

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