
A BILL FOR AN ACT

RELATING TO CIVIL SERVICE EXEMPT EMPLOYEES.

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

1 SECTION 1. The purpose of this Act is to comply with Act
2 253, Session Laws of Hawaii 2000, which placed restrictions on
3 the creation of civil service exempt positions and required the
4 review of exempt positions annually to determine whether they
5 should remain exempt or be converted to civil service status.

6 SECTION 2. Section 6E-3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§6E-3 Historic preservation program.** There is
9 established within the department a division to administer a
10 comprehensive historic preservation program, which shall include
11 but not be limited to the following:

12 (1) Development of an on-going program of historical,
13 architectural, and archaeological research and
14 development, including surveys, excavations,
15 scientific recording, interpretation, and publications
16 on the State's historical and cultural resources;

17 (2) Acquisition of historic or cultural properties, real
18 or personal, in fee or in any lesser interest, by



- 1 gift, purchase, condemnation, devise, bequest, land
2 exchange, or other means; preservation, restoration,
3 administration, or transference of the property; and
4 the charging of reasonable admissions to that
5 property;
- 6 (3) Development of a statewide survey and inventory to
7 identify and document historic properties, aviation
8 artifacts, and burial sites, including all those owned
9 by the State and the counties;
- 10 (4) Preparation of information for the Hawaii register of
11 historic places and listing on the national register
12 of historic places;
- 13 (5) Preparation, review, and revisions of a state historic
14 preservation plan, including budget requirements and
15 land use recommendations;
- 16 (6) Application for and receipt of gifts, grants,
17 technical assistance, and other funding from public
18 and private sources for the purposes of this chapter;
- 19 (7) Provision of technical and financial assistance to the
20 counties and public and private agencies involved in
21 historic preservation activities;



- 1 (8) Coordination of activities of the counties in
2 accordance with the state plan for historic
3 preservation;
- 4 (9) Stimulation of public interest in historic
5 preservation, including the development and
6 implementation of interpretive programs for historic
7 properties listed on or eligible for the Hawaii
8 register of historic places;
- 9 (10) Coordination of the evaluation and management of
10 burial sites as provided in section 6E-43;
- 11 (11) Acquisition of burial sites in fee or in any lesser
12 interest, by gift, purchase, condemnation, devise,
13 bequest, land exchange, or other means, to be held in
14 trust;
- 15 (12) Submittal of an annual report to the governor and
16 legislature detailing the accomplishments of the year,
17 recommendations for changes in the state plan or
18 future programs relating to historic preservation, and
19 an accounting of all income, expenditures, and the
20 fund balance of the Hawaii historic preservation
21 special fund;



1 (13) Regulation of archaeological activities throughout the
2 State;

3 (14) Employment of sufficient professional and technical
4 staff for the purposes of this chapter [~~without regard~~
5 ~~to~~] which may be in accordance with chapter 76;

6 (15) The charging of fees to at least partially defray the
7 costs of administering sections 6E-3(13), 6E-8, and
8 6E-42 of this chapter;

9 (16) Adoption of rules in accordance with chapter 91,
10 necessary to carry out the purposes of this chapter;
11 and

12 (17) Development and adoption, in consultation with the
13 office of Hawaiian affairs native historic
14 preservation council, of rules governing permits for
15 access by native Hawaiians and Hawaiians to cultural,
16 historic, and pre-contact sites and monuments."

17 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
18 amended by amending subsection (o) to read as follows:

19 "(o) Every person licensed under any chapter within the
20 jurisdiction of the department of commerce and consumer affairs
21 and every person licensed subject to chapter 485 shall pay upon
22 issuance of a license, permit, certificate, or registration a

