
A BILL FOR AN ACT

RELATING TO OATHS OF OFFICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Article XVI, section 4, of the Hawaii
2 constitution, mandating that public officers take and subscribe
3 to an oath of office, was amended in 1992 to reserve that
4 requirement to the specific offices of the governor, lieutenant
5 governor, members of the legislature, members of the board of
6 education, members of the national guard, state and county
7 employees possessing police powers, district court judges, and
8 office holders whose appointment requires the advice and consent
9 of the state senate.

10 After ratification of the constitutional amendment, the
11 legislature further clarified its position to restrict the
12 loyalty oath requirement by repealing part II of chapter 85,
13 Hawaii Revised Statutes, that set forth the statutory
14 requirements and administrative procedures related to the
15 loyalty oath as a general requirement for public employment.

16 The purpose of this Act is to amend various provisions of
17 the Hawaii Revised Statutes that predated the constitutional
18 amendment and that still contain a loyalty oath requirement for



1 appointment or employment of public officers and employees who
2 are not part of the constitutionally required class of
3 employees.

4 SECTION 2. Section 28-8, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§28-8 First deputy attorney general; other deputies. (a)**

7 The attorney general shall appoint, and at the attorney
8 general's pleasure remove, a first deputy attorney general and
9 other deputies and law clerks as the exigencies of the public
10 service may require, and shall be responsible for all of the
11 acts of the first deputy attorney general, other deputies, and
12 law clerks. They shall act under the direction of the attorney
13 general and shall perform duties as the attorney general may
14 require regardless of the source of funding for their
15 compensation and notwithstanding any law to the contrary, except
16 that the attorney general shall not require the performance of
17 duties that would violate the terms of an applicable funding
18 source or that would be in contravention of a federal
19 requirement, restriction, or condition. The first deputy
20 attorney general and other deputies, subject to the attorney
21 general's directions, may perform or exercise any and all duties



1 or powers by law required of or conferred upon the attorney
2 general.

3 (b) The attorney general may appoint and, by contract,
4 retain the services of special deputies to perform such duties
5 and exercise such powers as the attorney general may specify in
6 their several appointments. The special deputies shall serve at
7 the pleasure of the attorney general. At the option of the
8 attorney general, special deputies may be compensated on a
9 fixed-price basis, an hourly rate basis, with or without a fixed
10 cap, or, if a special deputy has been appointed to represent the
11 State in an action by the State pursuant to section 661-10,
12 through a contingent fee arrangement to be specified in the
13 contract and payable out of all sums the special deputy recovers
14 for the State by judgment, order, or settlement.

15 [~~(c) The first deputy attorney general and all of the~~
16 ~~other deputies shall take the oath required of other public~~
17 ~~officers.] "~~

18 SECTION 3. Section 128-16, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§128-16 Status of personnel other than regular officers**
21 **and employees.** All persons, including volunteers whose services
22 have been accepted by authorized persons, [~~shall,~~] while engaged



1 in the performance of duty pursuant to this chapter, including
 2 duty performed during periods of training, shall be deemed state
 3 employees or employees of a political subdivision, as the case
 4 may be, and shall have the powers, duties, rights, and
 5 privileges of such in the performance of their duties, except
 6 as, pursuant to this chapter, may be prescribed by or under the
 7 authority of the governor or the political subdivision[~~+~~
 8 ~~provided that volunteers serving without compensation shall be~~
 9 ~~subject to chapter 85, part II only if and to the extent that~~
 10 ~~the governor shall so provide]."~~

11 SECTION 4. Section 128-21, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "**§128-21 Civil defense personnel's oath.** [~~In order to~~] To
 14 comply with the Federal Civil Defense Act of 1950 each person
 15 appointed to serve in an organization for civil defense who is
 16 so required by the Federal Civil Defense Act of 1950, [~~shall,~~
 17 before entering upon the person's duties, shall take [~~an~~] such
 18 oath [~~in writing before a person authorized to administer oaths,~~
 19 ~~substantially as follows:~~

20 "~~I,....., do solemnly swear (or affirm)~~
 21 ~~that I will support and defend the Constitution of the United~~
 22 ~~States against all enemies, foreign and domestic; that I will~~

1 ~~bear true faith and allegiance to the same; that I take this~~
2 ~~obligation freely, without any mental reservation or purpose of~~
3 ~~evasion; and that I will well and faithfully discharge the~~
4 ~~duties upon which I am about to enter.~~

