

# DEPARTMENT OF PUBLIC SAFETY REPORT TO THE 2006 LEGISLATURE

# SECTION 66, ACT 178, SESSION LAWS OF HAWAII 2005 RELATING TO THE STATE BUDGET

A Report on the Practice of Reallocating Funds Between Budget Cost Categories, and the Legal Authority for Such Reallocation

October 2005

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## EXECUTIVE SUMMARY

Section 66 of the General Appropriations Act of 2005, enacted as Act 178, Session Laws of Hawaii 2005, provides that the Department of Public Safety (PSD) shall: (a) evaluate the practice of reallocating funds appropriated for positions, that may be vacant, to other operational costs; (b) develop a plan to realign funds from long-standing vacant positions to the appropriate cost elements for the Department; (c) discuss the reasons for the practice of reallocating funds; (d) discuss the expenses paid using reallocated funds for the previous two fiscal years; (e) discuss the legal authority for reallocating payroll funds for other expenses; and (f) submit the plan to the Legislature no later than October 1, 2005.

Accordingly, PSD reviewed its appropriations, allocations, and expenditures for FYs 2004 and 2005. We found that, contrary to the assumption underlying the passage of Section 66, the Department as a whole did not reallocate payroll funds for other expenses in either of the two fiscal years.

Moreover, budgets reflect planning and programming assumptions rather than a set of figures that mirror prior-year expenditures. Variances between budget details and actual expenditures are to be expected given the one-to-two-year lag from budget preparation to budget execution. Since actual expenditures may include responses to temporary conditions, and do not necessarily reflect a long-term program plan or solution, prior-year expenditures should not be prescribed as the basis for permanently altering or realigning the cost category details of future budgets.

The General Appropriations Act of odd-numbered years, and the Supplemental Appropriations Act of even-numbered years, appropriate funds by budget program ("program ID") and, within such program, by means of financing. Budget provisos in the General Appropriations Acts, such as Section 134 of Act 178, SLH 2005 allow the Governor to transfer operating funds between appropriations with the same means of financing, within an expending agency. The Governor is required to report such transfers to the Legislature prior to the next legislative session. The reallocation of funds between cost categories within the same program ID is allowed under current statutory authorizations.

Finally, although turnover savings may be realized in typical 8/5 operations, the same should not be assumed for vacant PSD positions. As such, this report includes an overview of the unique working conditions of the Department of Public Safety's 24/7 paramilitary operations and command structure. It is our hope that this overview facilitates an understanding of the complexity of managing 24/7 operations that center on the care and custody of approximately 6,000 incarcerated women and

men, and the special circumstances necessitating budget reallocations in order to meet payroll obligations.

### EVALUATE THE PRACTICE OF REALLOCATING FUNDS APPROPRIATED FOR POSITIONS, THAT MAY BE VACANT, TO OTHER OPERATIONAL Costs.

- A review of the Department of Public Safety's (PSD's) FY 2004 and FY 2005 budget and expenditures indicates that the Department as a whole did not reallocate funds budgeted for cost category 10-Personal Services to cost category 20-Other Current Expenses.
  - Exhibit A shows that FY 2004 Personal Services requirements exceeded funds appropriated by the Legislature and allocated by the Governor. Payroll requirements were met by transferring funds from Other Current Expenses to Personal Services as the need arose. In addition, some transfers were made from one program to meet another program's payroll obligations. In both cases, reallocation of funds resulted in an equal or greater amount of payroll expenditures, rather than a reduction of payroll costs to support non-payroll expenses. All funding transfers were implemented within Departmental appropriation and allocation ceilings, thereby maintaining a balanced budget.
  - For FY 2005, Exhibit A demonstrates that the Department expended less than the appropriated and allocated sums for cost categories Personal Services and Other Current Expenses, respectively. The (unintended) lapsing of funds in both cost categories suggests that the Department was unable to optimize the use of funds allocated for Other Current Expenses, thereby obviating the need to transfer any Personal Services funds to subsidize Other Current Expenses.