1 fee and a subsequent annual fee to be determined by the director
2 and adjusted from time to time to ensure that the proceeds,
3 together with all other fines, income, and penalties collected
4 under this section, do not surpass the annual operating costs of
5 conducting compliance resolution activities required under this
6 section. The fees may be collected biennially or pursuant to
7 rules adopted under chapter 91, and shall be deposited into the
8 special fund established under this subsection. Every filing
9 pursuant to chapter 514E or section 485-6(15) shall be assessed,
10 upon initial filing and at each renewal period in which a
11 renewal is required, a fee that shall be prescribed by rules
12 adopted under chapter 91, and that shall be deposited into the
13 special fund established under this subsection. Any unpaid fee
14 shall be paid by the licensed person, upon application for
15 renewal, restoration, reactivation, or reinstatement of a
16 license, and by the person responsible for the renewal,
17 restoration, reactivation, or reinstatement of a license, upon
18 the application for renewal, restoration, reactivation, or
19 reinstatement of the license. If the fees are not paid, the
20 director may deny renewal, restoration, reactivation, or
21 reinstatement of the license. The director may establish,
22 increase, decrease, or repeal the fees when necessary pursuant



1 to rules adopted under chapter 91. The director may also
2 increase or decrease the fees pursuant to section 92-28.

3 There is created in the state treasury a special fund to be
4 known as the compliance resolution fund to be expended by the
5 director's designated representatives as provided by this
6 subsection. Notwithstanding any law to the contrary, all
7 revenues, fees, and fines collected by the department shall be
8 deposited into the compliance resolution fund. Unencumbered
9 balances existing on June 30, 1999, in the cable television fund
10 under chapter 440G, the division of consumer advocacy fund under
11 chapter 269, the financial institution examiners' revolving
12 fund, section 412:2-109, the special handling fund, section
13 414-13, and unencumbered balances existing on June 30, 2002, in
14 the insurance regulation fund, section 431:2-215, shall be
15 deposited into the compliance resolution fund. This provision
16 shall not apply to the drivers education fund underwriters fee,
17 section 431:10C-115, insurance premium taxes and revenues,
18 revenues of the workers' compensation special compensation fund,
19 section 386-151, the captive insurance administrative fund,
20 section 431:19-101.8, the insurance commissioner's education and
21 training fund, section 431:2-214, the medical malpractice
22 patients' compensation fund as administered under section 5 of



1 Act 232, Session Laws of Hawaii 1984, and fees collected for
2 deposit in the office of consumer protection restitution fund,
3 section 487-14, the real estate appraisers fund, section 466K-1,
4 the real estate recovery fund, section 467-16, the real estate
5 education fund, section 467-19, the contractors recovery fund,
6 section 444-26, the contractors education fund, section 444-29,
7 and the condominium education trust fund, section 514B-71. Any
8 law to the contrary notwithstanding, the director may use the
9 moneys in the fund to employ, without regard to chapter 76,
10 hearings officers [~~, investigators,~~] and attorneys [~~, accountants,~~
11 ~~and other necessary personnel to implement this subsection]~~.
12 All other employees may be employed in accordance with chapter
13 76. Any law to the contrary notwithstanding, the moneys in the
14 fund shall be used to fund the operations of the department.
15 The moneys in the fund may be used to train personnel as the
16 director deems necessary and for any other activity related to
17 compliance resolution.

18 As used in this subsection, unless otherwise required by
19 the context, "compliance resolution" means a determination of
20 whether:



- 1 (1) Any licensee or applicant under any chapter subject to
2 the jurisdiction of the department of commerce and
3 consumer affairs has complied with that chapter;
- 4 (2) Any person subject to chapter 485 has complied with
5 that chapter;
- 6 (3) Any person submitting any filing required by chapter
7 514E or section 485-6(15) has complied with chapter
8 514E or section 485-6(15); or
- 9 (4) Any person has complied with the prohibitions against
10 unfair and deceptive acts or practices in trade or
11 commerce;

12 and includes work involved in or supporting the above functions,
13 licensing, or registration of individuals or companies regulated
14 by the department, consumer protection, and other activities of
15 the department.

16 The director shall prepare and submit an annual report to
17 the governor and the legislature on the use of the compliance
18 resolution fund. The report shall describe expenditures made
19 from the fund including non-payroll operating expenses."