5 ~~And I do further swear (or affirm) that I do not advocate,~~
6 ~~nor am I a member or an affiliate of any organization, group, or~~
7 ~~combination of persons that advocates the overthrow of the~~
8 ~~Government of the United States by force or violence; and that~~
9 ~~during such time as I am a member of the (name of civil defense~~
10 ~~organization), I will not advocate nor become a member or an~~
11 ~~affiliate of any organization, group, or combination of persons~~
12 ~~that advocates the overthrow of the Government of the United~~
13 ~~States by force or violence."~~

14 ~~Provided that to the extent permitted by the Federal Civil~~
15 ~~Defense Act of 1950 the governor by rule may provide for~~
16 ~~additional time for the taking of the oath, where compliance~~
17 ~~with the requirement before the person so required enters upon~~
18 ~~the person's duties is or may be impracticable; for like reasons~~
19 ~~the governor similarly may provide as to the oath required by~~
20 ~~part II of chapter 85.~~

21 ~~The governor by rule may relieve persons, or classes of~~
22 ~~persons, subject to the requirements imposed by this section,~~



1 ~~from compliance with part II of chapter 85.]~~ as may be required
2 by federal law."

3 SECTION 5. Section 281-11, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§281-11 County liquor commissions and liquor control**
6 **adjudication boards; qualifications; compensation.** (a) A
7 liquor commission or liquor control adjudication board,
8 consisting of not less than five members, no more than the
9 minimum required for a quorum of whom shall belong to the same
10 political party at the time of appointment, may be created for
11 each of the counties. The elected executive head of each county
12 may nominate, and by and with the advice and consent of the
13 legislative body of the county, shall appoint the members of the
14 commissions and boards. The elected executive head of each
15 county, by and with the advice and consent of the legislative
16 body of the county, may remove from office any of the members.
17 The commission or board shall designate one of its members as
18 chairperson. Each member shall be a citizen of the United
19 States and shall have resided in the county for which appointed
20 for at least three years immediately preceding the date of the
21 member's appointment.



1 (b) Upon the expiration of the term of each commissioner
2 or board member, the commissioner's or board member's successor
3 shall be appointed for a term to expire five years from the date
4 of the expiration of the preceding term.

5 The tenure in office of every commissioner or board member
6 shall be for the terms provided and until their successors are
7 duly appointed and qualified.

8 Any vacancy shall be filled by appointment for the
9 remainder of the unexpired term. No person shall be a member of
10 any commission or board who is or becomes engaged, or is
11 directly or indirectly interested in any business for the
12 manufacture or sale of liquor or who advocates or is or becomes
13 a member of, or is identified or connected with, any
14 organization or association which advocates prohibition, or who
15 is an elected officer of the state or county government or who
16 presents oneself as a candidate for election to any public
17 office during the term of the person's appointment hereunder.
18 This provision shall be enforced by the elected executive head
19 of the county by the removal of the disqualified member whenever
20 such disqualifications shall appear.



1 (c) The amount of compensation and reasonable expenses for
2 travel and other costs necessarily incident to the discharge of
3 the members' duties shall be established by each county.

4 [~~(d) Each member of the commission or board, before
5 entering upon the duties of the member's office, shall take and
6 subscribe to an oath that the member will faithfully perform
7 such duties according to law, which written oath shall be filed
8 with the elected executive head of each county.]"~~

9 SECTION 6. Section 382-4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§382-4 Employees under government operation.** In
12 operating the plant and facilities of each company the governor,
13 so far as possible and to the extent employees are needed, shall
14 employ the personnel employed by the company upon the seizure
15 and taking of possession thereof or immediately prior to the
16 disruption of service by the company, including employees on
17 strike or locked out, if the disruption is due to a strike or
18 lockout. Persons so employed by the governor or otherwise
19 employed by the governor shall not by reason of such employment
20 be or become entitled to civil service, retirement, vacation, or
21 other benefits provided by law for other employees of the State,
22 nor shall they be required to possess the qualifications of



