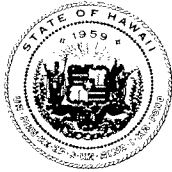


Office of the President
The Senate
State of Hawaii
State Capitol
Honolulu, Hawaii
96813



June 30, 2009

The Honorable Linda Lingle
Governor of the State of Hawaii
Executive Chambers
State Capitol
Honolulu, HI 96813

Dear Governor Lingle:

As you are aware, I have been and continue to be an advocate of collective bargaining. To this end, I have refrained from acts which could be perceived as intruding into your Administration's labor negotiations. Notwithstanding, there are certain issues which I would like to bring to your attention, and ask that you give them appropriate consideration.

1. Judiciary. As you have correctly stated, the Judiciary, like the Legislature, is your co-equal branch of government; therefore you cannot directly affect our separate budgets, but have asked that the branches restrict their spending by the requisite amount. In a separate letter, I am sending you and the Honorable Chief Justice Ronald Moon a proposal for your consideration to delay the costs of judicial salaries. However, due to the fact that my suggestion could be misinterpreted, I would like to again clarify my purpose in offering the proposal. I am fully aware that it could be perceived as an attempt to affect your authority to appoint Circuit- and Appellate Court judges and justices. Please be assured that this is not my intent. After reviewing the judicial appointment process, I believe if we can collectively agree that the Chief Justice has the right to determine the timing of the swearing-in of his judges—once they have been vetted by the Judicial Selection Commission, appointed by you or the Chief Justice, and brought to the Senate for advise and consent—then he, the Chief Justice, can determine when the respective judges shall be seated. Like all of us, the timing will be up to the Chief Justice and he will then have additional flexibility with his budget. Looking back to my experience as chair of the Senate Judiciary Committee, I recall how high the cost of a Judge and support staff can be. If we take a unified position that any delay in swearing in a judge is within the Chief Justice's discretion, we can minimize unnecessary and unproductive political criticism.

2. Unintended Consequences of Furloughs. I recognize your desire to have furloughs apply uniformly to all. You have taken the position that even those workers who are paid for by special funds and federal funds should also be placed on furloughs. Your definition of a furlough is a short-term layoff without pay. Though we may disagree regarding the legal definition of a furlough, the end result is that the employee will, assuming your furlough plan is upheld, be without work and pay for three days a month. However, I believe that there exist unintended consequences that will serve to diminish anticipated savings from such furloughs. These consequences include the fact that certain salaried employees, whose furlough-adjusted salaries would drop below the federal FLSA weekly earnings exemption standard (\$455/week), will consequently enable these employees to qualify for benefits such as overtime. Potential furloughs of exempt status employees, such as university professors, also raise serious FLSA questions.

As you know, I am a labor attorney. One of the areas in which I have brought cases before the Hawaii Supreme Court is on the issue of unemployment benefits. Though the specific area I have litigated is the benefits available to striking employees, I developed a familiarity with unemployment insurance (UI) benefits in general. My research indicates that a potential unintended consequence of your furlough plan is that, for employees who earn approximately \$35,000 or less, the furloughs may result in an economic windfall for the employee. As the DLIR has probably informed you, when an employee is without work for a portion of a week and lost wages fall below a certain amount, the UI fund can be called upon to make up the difference. Adding to that benefit the stimulus funds which may automatically add \$25 to that amount, a furloughed employee, depending upon qualifications, could receive more than what he or she would have earned for the week if fully employed. If an employee earns \$30,000 a year or \$2,500 a month, the windfall increases.

For example, a state employee that earns \$30,000 per year has weekly wages of \$577. When that employee is furloughed one day during the week they will earn only \$462. If that state employee has earned a salary of \$30,000 for the past five calendar quarters, then that employee is eligible for the maximum weekly unemployment benefit of \$545. However, the earnings of that employee during a furloughed week that are in excess of \$150 will reduce that maximum weekly benefit to \$233 ($545 - (462 - 150)$). When adding that furloughed employee's weekly earnings of \$462 with their unemployment insurance benefits of \$233 the employee receives a total of \$695 for that furloughed week, and comparing that total to the employee's regular wages for one week of \$577, the furloughed employee is receiving an income windfall of \$118 for every week that they are furloughed. In addition, for those state employees who are furloughed Monday through Friday, they will be entitled 100% of their weekly unemployment insurance benefits because they will not earn any income during that furloughed week. The maximum weekly benefits for the 2009 calendar year is \$545, which does not include the additional \$25 received per week from the American Recovery and Reinvestment Act of 2009.

