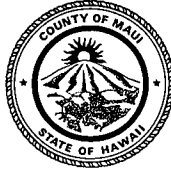


CHARMAINE TAVARES  
Mayor



BRIAN T. MOTO  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

TELEPHONE: (808) 270-7742

FACSIMILE: (808) 270-7152

May 20, 2010

**MEMORANDUM**

**T O:** Sheri Morrison, Managing Director

**F R O M:** Jeffrey T. Ueoka *Jeffrey T. Ueoka*  
Deputy Corporation Counsel

**SUBJECT:** ACT 70, H.B. No. 1868 H.D. 1 (2010)

The purpose of this memorandum is to respond to your request for legal services, dated May 7, 2010, in which you pose the following questions pertaining to Act 70, H.B. No. 1868, H.D. 1 (2010) ("Act 70"):

1. Does this bill affect County of Maui employees?
2. If current appointed staff are affected, what steps should be taken to protect their current positions and their return rights?
3. If not the same as the county, what will be the impact on State Employees appointed to exempt positions?

Act 70 became effective on April 29, 2010, as a result of a veto override by the State Legislature.

**Analysis of Act 70.**

Act 70 focuses on those employees who request leaves of absence from positions covered by Hawaii Revised Statutes ("HRS") Chapter 76, pertaining to the Civil Service Law, for appointment to certain positions that are exempt from the Civil Service Law under HRS §§76-16(b)(7), (8), (9), (10), or (16) (collectively, the "Act 70 Positions") and whose terms of appointment are not less than one year.

All of the Act 70 Positions are positions in State government, not county government. In particular, HRS §76-16(b)(7) positions are "Department heads, officers, and members of any board,

Sheri Morrison, Managing Director  
May 20, 2010  
Page 2

commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate". (Emphasis added). HRS §§76-16(b)(8) and (9) positions are in the State Judiciary. HRS §76-16(b)(10) positions are in the Department of the Attorney General. HRS §76-16(b)(16) positions include first deputies and first assistants of department heads in State government and certain administrative assistants in State government.

Positions exempt from the Civil Service Law in the counties of Hawaii, Maui, and Kauai are listed in HRS §76-77, not HRS §76-16(b).

**Question 1: Does this bill affect County of Maui employees?**

Act 70 would affect only those County of Maui employees, if any, who are in civil service positions (i.e., positions covered by HRS Chapter 76) and who seek leaves of absence to fill appointed Act 70 Positions in State government for terms of one year or more. Act 70 prohibits leaves of absence in such circumstances.

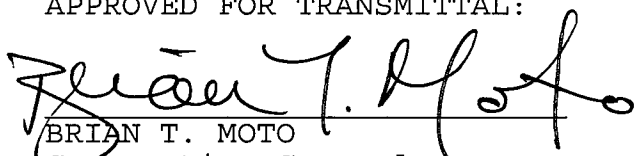
**Question 2: If current appointed staff are affected, what steps should be taken to protect their current positions and their return rights?**

The Department of Personnel Services has informed us that it is not aware of any County of Maui employee who is currently on a leave of absence as a result of having accepted an appointment to an Act 70 Position in State government.

**Question 3: If not the same as the county, what will be the impact on State Employees appointed to exempt positions?**

As discussed above, we do not believe any County of Maui employees will be affected by Act 70 at this time. We have no information as to whether, or how, any State employees will be affected.

APPROVED FOR TRANSMITTAL:

  
BRIAN T. MOTO  
Corporation Counsel

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JTU:keu

cc: Lynn Krieg, Director, Department of Personnel Services  
Webpage