20 SECTION 4. Section 28-10.5, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) The attorney general may employ, without regard to
2 chapter 76, and at pleasure dismiss, an administrator to oversee
3 and carry out the resource coordination functions of the
4 department set forth in subsection (a). In addition, the
5 attorney general may employ, [~~without regard to~~] in accordance
6 with chapter 76, [~~and at pleasure dismiss~~] other support staff
7 necessary for the performance of the resource coordination
8 functions."

9 SECTION 5. Section 28-10.6, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) The attorney general may employ, without regard to
12 chapter 76, and at the attorney general's pleasure dismiss, an
13 administrator [~~and~~] to oversee and carry out the programs,
14 projects, and activities on the subject of crime, as set forth
15 in subsection (a). The attorney general may also employ other
16 support staff, in accordance with chapter 76, necessary for the
17 performance or coordination of the programs, projects, and
18 activities on the subject of crime."

19 SECTION 6. Section 28-11, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) The attorney general may also appoint persons whose
22 primary function [~~will~~] shall be to provide security coverage



1 for the governor and other public officials of this State, to be
2 known as security investigators, who shall have and may exercise
3 all the powers and authority of the investigators appointed
4 under subsection (a). When not providing security coverage for
5 the governor or other public officials, the security
6 investigators [~~will~~] shall conduct other investigations as
7 directed by the attorney general. The positions of security
8 investigators [~~shall~~] may be exempt from chapter 76."

9 SECTION 7. Section 174C-5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§174C-5 General powers and duties.** The general
12 administration of the state water code shall rest with the
13 commission on water resource management. In addition to its
14 other powers and duties, the commission:

15 (1) Shall carry out topographic surveys, research, and
16 investigations into all aspects of water use and water
17 quality;

18 (2) Shall designate water management areas for regulation
19 under this chapter where the commission, after the
20 research and investigations mentioned in paragraph
21 (1), shall consult with the appropriate county council
22 and county water agency, and after public hearing and



1 published notice, finds that the water resources of
2 the areas are being threatened by existing or proposed
3 withdrawals of water;

4 (3) Shall establish an instream use protection program
5 designed to protect, enhance, and reestablish, where
6 practicable, beneficial instream uses of water in the
7 State;

8 (4) May contract and cooperate with the various agencies
9 of the federal government and with state and local
10 administrative and governmental agencies or private
11 persons;

12 (5) May enter, after obtaining the consent of the property
13 owner, at all reasonable times upon any property other
14 than dwelling places for the purposes of conducting
15 investigations and studies or enforcing any of the
16 provisions of this code, being liable, however, for
17 actual damage done. If consent cannot be obtained,
18 reasonable notice shall be given prior to entry;

19 (6) Shall cooperate with federal agencies, other state
20 agencies, county or other local governmental
21 organizations, and all other public and private
22 agencies created for the purpose of utilizing and



1 conserving the waters of the State, and assist these
2 organizations and agencies in coordinating the use of
3 their facilities and participate in the exchange of
4 ideas, knowledge, and data with these organizations
5 and agencies. For this purpose the commission shall
6 maintain an advisory staff of experts;

7 (7) Shall prepare, publish, and issue [~~such~~] printed
8 pamphlets and bulletins as the commission deems
9 necessary for the dissemination of information to the
10 public concerning its activities;

11 (8) May appoint and remove agents [~~and employees~~],
12 including hearings officers[~~, specialists,~~] and
13 consultants, necessary to carry out the purposes of
14 this chapter, who may be engaged by the commission
15 without regard to the requirements of chapter 76 and
16 section 78-1;

17 (9) May hire employees in accordance with chapter 76;

18 [~~(9)~~] (10) May acquire, lease, and dispose of such real and
19 personal property as may be necessary in the
20 performance of its functions, including the
21 acquisition of real property for the purpose of



1 conserving and protecting water and water related
2 resources as provided in section 174C-14;

3 ~~[(10)]~~ (11) Shall identify, by continuing study, those areas
4 of the State where salt water intrusion is a threat to
5 fresh water resources and report its findings to the
6 appropriate county mayor and council and the public;

