Historical Background

- Article XVI, Section 1. of the State Constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle.
- In 1955 the Territorial Legislature enacted Act 274 which created the State’s Civil Service System under HRS, Chapter 76.
- The Legislature also created exemptions the Civil Service System for certain State positions that are covered under HRS, §76-16.

Historical Background

- In 1991, UPW begins challenge of Hawai‘i County’s actions to privatize the operation of the Pu‘uanahulu Landfill on the Big Island.
- In 1997, the Hawai‘i Supreme Court issued its decision *Konno v. County of Hawai‘i* over UPW’s challenge.
- The Court ruled that the County of Hawai‘i violated the State’s civil service laws and merit principals.
- The Court adopted the “nature of services” test.
Historical Background

- The nature of services test in this case holds that civil service, as defined by State law, encompasses those services that have been “customarily and historically” provided by civil servants.
- The Court noted that privatization is not subject to collective bargaining.
- The Court stated that contracting out positions without an exemption would be a violation of Constitutional and statutory law.

Historical Background

- In 1998, the Legislature adopted Act 230, SLH 1998, to enable a process for managed competition.
- In 2001, the Legislature adopted Act 90, SLH 2001, that granted State and County governments to issue private contracts from 7/1/01 to 6/30/07.
- On July 1, 2007, Act 90 expired.
- There is no carte blanche authority granted by the legislature to contract out services of government workers.

Civil Service Exemptions (HRS, §76-16)

- Currently, HRS, §76-16, provides for 27 exemptions of positions from the State’s Civil Service System.
- DHRD Memo (10/13/06) delegated authority to department heads to approve exemptions from civil service under HRS, §76-16(b)(2) and §76-16(b)(15).

Civil Service Exemption HRS, §76-16(b)(2)

- Exemption from civil service to contract for services if the service:
  - Is special or unique; or
  - Is essential to the public interests; and
  - Cannot be obtained through normal civil service recruitment procedures.
Civil Service Exemption HRS, §76-16(b)(15)

- Exemption from civil service to contract for services if the services are provided by persons or firms:
  - Employed on a fee, contract, or piecework basis; and
  - The work can lawfully be performed concurrently with a private business or profession or other private employment, and where it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State.

Submitting Exemption Requests

- President Greenwood has delegated the authority to approve civil service exemptions for UH to the System Director of OHR.
- Requests for civil service exemptions under HRS, §76-16(b)(2) and §76-16(b)(15) shall be submitted via a memo to the System Director of OHR.

Memo requesting exemptions under HRS, §76-16(b)(2) shall include the following info:

- Explanation of how service is special or unique;
- Services are essential to public interests;
- Personnel cannot be obtained through normal civil service recruitment procedures;
- Contract period (cannot extend beyond 1 year)

Memo requesting exemptions under HRS, §76-16(b)(15) shall include the following info:

- Employment contract basis – Fee, Contract, or Piecework;
- Performs duties concurrently with private business (no emp/emp relationship);
- Provides intermittent services;
- Delivery of completed work/product by or during a specific time;
- Contract period (may exceed one year).
Q & A

Questions?

If not, thank you for your time and attention this morning.