### DEVELOP A PLAN TO REALIGN FUNDS FROM LONG-STANDING VACANT POSITIONS TO THE APPROPRIATE COST ELEMENTS FOR THE DEPARTMENT.

- Long-standing vacancies do not reflect a lack of need for such positions.
  - For example, PSD continues to suffer from the nationwide and statewide nursing shortage, in addition to the stigma of working in a correctional facility. However, despite the vacant Registered Professional Nurse positions, it is imperative that we provide 24/7 health care for inmates. The only alternative is to contract agency nurses at nearly double the cost of nurse employees, requiring the expenditure of non-payroll funds under cost category Other Current Expenses instead of Personal Services. Given the current realities of the nursing shortage, contracting agency nurses is PSD's response to temporary conditions and does not reflect a long-term plan or solution to the recruitment and retention problem affecting Health Care Division services. Hopefully, the efforts of higher education institutions to graduate more nurses will eventually alleviate the current nursing shortage. As such, actual

expenditures incurred to meet temporary conditions should not necessarily serve as the basis for permanently altering or realigning the cost category details of future budgets.

- Budgets reflect planning and programming assumptions as opposed to a set of figures that mirror prior-year expenditures. As such, there is no requirement to realign budgeted funds from vacant positions to other cost categories.
  - Section 37-63, Hawaii Revised Statutes (HRS), provides that a comprehensive system for State program and financial management shall enhance the capacity of the Governor and the Legislature to *plan, program, and finance* the programs of the State. Further, HRS Section 37-64 enumerates governing principles to guide the program and financial management system, one of which is that *planning shall have a long-range view*. HRS Section 37-69 prescribes the manner in which the Governor shall prepare a State six-year program and financial plan encompassing all State programs, for submittal to the Legislature in every odd-numbered year. For each program at the lowest program structure level, the details are to reflect actual (vs. budgeted) expenditures only for the last completed fiscal year, and estimated or budgeted costs for the fiscal year in progress and for each of the ensuing six fiscal years.
  - Budget estimates for future years are broken down by cost categories and predicated on forward-looking plans, goals, and objectives as opposed to fiscal accounting reports of past expenditures. It is not surprising that actual costs may differ from budget estimates that were prepared one or two years prior to execution of the budget, as program requirements could well evolve during the interim between budget preparation and budget execution. This is especially true for the Corrections area, given the dynamics involved in the 24/7 care and custody of approximately 6,000 incarcerated adults.

## DISCUSS REASONS FOR THE PRACTICE OF REALLOCATING FUNDS.

- Like any other expending agency, the Department of Public Safety is responsible for budgeting and reallocating funds as necessary to meet changing operational requirements over the one- or two-year lead time required for preparation of the budget, relative to the execution of the budget. Moreover, program needs may change even during the budget execution process. A "budget" is a dynamic management tool that should provide sufficient flexibility to meet new and unforeseen needs or opportunities.
  - A prime example of an unforeseen need is the current necessity of absorbing the higher costs of purchasing motor vehicle fuel due to skyrocketing prices following the recent enactment of the Hawaii gas cap law. An inability to reallocate funds to procure adequate fuel supplies would undoubtedly

frustrate the Department's discharge of its responsibilities relating to law enforcement patrol, narcotics enforcement and other investigations, inmate transports to/from court dates, and the like.

- The need to reallocate additional funds to cover payroll costs (as opposed to other current expenses) stems from the fact that PSD's authorized positions and total payroll costs are not fully funded.
  - A 5% reduction is assessed as "turnover savings" against the total funds budgeted for authorized positions, on the assumption that turnover among employees generates salary savings. This assumption does not hold true for the Department of Public Safety.
  - Funding augmentations for collective bargaining pay increases are allocated at only 90% of the projected costs.
  - The Department's FB 2003-2005 appropriations for overtime pay were arbitrarily reduced by the Legislature to reflect only 10% of base pay for FY 2004, and 8% of base pay for FY 2005.
  - The complexities and necessity of overtime pay incurred by PSD's 24/7 operations—with three shifts daily—are not fully understood by decision makers outside the Department, and are therefore not considered in the development of Statewide policies on overtime work, for example, that are implemented across-the-board for 8/5 operations with only one shift five days a week. Exhibit B provides an overview of the unique circumstances which necessitate overtime work in the Department's 24/7 Corrections and Law Enforcement operations which are governed by paramilitary command structures along with nine different and very complex collective bargaining agreements. In addition to the overtime work requirements of the uniformed officers in the line operations, there are also overtime payroll costs incurred by administrative support staff using inefficient manual processes due to a lack of adequate information technology staff, systems, and tools.

