



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

GOV. MSG. NO. 1045

July 11, 2005

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

I am transmitting herewith SB1352 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB1352 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO
PUBLIC EMPLOYEES.

Sincerely,

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 11, 2005

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1352

Honorable Members
Twenty-Third 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, Senate Bill No. 1352, entitled "A Bill for an Act Relating to Public Employees."

The purpose of Senate Bill No. 1352 is to amend provisions relating to the scope of negotiations in public employment collective bargaining. This bill will amend Section 89-9(d), Hawaii Revised Statutes, by requiring the Public Employer and the unions to negotiate over the impact of transfers, assignments, and layoffs of public employees. This bill could also require the parties to negotiate over the criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, and other disciplinary actions.

This bill is objectionable because it attempts to eliminate management rights currently protected under Section 89-9(d), Hawaii Revised Statutes. Historically, Section 89-9, Hawaii Revised Statutes, has been recognized as the provision covering management's rights and sets into law protections which do not allow management to bargain away the right to direct its workforce and oversee governmental operations. This ensures that Public

Employers are able to manage their operations efficiently and effectively to service the public.

The other Public Employer jurisdictions have advised me that this bill would critically impede their ability to manage their workforce and protect the health and safety of the public. The State would also face serious difficulties in carrying out its civil defense, public safety, health, welfare, and other public service functions. This bill would require Public Employers to negotiate with collective bargaining union representatives the impact of transfers, reassignments, and layoffs before these personnel actions could be implemented. Such a requirement would seriously delay the delivery of services to the community at large. For example, the county police and fire departments have commented that Senate Bill No. 1352, if it became law, would seriously jeopardize their ability to provide timely emergency services to the public. This bill could restrict the deployment of lifeguards, emergency medical services personnel, civil defense workers, and similar health and safety staff who are expected to respond to and adjust their work locations and hours as emergencies and unanticipated events may dictate.

On January 28, 2005, the Hawaii Supreme Court issued a decision upholding management rights as set forth in Section 89-9(d), Hawaii Revised Statutes. The case involved idle public refuse workers within the City and County of Honolulu who were being reassigned to a district where they were needed to ensure the trash was picked up and sanitation standards were maintained.

The Hawaii Supreme Court decision in United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Haw. 359 (2005), does not invalidate negotiated provisions in the collective bargaining agreements. However, this decision preserves the rights of management to reallocate the public workforce as needs and circumstances require. Senate Bill No. 1352 is troubling because it attempts to overturn this fundamental management principal.

Further, this bill presumes that reasonable people, both managers and their staffs, are unable or unwilling to accommodate the needs of the public through mutual agreement and adjustment. This bill evidences a lack of trust and accommodation which can be fostered between management and the rank-and-file when mutual respect develops between employees and their employers. Moreover, this bill fails to recognize that employers regularly consult with the respective exclusive representatives on matters affecting employee relations.

Finally, Senate Bill No. 1352 would also allow the parties to negotiate criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, and other disciplinary actions. There is concurrence among the various public sector jurisdictions that these personnel actions should be determined by the employer as has been the case historically. Moreover, the criterion commonly proposed by the unions for personnel actions (i.e., seniority) is contrary to the Merit Principle, as defined in Section 76-1, Hawaii Revised Statutes.

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For the foregoing reasons, I am returning Senate
Bill No. 1352 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii