
A BILL FOR AN ACT

RELATING TO PUBLIC SERVICE.

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

1 SECTION 1. The legislature finds that the critical purpose
2 of this Act is to exercise austerity with respect to all state
3 executive budget expenditures by imposing an absolute hiring
4 freeze on permanent civil service position holders for the
5 relatively short duration of nine months or less. Hiring
6 freezes are commonly used by federal government agencies to
7 immediately reduce expenditures, and thereby conserve limited
8 federal funds. Given the Hawaii state government's current
9 revenue shortfalls, the legislature finds that immediate
10 conservation of state funds can be implemented through the
11 hiring freeze required under this Act.

12 In determining the exact breadth of the civil service
13 positions that will be subject to this temporary hiring freeze,
14 in *Konno v. County of Hawaii*, 85 Hawaii 61 (1997), the Hawaii
15 supreme court stated that it is the legislature's duty to make
16 such a determination. In holding that the legislature has great
17 leeway in determining which job positions were civil service job
18 positions, the Hawaii supreme court held in *Konno* that the civil



1 service system cannot be read as "only including those employees
2 who are paid regular salaries by the government [because] such
3 an interpretation would allow the state [administration] . . .
4 to avoid civil service coverage simply by reducing the size of .
5 . . [the state's] official payroll." The Hawaii supreme court
6 in *Konno* further construed the then existing statutory term
7 "civil service" to mean "those services that have been
8 customarily and historically provided by civil servants."

9 While *Konno* dealt with the portion of chapter 76, Hawaii
10 Revised Statutes, that addressed employment in the civil service
11 system of the State's political subdivisions, and this Act
12 concerns the civil service system of the State, the legislature
13 finds that such a difference is immaterial. Through this Act,
14 the legislature is exercising its authority, "as defined by law"
15 as set forth in article XVI, section 1, of the Hawaii
16 Constitution, to determine the scope of the state civil service.
17 In doing so, the legislature adopts the approach set forth in
18 *Konno*.

19 Against this backdrop of fiscal uncertainty, it is the
20 legislature's intent to halt further deterioration of the core
21 of the state government treasury by implementing this temporary
22 hiring freeze system.



1 The legislature also finds that in the employer-public
2 service employee relationship, it is imperative for the employee
3 to undergo an initial probation period that allows the employer
4 and employee to develop a complete and clear understanding of
5 what the employee's daily job requirements will consist of over
6 the course of one year and to give the employer sufficient time
7 to assess the employee's ability to meet the fundamental
8 expectations of the job position. In some cases, certain civil
9 service positions that have only a six-month initial probation
10 period can create an inherent risk for inefficiencies,
11 ineffectiveness, or ineptness.

12 In the wake of the current revenue shortfalls of this
13 state, there have been numerous layoffs of civil service
14 position employees. The governor has also announced a second
15 wave of layoffs is likely for civil service employees and for
16 those working in civil service-like positions later this year.
17 To prevent the potential for overloading the hiring of permanent
18 civil service employees and thus further depleting the State's
19 fiscal and human resources that are dedicated to providing core
20 government functions, the legislature finds that the initial
21 probation period for civil service positions needs to be
22 extended.



1 The legislature further finds that providing periodic
2 reports to the legislature about the hiring practices of civil
3 service employees will enhance the transparency and
4 accountability of state government operations. In addition,
5 periodic reporting will assist the legislature in identifying
6 potential pitfalls to providing for the efficient and timely
7 delivery of critical services and functions of state government.

8 SECTION 2. Chapter 76, Hawaii Revised Statutes, is amended
9 by adding a new section to be appropriately designated and to
10 read as follows:

11 "§76- Positions insulated from partiality; appointment
12 prohibited practices; Hawaii enforcement board established. (a)

13 It shall be prohibited for any person, directly or indirectly,
14 to:

- 15 (1) Fill, attempt to fill, accept, or attempt to accept
16 any position insulated from partiality, from the
17 effective date of Act , Session Laws of Hawaii 2010,
18 until 10 a.m. on the third Wednesday in January 2011,
19 including issuing or causing to be issued requests for
20 proposals that call for individuals who are not
21 government employees to be employed to perform work
22 that is traditionally performed by civil service



1 employees, or contracts that fulfill such requests for
2 proposals;

3 (2) Retaliate against any person or entity participating
4 in any manner in the investigation of or bringing of
5 an appointment prohibited practice, including
6 providing information regarding a possible appointment
7 prohibited practice either to a person or entity who
8 is authorized to bring an appointment prohibited
9 practice complaint, or in testimony in a Hawaii
10 enforcement board proceeding; or

11 (3) Compensate or cause to be compensated an attorney or
12 representative of a respondent to represent the
13 respondent in any matter that arose under this
14 section, including an appeal of the Hawaii enforcement
15 board's finding of fact, conclusions of law, and
16 decision and order, where that person is not the
17 respondent or the spouse of the respondent.