#### DISCUSS THE EXPENSES SUBSIDIZED USING REALLOCATED FUNDS DURING THE PREVIOUS TWO FISCAL YEARS.

This report previously indicated that the Department of Public Safety as a whole did not realize salary savings from position vacancies in FY 2004 and FY 2005. That is, payroll funds were inadequate at the outset and therefore not available for transfer to cover other current expenses. To meet program requirements inherent in the care and custody of approximately 6,000 inmates housed in PSD's antiquated and poorly designed four jails and four prisons, the Federal Detention Center in Hawaii, and contracted mainland prisons; funds appropriated for Other Current Expenses were of necessity reallocated to cover Personal Services costs primarily at Halawa Correctional Facility (HCF). HCF, which comprises a Medium Security Facility and a Special Needs/High Security Facility, has never been funded adequately by budget appropriations.

### DISCUSS THE LEGAL AUTHORITY USED TO REALLOCATE PAYROLL FUNDS FOR OTHER EXPENSES.

- Pursuant to HRS Section 37-74, each agency is responsible for the administration of its programs, subject to restrictions imposed by the Governor, the Legislature, or existing laws. In the absence of any restrictions, however, each agency has the authority and responsibility to administer its own programs.
  - The General Appropriations Act of odd-numbered years, and the Supplemental Appropriations Act of even-numbered years, appropriate funds by budget program ("program ID") and, within such program, by means of financing. Section 133 of Act 200, Session Laws of Hawaii (SLH) 2003, and Section 134 of Act 178, SLH 2005, allow the Governor to transfer operating funds between appropriations with the same means of funding, within an expending agency. The Governor is required to report such transfers to the Legislature prior to the next legislative session. Section 134 of Act 178, SLH 2005 makes clear that the Governor must include, among other items, the program ID from which funds were transferred and the program ID to which funds were transferred. Accordingly, when funds are transferred between different program IDs, Section 133 of Act 200 or Section 134 of Act 178 set forth a specific method by which the transfer is to occur.
  - For example, when the Department of Public Safety relocated women inmates from the Hawaii Community Correctional Center's (HCCC) main campus to HCCC's Hale Nani facility as a means to reduce overcrowding, that move created a need to establish new security posts at Hale Nani which could be staffed by hiring and training additional ACOs or by incurring additional overtime payroll costs for existing ACOs employed at HCCC. Positions could be kept vacant at the Oahu Community Correctional Center (OCCC), for example, with the resulting OCCC cost savings being used to

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subsidize the unbudgeted HCCC staffing requirements, provided that PSD followed the requirements of Section 133 of Act 200, SLH 2003, or such similar provision applicable to that fiscal year. On the other hand, if HCCC needed to increase certain operational expenditures in order to prepare for a potential hurricane, HCCC may decide that certain program posts at HCCC would temporarily be closed (remain unstaffed) and corrections program services suspended in order to generate sufficient savings to cover hurricane preparedness expenses. The discretion to prioritize and determine necessary reallocations within the appropriation for HCCC is left to PSD.

Were this reallocation flexibility not afforded to State agencies, agencies may have to resort to meeting operational requirements by expending funds from any of the agency's program IDs having sufficient available balances in the required cost category (10 or 20) or cost element (A, B, C, L, or M). For example, the Department of Public Safety may be compelled to charge Medicaid reimbursements exceeding the Health Care Division's allotment for cost category 20-Other Current Expenses to the Food Services allotment for Other Current Expenses. The unfortunate consequence would be a misalignment between expenditures and budget program objectives.