7 ~~[(11)]~~ (12) Shall provide coordination, cooperation, or
8 approval necessary to the effectuation of any plan or
9 project of the federal government in connection with
10 or concerning the waters of the State. The commission
11 shall approve or disapprove any federal plans or
12 projects on behalf of the State. No other agency or
13 department of the State shall assume the duties
14 delegated to the commission under this paragraph;
15 except that the department of health shall continue to
16 exercise the powers vested in it with respect to water
17 quality, and except that the department of business,
18 economic development, and tourism shall continue to
19 carry out its duties and responsibilities under
20 chapter 205A;

21 ~~[(12)]~~ (13) Shall plan and coordinate programs for the
22 development, conservation, protection, control, and



1 regulation of water resources, based upon the best
2 available information, and in cooperation with federal
3 agencies, other state agencies, county or other local
4 governmental organizations, and other public and
5 private agencies created for the utilization and
6 conservation of water;

7 ~~[(13)]~~ (14) Shall catalog and maintain an inventory of all
8 water uses and water resources; and

9 ~~[(14)]~~ (15) Shall determine appurtenant water rights,
10 including quantification of the amount of water
11 entitled to by that right, which determination shall
12 be valid for purposes of this chapter."

13 SECTION 8. Section 202-3, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The workforce development council shall appoint and
16 fix the compensation of an executive director, who shall be
17 exempt from chapter 76, and may employ ~~[such]~~ any other
18 personnel as it deems advisable within chapter 76."

19 SECTION 9. Section 342G-12.5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§342G-12.5 Recycling coordinator.** There is established a
22 position of assistant to the coordinator of the office of solid



1 waste management to be known as the recycling coordinator. The
2 position [~~shall~~] may be appointed by the director [~~without~~
3 ~~regard to~~] in accordance with chapter 76. [~~Effective July 1,~~
4 ~~2005, the recycling coordinator shall be paid a salary set by~~
5 ~~the appointing authority that shall not exceed fifty per cent of~~
6 ~~the salary of the director of human resources development. The~~
7 ~~recycling coordinator shall be included in any benefit program~~
8 ~~generally applicable to the officers and employees of the~~
9 ~~State.] "~~

10 SECTION 10. Section 346D-8, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§346D-8 Personnel exempt.** The department of human
13 services may employ civil service [~~and non-civil service~~]
14 personnel in accordance with chapter 76 to service the waiver
15 programs. [~~The personnel employed for the waiver programs may~~
16 ~~be exempt from chapter 76, as deemed appropriate by the~~
17 ~~department of human services.] "~~

18 SECTION 11. Section 371K-3, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§371K-3 General functions, duties, and powers of the**
21 **executive director.** The executive director shall:



- 1 (1) Serve as the principal official in state government
2 responsible for the coordination of programs for the
3 needy, poor, and disadvantaged persons, refugees, and
4 immigrants;
- 5 (2) Oversee, supervise, and direct the performance by
6 subordinates of activities in such areas as planning,
7 evaluation, and coordination of programs for
8 disadvantaged persons, refugees, and immigrants and
9 development of a statewide service delivery network;
- 10 (3) Assess the policies and practices of public and
11 private agencies impacting on the disadvantaged and
12 conduct advocacy efforts on behalf of the
13 disadvantaged, refugees, and immigrants;
- 14 (4) Devise and recommend legislative and administrative
15 actions for the improvement of services for the
16 disadvantaged, refugees, and immigrants;
- 17 (5) Serve as a member of advisory boards and panels of
18 state agencies in such areas as child development
19 programs, elder programs, social services programs,
20 health and medical assistance programs, refugee
21 assistance programs, and immigrant services programs;



1 (6) Administer funds allocated for the office of community
2 services; and apply for, receive, and disburse grants
3 and donations from all sources for programs and
4 services to assist the disadvantaged, refugees, and
5 immigrants;

6 (7) Adopt, amend, and repeal rules pursuant to chapter 91
7 for purposes of this chapter;

8 (8) Retain such staff as may be necessary for the purposes
9 of this chapter, who [~~shall~~] may be exempt from
10 chapter 76;

11 (9) Contract for [~~such~~] services as may be necessary for
12 the purposes of this chapter;

13 (10) Orient members of the advisory council to the goals,
14 functions, and programs of the office; and

15 (11) Seek the input of council members on all matters
16 pertaining to the functions of the office."

