



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

October 3, 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:

For your information and consideration, I am transmitting herewith two (2) copies of a report on unauthorized positions required by Section 167 of Act 178, SLH 2005, the General Appropriations Act.

Pursuant to Act 231, SLH 2001, I am also informing you that the report may be viewed electronically at www.hawaii.gov/budget/LegReports/reportslist.htm.

Sincerely,

LINDA LINGLE

Attachments



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HONOLULU

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GOVERNOR

October 3, 2005

The Honorable Calvin K. Y. Say, Speaker
and Members of the House of Representatives
Twenty-Third State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear Mr. Speaker and Members of the House:

For your information and consideration, I am transmitting herewith two (2) copies of a report on unauthorized positions required by Section 167 of Act 178, SLH 2005, the General Appropriations Act.

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Report to the Legislature on Unauthorized Positions

This report was prepared pursuant to Section 167 of Act 178, SLH 2005, which requests, by department, details regarding unauthorized positions established during FY 05, projected expenditures through FY 07, and impacts of eliminating the positions and funds projected to be expended. Section 167 specifically excludes the Department of Education and the University of Hawaii from the reporting requirements. (Attachment 1 is a copy of Section 167 for reference.)

In the absence of a specific definition for "unauthorized position" we have used our best judgment in interpreting the intent of the Legislature. We believe that the term refers to positions (temporary or exempt) not identified in the budget that are employed on a full time or half time basis rather than casual hourly employees who are on call or who work sporadically for a limited number of hours per pay period.

While we have included a listing of vicing positions (positions that temporarily assume the functions of authorized positions where the incumbent is on extended leave), we believe that these should be characterized as authorized in that they are established solely to perform the work of authorized positions until the incumbent returns and in effect do not expand the activity level of programs.

Also, we believe that positions not individually identified, but budgeted within the payroll category, are also authorized. This category includes lump sum student hires and temporary help, classroom cleaners, and project funded positions budgeted as lump sum in the Capital Improvement Project Section of the General Appropriations Act.

Based upon our survey of departmental requirements, we are concerned with the potential adverse impact of Section 167 with respect to the ability to utilize unauthorized positions during FY 07. While we will make every effort to incorporate these positions into our supplemental budget request, the restrictiveness of Section 167 will severely limit the flexibility of the Executive Branch to address unanticipated opportunities and problems arising subsequent to the passage of the Supplemental Budget. Departments identify their budget requirements one or two years prior to receiving their appropriations and every need cannot be anticipated.

The following examples are illustrative:

1. Federal grants made available (subsequent to the Appropriations Act) that require additional staff (Section 76-16(b) (12), HRS) to implement the grant requirements.
2. Special projects authorized by the Governor (Section 76-16(b) (12), HRS) to address critical needs or initiatives that were not anticipated during the legislative session.

For example, federal audits of state programs may require prompt response in order to take corrective action.

3. Positions that must be filled without delay to comply with a court order or consent decree, such as the Felix-Cayetano consent decree (Section 76-16(b) (3), HRS).
4. Temporary positions established to provide support for disabled, homeless or incarcerated individuals (Section 76-16 (b), subsections (13), (21), and (23), HRS).
5. Programs that have explicit authorization to hire personnel to implement the purposes of the program.

For example, the Public Utilities Commission (Chapter 269, HRS) has authority pursuant to Section 269-3 to employ assistants as necessary to accomplish the functions of the Commission. While every effort will be made to reflect manpower needs in the budget, there may be circumstances where flexibility is required to adjust requirements to ensure that statutory duties are effectively carried out. As a result, the position count may rise or fall depending upon activity levels.

Further, we believe that the Department of Education and the University of Hawaii should be exempted entirely from the provisions of Section 167. Staffing levels for these two departments are driven largely by enrollment and research activity in the case of the University and both departments require flexibility to ensure that educational needs of the Hawaii's citizens are met.

In the absence of elimination of the proviso, we are proposing the following amendments to Section 167 to ensure that programs will be able to effectively carry out their required functions:

Section 167. Provided that for fiscal year 2006-2007 no funds, including federal funds, shall be expended to fill any position not authorized by the legislature; provided further that this prohibition shall not apply to the department of education and the university of Hawaii; provided further that a report shall be submitted to the legislature by the department of education and the university of Hawaii no later than five business days after the expenditure of funds for positions not authorized by the legislature; provided further that this prohibition shall not apply to positions established pursuant to Section 76-16(b) subsections (3), (12), (13), (21) , and (23), Hawaii Revised Statutes, or where an agency has explicit statutory authorization to establish positions to accomplish necessary functions; provided further that the department of budget and finance shall submit a report to the legislature detailing positions not authorized by the legislature established and funded during fiscal year 2006-2007 pursuant to Section 76-16(b) subsections (3), (12), (13), (21) and (23), Hawaii Revised Statutes, or where an agency has explicit statutory authorization to establish positions; provided further that this report shall identify the authorization used to establish the position, the source and amount of funds required, and the rationale for establishing the position, provided further that this report shall be submitted no later than twenty days prior to the convening of the 2007 regular session; provided further that a report shall be prepared by the department of budget and finance identifying all positions not authorized by the legislature (both filled and vacant) in the Executive Branch with the exception of the

department of education and the university of Hawaii; provided further that this report shall include for each position the authority used to establish the position, the date the position was established, whether the position is filled or vacant, if the position is vacant the date the position became vacant, if the position is filled the date the position was filled, the amount expended for the position for fiscal year 2004-2005, the amount projected to be expended in fiscal year 2005 2006, the amount projected to be expended for fiscal year 2006 2007, the source of funds used to pay for the position, the impact of eliminating the position and funds projected to be expended for the position; and provided further that the report shall be submitted to the legislature no later than October 1, 2005.

Attachment 2 is a copy of spreadsheets with the requested information prepared by the affected departments.

1 SECTION 167. Provided that for fiscal year 2006-2007 no
2 funds, including federal funds, shall be expended to fill any
3 position not authorized by the legislature; provided further
4 that a report shall be prepared by the department of budget and
5 finance identifying all positions not authorized by the
6 legislature (both filled and vacant) in the Executive Branch
7 with the exception of the department of education and the
8 university of Hawaii; provided further that this report shall
9 include for each position the authority used to establish the
10 position, the date the position was established, whether the
11 position is filled or vacant, if the position is vacant the date
12 the position became vacant, if the position is filled the date
13 the position was filled, the amount expended for the position
14 for fiscal year 2004-2005, the amount projected to be expended
15 in fiscal year 2005-2006, the amount projected to be expended
16 for fiscal year 2006-2007, the source of funds used to pay for
17 the position, the impact of eliminating the position and funds
18 projected to be expended for the position; and provided further
19 that the report shall be submitted to the legislature no later
20 than October 1, 2005.