#### EXHIBIT A

## DEPARTMENT OF PUBLIC SAFETY COMPARISON OF APPROPRIATIONS, ALLOCATIONS, AND EXPENDITURES GENERAL FUNDS

Prepared for Section 66, Act 178, SLH 2005 September 28, 2005

FY 2004										
Cost		Collective Barg	Transfer to	Emergency		Actual	Alloc Minus			
Category	Appropriation	Augmentation	DAGS	Appropriation	Allocation	Expenditures	Actual Exp			
Personal Services	87,078,456	2,850,304	-	-	89,928,760	91,030,731	(1,101,971)			
Other Current Exp	66,610,813	-	(333,000)	300,000	66,577,813	64,377,715	2,200,098			
Total	153,689,269	2,850,304	(333,000)	300,000	156,506,573	155,408,446	1,098,127			

FY 2005											
Cost		Collective Barg	Transfer to	Emergency		Actual	Alloc Minus				
Category	Appropriation	Augmentation	DAGS	Appropriation	Allocation	Expenditures	Actual Exp				
Personal Services	85,912,199	6,747,805	-	-	92,660,004	92,360,722	299,282				
Other Current Exp	73,524,588	-	-	-	73,524,588	73,236,124	288,464				
Total	159,436,787	6,747,805	-	-	166,184,592	165,596,846	587,746				

[c:/data/excel/leg/05 leg/Section 66, Act 178, SLH 2005(tlo)]

### EXHIBIT B

#### THE NATURE OF OVERTIME WORK IN 24/7 OPERATIONS: CORRECTIONS AND LAW ENFORCEMENT IN THE DEPARTMENT OF PUBLIC SAFETY

Within Hawaii State government, policies on overtime (OT) work are typically issued on a "one size fits all" basis, based on assumptions applicable to 8/5 work schedules using only one shift of employees on any given workday. However, such assumptions are mistakenly applied to the Department of Public Safety's (PSD) 24/7 paramilitary operations and command structure that require three shifts daily.

This report attempts to provide insights into the conditions giving rise to administrative and operational overtime work within PSD, based on the complexities and unique characteristics of the 24/7 corrections and law enforcement work environment.

- Essential posts must be covered whether or not scheduled shift workers report to work. The post assignment of an absent employee cannot necessarily be assumed among those present, since a given individual can be in only one place at a time, and all assigned posts must be staffed.
  - Shift workers include Adult Corrections Officers (ACOs), Registered Professional Nurses, Licensed Practical Nurses, Cooks, Kitchen Helpers, and Deputy Sheriffs.
  - When a shift worker does not report to work as scheduled, a replacement must be identified and deployed immediately for the health and safety of other employees, the inmate population, and the general public. In the case of PSD's paramilitary operations and command structure, the Watch Commander is responsible for authorizing OT work by Deputy Sheriffs or ACOs as needed, prior to the start of each shift, in a manner consistent with collective bargaining agreements. Similarly, this also holds true for supervisors of civilian/non-uniformed staff members.
  - Reasons for unplanned absences include—but are not limited to—sick leave, family leave due to emergency, emergencies, disciplinary action of suspension, workers' compensation leave, leave pending investigation, and military leave. For example, at Waiawa Correctional Facility alone, 7 of 67, or 10.4% of ACO IIIs, were on active military duty as of May 2005.
- Prison and jail operations would also be jeopardized if overtime work performed by non-shift Building Maintenance Workers were disallowed by Wardens or Watch Commanders. The workload and emergency nature of job orders require immediate attention through completion. Such tasks include--but are not limited

to--unclogging toilets and sewer lines, security fencing repairs, cleanup after deliberate flooding of cells by inmates, activating generators in lieu of (short-circuited) electrical transformers, and tending to malfunctioning wastewater treatment plants, not unlike a sewer break in the general community.