17 SECTION 12. Section 373C-33, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§373C-33 Personnel.** The department of labor and
20 industrial relations may establish positions and hire necessary
21 personnel for the purposes of this part [~~without regard to~~] in
22 accordance with chapter 76."



1 SECTION 13. Section 383-128, Hawaii Revised Statutes, is
2 amended by amending subsection (k) to read as follows:

3 "(k) The director may establish positions and hire
4 necessary personnel to establish and administer the employment
5 and training fund [~~without regard to~~] in accordance with chapter
6 76."

7 SECTION 14. Section 412:2-109, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) The commissioner may appoint financial institution
10 examiners, [~~not subject to~~] in accordance with chapter 76, who
11 shall examine the affairs, transactions, accounts, records,
12 documents, and assets of financial institutions. The
13 commissioner also may appoint administrative support personnel,
14 [~~not subject to~~] in accordance with chapter 76, who shall assist
15 and support the examiners. The commissioner may pay the
16 salaries of the financial institution examiners and
17 administrative support personnel from the compliance resolution
18 fund."

19 SECTION 15. Section 440G-12, Hawaii Revised Statutes, is
20 amended by amending subsection (d) to read as follows:

21 "(d) The director may appoint, without regard to chapter
22 76, an administrator [~~, engineers, financial analysts, and other~~]



1 ~~technical staff as may be necessary~~ and ~~[may appoint]~~ one or
2 more attorneys for purposes of enforcing this chapter. The
3 director shall define their powers and duties and fix their
4 compensation. The director may also appoint professional,
5 clerical, stenographic, and other staff as may be necessary for
6 the proper administration and enforcement of this chapter
7 subject to chapter 76."

8 SECTION 16. Section 802-12, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§802-12 Organization of office; assistance.** Subject to
11 the approval of the defender council, the state public defender
12 may employ assistant state public defenders and ~~[such]~~ other
13 employees, including investigators, as may be necessary to
14 discharge the function of the office. ~~[The assistant]~~ Assistant
15 state public defenders shall be qualified to practice before the
16 supreme court of this State. ~~[They]~~ Assistant state public
17 defenders shall be appointed without regard to chapter 76~~[7]~~ and
18 shall serve at the pleasure of the state public defender. All
19 other employees may be appointed in accordance with chapter 76.
20 An assistant state public defender may be employed on a part-
21 time basis, and when so employed, the assistant public defender



1 may engage in the general practice of law, other than in the
2 practice of criminal law."

3 SECTION 17. Act 88, Session Laws of Hawaii 2001, is
4 amended by amending section 4 to read as follows:

5 "SECTION 4. Effective July 1, 2003, all positions and
6 employees of the Hawaii public employees health fund who are
7 subject to ~~[chapters]~~ chapter 76, Hawaii Revised Statutes, shall
8 be transferred to the Hawaii employer-union health benefits
9 trust fund. All officers and employees whose functions are
10 transferred by this Act shall be transferred with their
11 functions and shall continue to perform their regular duties
12 upon their transfer, subject to the state personnel laws and
13 this Act.

14 All civil service positions and incumbents of the Hawaii
15 public employees health fund transferred by this Act shall
16 remain in the civil service and subject to ~~[chapters]~~ chapter 76
17 ~~[and 77]~~, Hawaii Revised Statutes; provided that in the event
18 the civil service administrator position becomes vacant prior to
19 July 1, 2003, its successor shall be appointed pursuant to
20 section 87-28, Hawaii Revised Statutes, as amended in section 2
21 of this Act. ~~[When such positions are vacated on or after~~
22 ~~July 1, 2003, the positions shall be exempt from civil service~~



1 ~~and prospective appointments shall be made pursuant to section 1~~
2 ~~of this Act.]~~

3 No officer or employee of the State having tenure shall
4 suffer any loss of salary, seniority, prior service credit,
5 vacation, sick leave, or other employee benefit or privilege as
6 a consequence of this Act, and such officer or employee may be
7 transferred or appointed to a civil service position without the
8 necessity of examination; provided that the officer or employee
9 possesses the minimum qualifications for the position to which
10 transferred or appointed; and provided that subsequent changes
11 in status may be made pursuant to the applicable civil service
12 and compensation laws.