18 (b) Notwithstanding any law or memoranda, documents, or
19 writings of the State, including any conflicts in any of the
20 foregoing, this section shall be in full force and effect.

21 (c) It shall be an appointment prohibited practice for any
22 person to cause or commit in any manner, directly or indirectly,



1 individually or in concert with other persons, a violation of
2 subsection (a).

3 A civil penalty shall be imposed on any person who commits
4 an appointment prohibited practice, with the doctrine of
5 respondeat superior being inapplicable thereto, thereby making
6 no superior person or entity, including a government entity,
7 liable for payment of that penalty. The civil penalty shall not
8 exceed \$500,000 per individual filling, or attempting to fill a
9 position in a manner that constitutes an appointment prohibited
10 practice. The civil penalty shall be deposited into the general
11 fund.

12 No form of immunity shall make any person, including
13 without limitation the governor, exempt from payment of the
14 penalty, with this subsection constituting a waiver of sovereign
15 immunity. In executing any order or judgment that imposes the
16 penalty upon a person, any and all property of that person shall
17 be subject to execution, including any property upon which a
18 limitation on execution of an order or judgment would normally
19 apply, including limitations as spendthrift provisions in a
20 trust, and the limitation on the execution on property held as
21 tenants by the entirety. Any property or money that was
22 transferred from the respondent in an appointment prohibited



1 practice proceeding to any person or entity six months prior to,
2 or one day after, the effective date of Act , Session Laws of
3 Hawaii 2010, but prior to the filing of an appointment
4 prohibited practice complaint, whichever is shorter in duration,
5 shall be void and subject to execution even though the property
6 is in the possession of the transferee; provided that this
7 voiding of transfers shall not apply to transfers that satisfied
8 the following debts of the respondent that are bona fide:

9 (1) Payments of loans to financial institutions that are
10 registered with the state or federal government;

11 (2) Utility payments; and

12 (3) Bona fide payments for food, clothing, and shelter for
13 the respondent.

14 (d) There is established the Hawaii enforcement board
15 within the department of labor and industrial relations for
16 administrative purposes only. The board shall adjudicate
17 allegations that any person or entity has committed an
18 appointment prohibited practice, pursuant to the contested case
19 provisions in chapter 91.

20 The Hawaii enforcement board shall consist of five members
21 as follows:

22 (1) One member shall be appointed by the governor;



1 (2) One member shall be appointed by the president of the
2 senate;

3 (3) One member shall be appointed by the speaker of the
4 house of representatives;

5 (4) One member shall be appointed by agreement of the
6 three chapter 89 exclusive representative
7 organizations that have the largest number of
8 bargaining unit members; and

9 (5) One member shall be appointed by agreement of all
10 chapter 89 exclusive representative organizations;
11 provided that if no agreement is reached, then by a
12 per capita of chapter 89 bargaining unit members vote
13 with their respective exclusive representative
14 organizations voting on their behalf in the respective
15 bargaining units that they represent.

16 The Hawaii enforcement board shall use the Hawaii labor
17 relations board facilities, statutory and administrative rules
18 for the adjudication of prohibited practices within the meaning
19 of chapter 89, in the adjudication of claims of commissions of
20 appointment prohibited practices, and in doing so shall
21 substitute in these chapter 89 statutory and administrative
22 rules, appropriate statutory and administrative terms from this



1 section for the adjudication of appointment prohibited
2 practices; provided that notwithstanding any law to the
3 contrary, there shall be a two-year statute of limitations in
4 which to file a complaint with the Hawaii enforcement board that
5 a person has committed an appointment prohibited practice.