- It is neither feasible nor responsible to defer investigation of suspected criminal activity, or to suspend surveillance operations after-hours, to avoid overtime work by Internal Affairs or Narcotics Enforcement Investigators. Suspending afterhours work would impede the investigation and possibly the prosecution of cases.
- A 1988 review by the National Institute of Corrections, and the State Auditor's Report Nos. 92-27 and 94-18 all found that PSD's shift relief factor (SRF) of 1.65 fell short of the recommended 1.88 SRF to be used in calculating the number of employees necessary to properly staff a post.
  - The shift relief factor is a number derived as a ratio between the number of days per year that a post is active (365) and the total number of days off per employee per year (vacation days off, sick days off, holiday days off, worker's compensation days off, training days off, recruitment for vacancy days off, military leave days off, etc.).
  - The current 1.65 SRF was calculated in the 1970s using a generic formula based on a national model in a prison setting. However, given the higher number of days off (21 days of annual vacation leave, 21 days of annual sick leave, and 13-15 paid holidays per year) negotiated for Hawaii State employees, the studies found that a 1.88 SFR would be more appropriate for the Hawaii State correctional facilities. This means that our State prisons and jails are significantly underfunded and understaffed in terms of authorized positions, not to mention other operating expenses.
  - As a result of inadequate staff, available shift workers must work on an overtime basis to provide full coverage; for example, by working two consecutive eight-hour shifts and earning overtime pay for the unscheduled shift, and possibly being compensated additionally for an inadequate rest period between the end of the second consecutive shift and the beginning of the employee's next regular shift.
- Collective bargaining agreements (CBA) dictate terms under which overtime work is distributed.
  - For example, Section 26.12 of the CBA for Bargaining Unit (BU) 10 provides that the employer shall endeavor to assign overtime work on a fair and equitable basis giving due consideration to the needs of the work operation. Moreover, there is no ceiling in the CBA governing overtime work. Any attempt by the employer to impose a ceiling (e.g., 40% of base pay) will result in grievances that must be resolved through arbitration at an average cost per

case of \$2,500 to PSD, excluding PSD administrative staff time and any settlement costs.

- With the exception of the largest facilities (where it would be impractical)— Oahu Community Correctional Center (OCCC) and Halawa Correctional Facility (HCF)—OT work is assigned on a rotation system, based on seniority, to ACOs expressing an interest in OT work. ACOs from the previous watch may be held over, or a call out to off-duty ACOs may occur. Should an ACO decline an offer of OT work, that ACO forfeits OT assignments until her/his name comes up again in the rotation process.
- While some employees do not wish to work overtime at the expense of personal priorities, others willingly sign up for overtime work. As a result, the pool of overtime workers decreases and certain employees perform considerably more overtime work than others. If it were not for these employees who sign up for OT work, the security of the correctional facilities and the general public would be severely compromised.
- Holiday overtime pay is a year-round necessity for PSD's 24/7 operations. For example, there are uniformed officers who are assigned other than a Monday-Friday work schedule, and are scheduled to work on Fridays, including a Friday that happens to be a holiday. If these officers are required to work on Friday instead of observing the Friday holiday, they are entitled to OT pay on Friday.
- The rank structure of a security unit is based on the size of the correctional facility.
  - Each of the larger facilities—HCF, OCCC, and Maui Community Correctional Center—employs a Major as the Chief of Security, and Captains as Watch Commanders. These positions are excluded from BU 10. At these facilities, overtime work as Chief of Security or Watch Commander is performed only by the limited number of excluded personnel to ensure that an experienced Chief of Security or Watch Commander is managing the operations.
  - At OCCC, for example, OT exceeding the State's universally applied threshold of 40% of base pay was incurred by a Major and a Captain during the month of January 2005. Although four of the five Captain positions remained filled in January 2005, OCCC was forced to function with only three positions after one Captain was deployed on active military duty for three and one-half years. In order to meet the command structure requirement, the Major and the Captain performed the OT work when the other two Captains were unavailable. In any given week, 21 watches must be filled by a Watch Commander. The three Captains filled 15 watches as assigned shifts, leaving six watches to be filled on an overtime basis.
  - In contrast, the smaller facilities are staffed by Captains who serve as Chief of Security, and Lieutenants who serve as Watch Commanders. There is no alternative but to allow Lieutenants, who are included BU 10 members, to

temporarily serve in the excluded BU 10 position of Captain. There are more Lieutenants at the smaller facilities than there are Captains at the largest facilities, among which to rotate temporary assignments as Chief of Security or Watch Commander.

