vacancies occur on boards and commissions is necessary to achieve the strong policy interest in continuing governmental functions.

Furthermore, the bill could lead to situations where an employee with little executive management experience may be put in charge of a large state department with hundreds of employees and millions of dollars in operating and capital improvement program funds. There are legitimate circumstances that may arise when it is difficult to identify the most qualified candidate to fill a department head position. Because these positions pay relatively less than comparable private

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sector jobs, the field of candidates is smaller and those who do step forward make financial sacrifices to do so. To place an artificial timetable on this process could lead to placing an unqualified person in the department director position, contrary to sound public and personnel policies.

Also, this bill is ambiguous because it relies upon two different factors for determining who would be put in charge of a department. It is unclear whether it would designate the highest ranking person by virtue of that person's title and position within a department, or the person with the most seniority, regardless of that person's position. Enactment of this measure could jeopardize the ability of the State to deliver services and programs to the residents of Hawaii in the most effective manner.

While I concur in the position that an acting director should not remain in place indefinitely, I can assure you this Administration has acted in good faith to fill vacant senior positions with well qualified individuals.

For the foregoing reasons, I am returning House Bill No. 1818 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

VETO

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.B. NO. 1818
H.D. 2
S.D. 1

A BILL FOR AN ACT

RELATING TO GOVERNMENT EMPLOYEES.

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

1 SECTION 1. Section 26-31, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§26-31 Selection and terms of single executives as heads
4 of departments. Except as otherwise provided by the
5 Constitution of the State or by this chapter, each principal
6 department shall be headed by a single executive, who shall be
7 nominated and, by and with the advice and consent of the senate,
8 appointed by the governor, for a term to expire at the end of
9 the term for which the governor was elected. Upon the
10 expiration of the term of a single executive, there shall be a
11 vacancy that shall be filled by the renomination or a nomination
12 by the governor not later than the forty-first day of the
13 regular session of the legislature immediately following the
14 expiration of the term creating the vacancy; provided that if
15 the governor does not renominate or make a nomination, the
16 single executive whose term has expired shall cease to hold
17 office, including in the capacity of a holdover, upon the end of
18 that regular session of the legislature and the vacancy shall be

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1 filled pursuant to section 26-33. A vacancy occurring during a
2 term shall be filled for the unexpired balance of the term,
3 subject to the provisions of [~~Article~~] article V, section 6 of
4 the Constitution of the State. The governor may remove a single
5 executive from office at any time, except that the removal of
6 the attorney general shall be subject to the advice and consent
7 of the senate."

8 SECTION 2. Section 26-33, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§26-33 Performance of duties of vacant office. In the
11 event of a vacancy in any office for which the governor has the
12 power of appointment or nomination, the governor [~~may~~] shall
13 designate some other officer or employee of the State to perform
14 the duties of the vacant office until the office is filled. The
15 authority derived from this section shall not continue for a
16 longer period than sixty days after the vacancy occurs[~~-~~];
17 provided that if the governor does not designate an officer or
18 employee, or renominate, nominate, or grant a commission to fill
19 the vacant office, the following individual in the department
20 that has the vacancy shall perform the duties of the vacant
21 office until the governor makes a nomination or grants a
22 commission to fill the vacancy:



- 1 (1) In the department of the attorney general, the highest
- 2 ranking and most senior deputy attorney general;
- 3 (2) In the department of defense, the highest ranking and
- 4 most senior general officer serving in the department
- 5 on a full-time basis, or, if there is none, then the
- 6 highest ranking and most senior field grade officer
- 7 serving in the department on full-time basis; or
- 8 (3) In all other departments, the highest ranking and most
- 9 senior officer in a civil service position.

10 This section shall not apply to members of a board or
 11 commission unless the chair of a board or commission is the
 12 executive of a department.

13 An officer or employee designated to perform the duties of
 14 a vacant office shall, so long as the authority continues,
 15 receive the compensation attached to the vacant office, or the
 16 compensation attached to the officer's or employee's regular
 17 office or employment, whichever is the higher."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval
 20 and shall apply to all positions subject to section 26-31,
 21 Hawaii Revised Statutes, the terms of office of which expired on
 22 or after December 3, 2006.