6 The president of the senate and the speaker of the house of
7 representatives shall appoint an attorney who is employed by the
8 legislature to represent the Hawaii enforcement board when it
9 conducts proceedings under this section. At the pleasure of the
10 Hawaii enforcement board, the following shall represent the
11 Hawaii enforcement board in any court proceeding to which the
12 Hawaii enforcement board is a party:

- 13 (1) The department of the attorney general;
14 (2) Any attorney who is an employee of the legislature,
15 except for attorneys of the legislative reference
16 bureau; or
17 (3) A private attorney of the Hawaii enforcement board's
18 choice; provided that if a private attorney is
19 appointed, the attorney shall be paid from the funds
20 appropriated to the department of the attorney general
21 for the payment of special attorneys general.



1 The Hawaii enforcement board is empowered to, and shall award
2 reasonable attorney's fees to be paid to the complainant by the
3 respondent in any case that is filed with the Hawaii enforcement
4 board and in which the complainant prevails.

5 (e) The following entities and persons may bring a
6 complaint against any person alleged to have committed an
7 appointment prohibited practice:

8 (1) Any exclusive representative within the meaning of
9 chapter 89 who represents the members of a bargaining
10 unit that contains at least one position insulated
11 from partiality and that has suffered the adverse
12 effects of an appointment prohibited practice; or

13 (2) Any entity or person who has been directly or
14 indirectly displaced or otherwise adversely affected
15 by an appointment prohibited practice;

16 provided that the complainant shall have the burden of
17 proving by a preponderance of the evidence that an
18 appointment prohibited practice has been committed by the
19 respondent named in the appointment prohibited practice
20 complaint.

21 (f) The department of the attorney general and any
22 attorney directly or indirectly affiliated with it, including



1 the attorney general, any deputy attorney general, and any
2 special deputy attorney general, shall not represent or cause
3 another to represent, in any manner, any person who is alleged
4 to have directly or indirectly committed an appointment
5 prohibited practice, at any stage of an appointment prohibited
6 practice proceeding, including the appellate stage.

7 (g) The complainant and the respondent to an allegation
8 that the respondent violated an attempt to accept under
9 paragraph (a) (1) may resolve that allegation if the respondent
10 agrees:

11 (1) To resign immediately from the position insulated from
12 partiality that the respondent filled;

13 (2) To execute a release of claims in favor of the State
14 and the complainant;

15 (3) Not to seek any position with the State for a period
16 of five years after the resignation becomes effective;
17 and

18 (4) To testify truthfully regarding transactions and
19 occurrences that led to that respondent obtaining a
20 position insulated from partiality in violation of
21 subsection (a).



1 All other respondents may resolve with the complainant the
2 allegations that they committed appointment prohibited practices
3 in an agreed upon manner; provided that one of the terms of the
4 resolution shall be that the respondents testify truthfully
5 regarding transactions and occurrences that led to the
6 commission of appointment prohibited practices.

7 All resolutions of allegations of appointment prohibited
8 practices shall be approved by the Hawaii enforcement board.
9 The foregoing resolution of a complaint that subsection (a) has
10 been violated shall not affect any other claim that any other
11 person violated any provision of subsection (a).

12 (h) After a party to a contested case conducted under this
13 section receives notice of prevailing therein, the party may
14 make a motion to the circuit court that has jurisdiction over
15 the non-prevailing party for an order confirming the findings of
16 fact, conclusions of law, and decisions and order of the Hawaii
17 enforcement board. There shall be no time limitation for making
18 such a motion. Thereupon, the circuit court shall grant the
19 motion and issue an order confirming the findings of fact,
20 conclusions of law, and decision and order, unless an appeal of
21 those findings of fact, conclusions of law, and decision and
22 order is granted pursuant to section 91-14. Upon the granting



1 of the motion and order of confirmation, the same shall be filed
 2 in the office of the clerk of the circuit court and this shall
 3 constitute the entry of judgment. The judgment entered in
 4 accordance with this subsection shall have the same force and
 5 effect, in all respects as, and is subject to all the provisions
 6 of law relating to, a judgment in an action, and it may be
 7 enforced, as if it had been rendered in an action in the circuit
 8 court in which it is entered.

9 (i) For any and all appeals of the Hawaii enforcement
 10 board's decisions, the costs of the preparation of the record on
 11 appeal, including the cost of transcribing the hearing
 12 proceedings, shall be borne solely by the appellant.