- It takes between one and two years to recruit, conduct background checks and various tests, hire, and train a uniformed officer for the Department of Public Safety, whether in Corrections or Law Enforcement. Similarly, the Honolulu Police Department's (HPD) website indicates that, upon successfully passing the civil service exam, a police recruit is granted up to 24 months during which to complete remaining phases of the recruitment process (e.g., physical and psychological testing) before being recommended for hire. Once hired, the HPD recruit must undergo eight months of intensive training.
  - PSD has experienced a high turnover among its ACOs, and resulting vacancies that create the need for coverage of posts by existing employees on an overtime basis during the possible two-year period for recruiting and training a replacement officer. After the Department of Human Resources Development (DHRD) screens applications and refers eligible applicants to PSD, additional screening is performed using oral and written tests, attitude questionnaires, physical ability tests, and comprehensive suitability reviews (background checks). By this time, typically only 50% of the initially eligible applicants remain as viable candidates. When a cost-effective number of recruits is identified for hire, they are hired as a class and sent to mandatory training for 8 to 23 weeks before reporting to their assigned posts. During this extended period, overtime costs are being incurred for existing staff who must cover the recruits' future post assignments.
  - Staff shortages and the need for overtime work also stem from our long-term • difficulty in recruiting and retaining staff on the Big Island, Maui, and Kauai. Under the State's current full employment conditions, job seekers view ACO and Deputy Sheriff positions as measures of last resort. As such, the need for adequate security coverage can be met only by overtime work assigned to the limited staff onboard. For example, there is a trend for Big Island applicants to gain entry into Corrections by accepting ACO positions on Maui and, after attaining permanent civil service status, requesting transfer home to the Big Island. From PSD's perspective, the Maui ACO positions become costly points of entry into the Corrections system, considering that the recruitment and training process could well take up to two years, during which time existing staff must cover the post assignments of the vacant positions on an overtime basis. Another example of recruitment and retention difficulty is the lack of gualified social work and substance abuse treatment professionals on the Big Island.
  - Circumstances specific to Hawaii Community Correctional Center (HCCC) also mandate the performance of overtime work at this Hilo jail. HCCC

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comprises two building complexes geographically separated by several miles. Based on the threat of a lawsuit in mid-2004 for overcrowded conditions at the main complex, the Hale Nani complex was extensively renovated to permit the relocation of female inmates from the main complex to Hale Nani. This move allowed a more space-efficient use of bedspaces at the main complex. The gender-specific posts and staff for the female offenders were also reassigned to Hale Nani. Since a required security perimeter fence could not be constructed before the move, an additional unbudgeted 24-hour security post had to be established. A total of three to four unbudgeted posts are necessary for HCCC, which translates mathematically to a need for 9 to 12 positions that must be filled *daily* (over three shifts) on an overtime basis.

Another burden facing HCCC, that can be addressed only by overtime work, is the number of 200-mile or longer roundtrips from Hilo to transport inmates to court dates in Puna, Kau, Waimea, Kohala, and Kona with a minimum of two ACO escorts. Transport inefficiencies and the need for OT work will not be resolved until a West Hawaii Community Correctional Center (Kona jail) can be built.

Certain administrative tasks are very specialized, requiring overtime work for highly skilled individuals in addition to their normal duties. For example, the highly technical and tedious auditing of manually kept time and attendance records for roughly 2,500 employees including shift workers, in strict accordance with applicable rules, regulations, and seven complex collective bargaining agreements, has been centralized under the few staff who are able to perform this task with consistent accuracy and efficiency. The centralized auditing of time and attendance records by skilled employees is one of two key factors (the other being an automated time and attendance system interfacing with the State payroll system) in resolving the Department's salary overpayment cases based on human error, and to minimizing new cases of salary overpayment upon separation from the Department. While the Department has made progress in developing a semi-automated system for generating individual timesheets, the difficulty of programming work rules governed by seven different and complex CBAs will perpetuate the need for skilled administrative staff to audit employee time and attendance records on an overtime basis.