

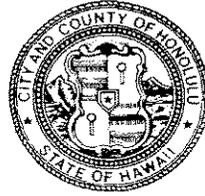
DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

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MUFI HANNEMANN  
MAYOR



KENNETH Y. NAKAMATSU  
DIRECTOR  
RECEIVED

April 14, 2008

The Honorable Todd K. Apo, Chair  
and Members of the Budget Committee  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

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CITY COUNCIL  
HONOLULU, HAWAII

Dear Chair Apo and Councilmembers:

Subject: Explanation of Departmental Budget Requests Related to the Conversion to Civil Service of Work Currently Performed by Contractors

Three City departments have appeared before you during the budget process and have requested new, unfunded, vacant positions next fiscal year to perform work that is currently performed under contracts with private vendors (the work is privatized). Your Committee has raised questions regarding this matter. As my Department has provided guidance and direction to the departments on the privatization issue, I am providing the following background information and insight on the reasons departments are taking these steps.

**Background:**

In 1997, the Hawaii Supreme court issued what is known as the Konno decision, Konno v. County of Hawaii, 85 Haw. 61, P.2d 397, which ruled that government contracts for services that had been customarily and historically performed by civil servants, violates state law and state constitutional provisions on civil service irrespective of whether such contracts were more cost effective.

Following the Konno ruling various lawsuits were filed against the City regarding the privatization issue.

In 2001, Act 90 (commonly referred to as the Privatization Law) was enacted. This law allowed for the privatization of government services under certain circumstances. The law contained a June 30, 2007 sunset date.

Despite efforts from the public employers, the privatization law did sunset last year. Following the sunset of the law one of the unions raised questions regarding the sunset of Act 90 and the effect of that sunset on the public employers' ability to enter into any contracts involving services that had traditionally and customarily been performed by civil servants.

The City's position is that it had, and continues to have, separate authority under Section 6-1103 of the City Charter to enter into contracts with private vendors. However, this position does not absolve the City of the requirement to provide the Union with the information requested. Gathering and analyzing just part of the information has involved a number of hours of staff time and has placed a significant burden on some departments. In addition, the City's position is open to challenge and, based on past experience with the lawsuits filed after the Konno decision, the ensuing legal battle would likely be a very costly one. Finally, while the City has authority to privatize, it should do so prudently. Our preliminary review indicates that there are contracts that should be converted to civil service positions.

**Resolution:**

Given these facts, DHR has determined that a proactive approach—one that would result in a resolution that would be fair to both the City and the Union—would be preferable. Accordingly, we worked with the Union to establish an understanding of the approach the City would take to resolve this issue without engaging in a legal battle. The approach commits City departments to seek new, unfunded, positions in the fiscal year 2009 budget for certain positions that involve work in three areas—ground and park maintenance, janitorial and custodial services, and building maintenance. (This is the reason the departments are seeking new positions.) These positions will replace contracts with private vendors for these services. Accordingly, there will be a savings from the contracts that we anticipate will help offset the cost of funding the positions. The understanding with the Union also commits departments to reviewing additional contracts that may be converted and requesting any necessary positions or funding for the conversion of contracts next year.

We believe that this understanding is fair and helps the City to avoid an unnecessary, potentially protracted, and expensive legal proceeding that could result in the loss of the City's ability to contract out any services that falls within the parameters of the Konno decision—something that would not be in the best interest of the City or its citizens.

In light of the foregoing, I urge you to support the requests for new, unfunded, positions to enable certain contracts to be converted to positions.

Thank you for the opportunity to provide input on this matter.

Sincerely,



Ken Y. Nakamatsu  
Director of Human Resources

APPROVED:



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Mary Pat Waterhouse, Director  
Department of Budget and Fiscal Services

FORWARDED:



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Wayne M. Hashiro, P.E.  
Managing Director

cc: Office of the Mayor