Furthermore, for those who may not qualify this year and just miss the entitlement amount, they will almost certainly qualify next year, in light of their 14% wage reduction. These increases in the amount paid out in UI benefits are likely to deplete the UI fund, calling for an increase in unemployment taxes to return the fund to adequate levels. I anticipate that those businesses, especially small businesses, which have supported the concept of furloughs, will be

upset with even the thought of having to pay into the UI special fund to maintain adequate reserves. As it is now, those reserves will be affected by the high unemployment in the private sector alone.

Finally, if a bargaining unit calls a strike, then the impact on the UI fund would have to be assessed, especially for those bargaining units which are not part of the strike but are unable to work, and consequently will be entitled to benefits.

3. Budget Consideration. At the heart of the need for furloughs and the determination of a number of furlough days is the condition of the State Budget. I understand that you may disagree with the Legislature's Budget; having said that, we do agree that you have the ability to restrict spending to meet the shortfall. The issue is what will be the amount of shortfall.

Like many situations, if we can reach common ground as to the following assumptions, we should be able to reach a compromise.

Assumption 1: All revenue enhancements will become law. I understand that you may not agree; however, with all due respect, if the Legislature overrides your vetoes then they will be law. If this is the case then the total ending balance will be \$149 million.

Assumption 2: The May Council of Revenues (COR) projections mean an additional \$180 million over the March projections for FY 09. Add to this an additional \$20 million for each FY10 and FY11. (Again, I do understand that you may not agree with the Legislature's revenue enhancements but for purposes of this discussion, please accept them.)

Assumption 3: You have delayed the payment of \$180 million or a portion of it by paying it in the next fiscal year. If we continue to pay "late," then we will carry this liability over into the out years when we anticipate that the economy will recover.

Assumption 4: Each day of the furlough represents a 4.6% pay reduction for every employee covered. It is anticipated that the three days will represent a 13.8% reduction. I recall a figure of about \$10 million a day as the cost when we agreed to shut down the State in anticipation of a natural disaster.

Assumption 5: If the State is shut down for the day, then there will be additional savings in terms of cost of operations. I believe a fair estimate of the operational savings may be between \$1 million and \$3 million a day.

All of these assumptions should result in a savings of approximately \$132 to \$156 million a year. What is therefore troubling is why you believe it is necessary to take 3 furlough days per month. It would be like satisfying the total deficit in one year.

I understand and can appreciate the need to maintain a negotiating position with collective bargaining. However, this is not the time. The public worker unions have said that they are willing to share in the pain. If a 5% pay cut is shared by all employees, would that not give us approximately \$175 million in savings? This would avoid the shutting down of government and furloughs.

Taking into consideration the unintended consequences of the furloughs and how devastating three furlough days can be, I ask that you consider the across the board pay cut with the Unions or, alternatively, take only one furlough day a month.

Shutting Down the Capitol. I must also bring to your attention that shutting down the State Capitol for 3 days a month will add an additional 12 days to our Legislative Session and increase costs to the Legislature. The Senate has, as you may be aware, been working for 2 years to become more efficient and more transparent. We believe we have achieved this with our paperless initiative. We are looking at the restrictions you have requested and stand ready to do our part. However, twelve additional session days to make up for the furlough days will add great expense to a budget which we have already substantially reduced.

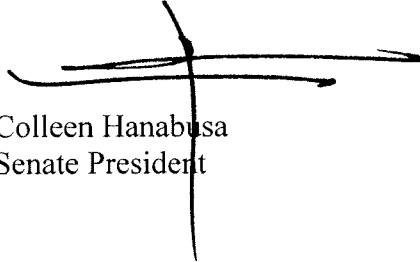
On a final note, I also learned that Chair Micah Kane of the Department of Hawaiian Homelands (DHHL), in a show of support, has decided to accept furlough days for the DHHL. I would like to point out that DHHL, like OHA, bears fiduciary responsibilities to its beneficiaries. In that DHHL will receive no general funds for this upcoming biennium, I see the shutting down of an organization entirely paid for by special funds as contrary to its constitutional mandate. Though Chair Kane has done an excellent job of placing beneficiaries on the land, there remains much to do. I would like for you and Chair Kane to re-think that symbolic showing of support.

Again, I recognize this is a very difficult time. However, I do believe that consideration must be given to the consequences—intended or not—of an act which may result in disparate treatment among workers, the outcome which you were attempting to avoid. In addition, there must be an alternative to simply furloughing all employees.

Honorable Linda Lingle, Governor
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Thank you for taking the time to consider my position. I am willing and available to discuss my concerns if you wish.

With warm regards,

A handwritten signature in black ink, consisting of a horizontal line with a small loop at the end, and a vertical line intersecting it.

Colleen Hanabusa
Senate President