1 other government employees, and no person shall be ineligible
 2 for employment by reason of the fact that the person is not a
 3 citizen of the United States or a resident of the State;
 4 provided that if it is necessary to employ persons who were not
 5 theretofore employed by the company, [~~such~~] those persons shall
 6 possess the residence qualifications prescribed by section 78-
 7 1[~~; provided further that all citizens employed or engaged by~~
 8 ~~the governor under the provisions of this chapter shall~~
 9 ~~subscribe to the oath or affirmation prescribed by sections 85-~~
 10 ~~31 to 85-48 and all noncitizens shall subscribe to the following~~
 11 ~~oath or affirmation:~~

12 ~~"I.....do solemnly swear and declare, on~~
 13 ~~oath, that I do not hold membership in, pay assessments, dues,~~
 14 ~~or make contributions to any organization or any political party~~
 15 ~~which advocates the overthrow of the constitutional form of~~
 16 ~~government of the United States of America or any change in the~~
 17 ~~government of the United States of America, except as provided~~
 18 ~~by its Constitution; that I take this obligation freely, without~~
 19 ~~any mental reservation or purpose of evasion; So help me God."~~

20 ~~Upon a showing as to the sincerity of anyone claiming that~~
 21 ~~one is unwilling to take the above prescribed oath only because~~
 22 ~~of religious beliefs one is unwilling to be sworn, one may be~~



1 ~~permitted, in lieu of the oath, to make one's solemn affirmation~~
2 ~~which shall be in the same form as the oath except that the~~
3 ~~words "sincerely and truly affirm" shall be substituted for the~~
4 ~~word "swear" and the phrases "on oath" and "So help me God"~~
5 ~~shall be omitted].~~

6 The salaries and wage rates of the persons employed by the
7 State shall be the same as those which existed in the industry
8 immediately prior to the disruption of service occasioning the
9 emergency. There shall be no deductions from such salaries and
10 wages except as authorized by law in the case of other state
11 employees. The hours of employment shall be the same as existed
12 in the industry immediately prior to the disruption of service
13 and insofar as possible the other conditions of employment shall
14 be the same as then existed, and neither the governor nor the
15 designated agency shall have authority to enter into
16 negotiations with any such company or with any labor
17 organization for a collective bargaining contract with respect
18 to wages, hours, and other terms and conditions of employment in
19 the industry. All services performed in the employ of the State
20 in government operations under this chapter shall constitute
21 employment for the purposes of chapters 383 and 386 and to the
22 extent of the services the State shall be deemed an employer



1 within the meaning of such chapters and shall make the
2 contributions required of a new employer as prescribed by
3 chapter 383."

4 SECTION 7. Section 431:2-105, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) There shall be a chief deputy commissioner, who shall
7 be subject to chapter 76. The chief deputy commissioner shall
8 have the power to perform any act or duty assigned by the
9 commissioner~~[, and shall take and subscribe the same oath of~~
10 ~~office as the commissioner, which oath shall be endorsed upon~~
11 ~~the]~~. The certificate of the chief deputy commissioner's
12 appointment ~~[and]~~ shall be filed in the office of the lieutenant
13 governor."

14 SECTION 8. Section 485-3, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The commissioner of securities shall employ from time
17 to time such other officers, attorneys, clerks, and employees~~[7]~~
18 as are necessary for the administration of this chapter. They
19 shall perform such duties as the commissioner assigns to them
20 and their compensation, and the compensation of the deputies
21 herein provided for, shall be fixed by the commissioner with the
22 approval of the governor, subject to chapter 76. [~~The~~



1 ~~commissioner and deputies and each of the employees shall take~~
2 ~~and subscribe and file the oath of office prescribed by law.]~~

3 The commissioner, deputies, or any person appointed or
4 employed by the commissioner under this subsection shall be
5 paid, in addition to their salary or compensation when required
6 to travel on official duties, the transportation cost, board,
7 lodging, and other traveling expenses necessary and actually
8 incurred by each of them in the performance of the duties
9 required by this chapter or performed by the direction of the
10 commissioner."

11 SECTION 9. Section 502-2, Hawaii Revised Statutes, is
12 repealed.

13 [~~"**§502-2 Oath.** The registrar shall take an oath~~
14 ~~faithfully to discharge the duties of the registrar's office."}]~~

15 SECTION 10. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect upon its approval.



H.B. NO. 3254

Report Title:

Oath of Office; Public Officers and Employees

Description:

Repeals various provisions that require public employees to take a loyalty oath. (HB3254 HD1)