13 In the event that an office or position held by an officer
14 or employee having tenure is abolished, the officer or employee
15 shall not thereby be separated from public employment, but shall
16 remain in the employment of the State with the same pay and
17 classification and shall be transferred to some other office or
18 position for which the officer or employee is eligible under the
19 personnel laws of the State as determined by the head of the
20 department or the governor."

21 SECTION 18. (a) Due to the complexities of converting
22 filled positions in multiple departments from exempt to civil



1 service positions, the department of human resources development
2 and Hawaii government employees association shall work
3 collaboratively to establish a logical, workable, and fair
4 process for converting positions in various departments, which
5 are currently exempt from chapter 76, Hawaii Revised Statutes,
6 to civil service positions.

7 (b) To establish a logical, workable, and fair process for
8 converting positions in various departments from exempt to civil
9 service positions, the department of human resources development
10 and the Hawaii government employees association shall consider
11 but not be limited to the following factors:

12 (1) Whether the criteria and statutory authority used to
13 exempt positions under section 76-16(b)(17), Hawaii
14 Revised Statutes, from civil service are no longer
15 needed;

16 (2) Whether the position has a confidential relationship
17 between an elected official, department head, or
18 policy making level staff;

19 (3) Whether the position directs programs defined by
20 statute or by departmental, board, or commission
21 policy or possesses significant authority to bind the
22 agency to a course of action; and



1 (4) Whether the position involves substantial
2 responsibility for formulating basic departmental or
3 executive policy or involves directing and controlling
4 program operations of a department or division of a
5 department.

6 SECTION 19. An employee who occupies an exempt position
7 for at least one year at the time it is replaced by a civil
8 service position through the process established by this Act
9 shall have a one-time election to remain exempt from civil
10 service. Once that position is vacated by the employee, the
11 position shall be converted to civil service.

12 SECTION 20. (a) An employee who occupies an exempt
13 position for at least one year at the time it is replaced by a
14 civil service position through the process established by this
15 Act shall be appointed to the civil service position that
16 replaces the employee's exempt position; provided that the
17 employee meets the minimum qualification requirements and any
18 other applicable public employment requirements.

19 (b) If the employee is appointed to the civil service
20 position, the employee's compensation shall be determined
21 according to the applicable collective bargaining agreement or
22 supplemental agreement covering exempt employees without loss of



1 seniority, prior service credit, accrued vacation, accrued sick
2 leave, or other employee benefits.

3 SECTION 21. The department of human resources development
4 shall submit, no later than twenty days prior to the convening
5 of each regular session beginning with the regular session of
6 2007, a report of the number of exempt positions that were
7 converted to civil service positions during the previous twelve
8 months. The report shall include but not be limited to:

- 9 (1) When the position was established;
- 10 (2) The purpose of the position;
- 11 (3) Rationale for the conversion; and
- 12 (4) How many exempt positions remain in each state
13 department after the conversions.

14 SECTION 22. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$110,064, or so much
16 thereof as may be necessary for fiscal year 2006-2007, for two
17 personnel management specialist V positions for the department
18 of human resources development.

19 SECTION 23. The sum appropriated shall be expended by the
20 department of human resources development for the purposes of
21 this Act.



1 SECTION 24. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 25. This Act shall take effect on July 1, 2006.



Report Title:

Exempt Employee Positions; Appropriation

Description:

Changes the status of statutorily exempt positions to conform with the annual review of these positions under Act 253, SLH 2000. Appropriates funds for two personnel management specialist V positions for FY 2006-2006. Effective July 1, 2006. (CD1)

