

EXECUTIVE CHAMBERS

HONOLULU

July 11, 2005

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1194

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. 1194, entitled "A Bill for an Act Relating to the Board of Trustees of the Deferred Compensation Plan."

The purpose of this bill is to require five out of the seven members of the Board of Trustees of the State Deferred Compensation Plan (hereinafter referred to as the "Plan") to be elected by participants of the Plan.

This bill is objectionable because:

(1) This bill imposes a permanent, annual cost to the Plan's participants.

Currently, section 88E-4, Hawaii Revised Statutes, requires the Board to have seven members: the Director of Human Resources Development, who serves as chairperson; the Director of Finance (or the Director's designee), who serves ex officio; and five appointed persons, three of whom shall be public employees and represent employee interests. The Governor currently appoints these five other members, with the advice and consent of the Senate, and interim members to fill vacancies on the Board.

This bill proposes to change the composition of the Board by increasing the number of members who must be public employees from three to five members (while retaining the Director of Human Resources Development and the Director of Finance or designee on the Board), requiring that these five members be elected by Plan participants, and requiring that these five members have staggered terms. Because the current Board members also have staggered terms, at least one Board member's

term expires every year. Thus, under this bill, an election will have to be held every year to replace an outgoing Board member.

There are significant costs associated with holding an election. These costs include the costs of printing and advertising a public notice, printing ballots and communications materials (there are currently 28,000 participants in the Plan), purchasing postage and supplies, hiring additional administrative staff, and retaining the services of an independent third party to oversee the counting of the ballots. At a minimum, the Board estimates that these costs could exceed \$130,000 for each election.

Because this bill specifically imposes these costs on the Plan, and participants are responsible for all costs to implement and administer the Plan under section 88E-13, Hawaii Revised Statutes, the Board will have to assess participants the costs of these elections every year. These election costs are in addition to the service fees that are currently being paid by participants, and will come directly out of and ultimately reduce participants' retirement savings in the Plan. Participants could challenge or seek legal relief to address the imposition of these permanent annual costs. Burdening participants with these election costs is not in their best interest.

In addition, issues regarding the allocation of the election costs to participants may arise. For example, if the Board assesses a percentage fee to cover the election costs, those participants with higher account values may end up paying a significantly higher proportion of the election costs. Alternatively, if the Board assesses a flat fee to cover the election costs, those participants with smaller account values may end up paying a disproportionate amount of the election costs. In either case, participants may argue that the election costs are arbitrary or unfair.

(2) This bill precludes access to expertise in the private

sector.

This bill requires that Board members be public employees. In the past, some members appointed to the Board have come from the private sector and have brought invaluable expertise in financial and investment matters. These members bring an understanding of the fiduciary role they are obligated to carry out that is distinct & complimentary to the public sector members. Losing the ability to obtain expertise from the private sector could be detrimental to the Plan and its participants.

(3) There is adequate public employee representation on the Board.

Currently, section 88E-4, Hawaii Revised Statutes, requires three members to be public employees who represent employee interests. These three members plus the Directors of Human Resources Development and of Finance bring the number of public employees to five. Because more than a majority of the members are public employees, there currently is ample public employee representation on the Board without imposing any additional costs on participants.

(4) Plan participants are currently able to participate in evaluating the qualifications of the Board members.

All of the five appointed Board members are required to be confirmed by the Senate under section 88E-5, Hawaii Revised Statutes. During the confirmation process, Plan participants may comment on the nominated members and their qualifications to be appointed to the Board and represent participant interests. Thus, Plan participants are able under the existing statute to participate in the evaluation and selection process of the Board members and the process proposed under this bill is unnecessary.

For the foregoing reasons, I am returning Senate Bill No. 1194 without my approval.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 1194
Page 4

Respectfully,

LINDA LINGLE
Governor of Hawaii