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# 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 consent of the  
9 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  
 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 of the State; provided that if  
 4 it is necessary to employ persons who were not theretofore  
 5 employed by the company, [~~such~~] those persons shall possess the  
 6 residence qualifications prescribed by section 78-1[~~;~~ provided  
 7 further that all citizens employed or engaged by the governor  
 8 under the provisions of this chapter shall subscribe to the oath  
 9 or affirmation prescribed by sections 85-31 to 85-48 and all  
 10 noncitizens shall subscribe to the following oath or  
 11 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 certificate of the chief deputy commissioner's appointment~~  
12 ~~and filed in the office of the lieutenant governor]."~~

13 SECTION 8. Section 456-2, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "~~§456-2~~ **Qualifications**[~~; oath~~]. Every person appointed a  
16 notary public shall, at the time of the person's appointment, be  
17 a resident of the State, possess the other qualifications  
18 required of public officers and be at least eighteen years of  
19 age. [~~Every person appointed to that office shall, before~~  
20 ~~entering thereon, take and subscribe an oath for the faithful~~  
21 ~~discharge of the person's duties, which oath shall be filed in~~  
22 ~~the department of the attorney general.]"~~



1 SECTION 9. Section 485-3, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The commissioner of securities shall employ from time  
4 to time such other officers, attorneys, clerks, and employees,  
5 as are necessary for the administration of this chapter. They  
6 shall perform such duties as the commissioner assigns to them  
7 and their compensation, and the compensation of the deputies  
8 herein provided for, shall be fixed by the commissioner with the  
9 approval of the governor, subject to chapter 76. [~~The  
10 commissioner and deputies and each of the employees shall take  
11 and subscribe and file the oath of office prescribed by law.]~~

12 The commissioner, deputies, or any person appointed or  
13 employed by the commissioner under this subsection shall be  
14 paid, in addition to their salary or compensation when required  
15 to travel on official duties, the transportation cost, board,  
16 lodging, and other traveling expenses necessary and actually  
17 incurred by each of them in the performance of the duties  
18 required by this chapter or performed by the direction of the  
19 commissioner."

20 SECTION 10. Section 88-27, Hawaii Revised Statutes, is  
21 repealed.



1        [~~"§88-27 Oath of trustees. Each trustee shall, within ten~~  
2 ~~days after the trustee's appointment or election, take an oath~~  
3 ~~of office that, so far as it devolves upon the trustee, the~~  
4 ~~trustee will diligently and honestly administer the affairs of~~  
5 ~~the board of trustees, and that the trustee will not knowingly~~  
6 ~~violate or willingly permit to be violated any of the provisions~~  
7 ~~of law applicable to the system. The oath shall be subscribed~~  
8 ~~to by the member making it and certified by the officer before~~  
9 ~~whom it is taken and shall be immediately filed in the office of~~  
10 ~~the lieutenant governor." ]~~

11        SECTION 11. 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 12. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17        SECTION 13. This Act shall take effect upon its approval.

18

INTRODUCED BY:

JAN 25 2006



**Report Title:**

Oath of Office; Public Officers and Employees

**Description:**

Repeals various provisions that require public employees to take a loyalty oath.