13 (j) For the purposes of this section;

14 "Any and all positions in the civil service" means:

15 (i) Any and all positions in the State under section 76-16
 16 that are compensated on the E.M. pay scale, as the
 17 sections existed on December 31, 2009;

18 (ii) Any and all positions that would be held by civil
 19 service employees or members of the civil service but
 20 for the fact that the positions are vacant; and

21 (iii) Any and all positions that perform personal services
 22 for the benefit of the State that have customarily and



1 historically been held by the civil servants, but are
2 within the employment system of a person or entity
3 that is not a government;
4 provided that, notwithstanding the foregoing, the
5 provisions that require the director of human resources
6 development to determine the applicability of the statute
7 to specific positions shall not apply.
8 "Fill" means a person performing work in a position
9 insulated from partiality or of a position insulated from
10 partiality, be it as an employee, an independent agent, an
11 employee of a person, or entity who has entered into a contract,
12 agreement, or understanding with the State, or an independent
13 agent of an entity that has entered into a contract, agreement,
14 or understanding with the State, or otherwise, for any length of
15 time; provided that it shall not mean an employee who, having
16 been continuously employed in a position insulated from
17 partiality prior to January 1, 2009, performing work in a
18 position insulated from partiality on a temporary assignment, as
19 that term is customarily used in the state civil service system;
20 provided further that it shall not mean a person who performs
21 work as an emergency hire for a duration of ninety consecutive
22 calendar days or less.



1 "Position" means a specific office or job, whether occupied
2 or vacant, requiring full- or part-time employment of one
3 person; provided that "position" also means a specific office or
4 job, whether occupied or vacant, which normally requires full-
5 or part-time employment of one person, but that is capable of
6 being shared by two or more people, or that is being shared by
7 two or more people.

8 "Positions insulated from partiality" means any and all
9 positions in the state civil service; any and all positions that
10 were held by state civil service employees who were compensated
11 on the E.M. pay scale or members of the state civil service who
12 were compensated on the E.M. pay scale, just prior to becoming
13 vacant; classified and non-classified positions of the
14 department of education; and faculty and non-faculty positions
15 of the University of Hawaii and the community college system.

16 "State" means any and all parts of the State of Hawaii
17 government, including but not limited to the state entities set
18 forth in the Hawaii state constitution; the state entities under
19 chapter 26; any and all state bodies corporate and state
20 corporations, including the Hawaii health systems corporation,
21 the University of Hawaii and the research corporation of the
22 University of Hawaii and all subdivisions, employees, agents,



1 servants, intermediaries, or offshoots of any of the foregoing
2 entities.

3 "To directly or indirectly" means any entity, including the
4 State, or persons to take direct action or inaction, such as,
5 without limitation, hiring employees; or the State to take
6 indirect action or inaction, such as, without limitation, making
7 a written or verbal contract, agreement, or understanding with a
8 third party for the third party to cause an action, transaction,
9 or occurrence to transpire or not transpire at any time."

10 SECTION 3. Chapter 78, Hawaii Revised Statutes, is amended
11 by adding a new section to be appropriately designated and to
12 read as follows:

13 "§78- Non-civil service, temporary employees; report by
14 state agencies. Every state agency shall report to the
15 legislature all non-civil service, temporary employees employed
16 by the agency for each quarterly period of the fiscal year, not
17 later than the fifteenth day following the end of each quarterly
18 period, as follows:

19 (1) Each position filled by a non-civil service, temporary
20 employee, the purpose of the position, and the date
21 that the position was established;



1 (2) How long the position has been filled by a non-civil
2 service, temporary employee, and the reason the
3 position has not been filled by a permanent civil
4 service or exempt employee; and

5 (3) In the case of any position that has been filled by
6 the rehiring of a non-civil service, temporary
7 employee for at least three contract periods in one
8 fiscal year, the reasons for the rehiring and why the
9 position should or should not be made a permanent
10 civil service or exempt position.

11 For the purpose of this section, "non-civil service,
12 temporary employee" means any person employed for a contract
13 period of less than ninety days."

14 SECTION 4. Section 76-11, Hawaii Revised Statutes, is
15 amended by adding a new definition to be appropriately inserted
16 and to read as follows:

17 "Initial probation period" means a period of not less than
18 six months nor more than one year from the beginning of an
19 employee's service in a civil service position."

20 SECTION 5. Section 76-27, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) All employees appointed to civil service positions
2 shall constitute the membership of the civil service, but no
3 employee shall be entitled to membership in civil service until
4 the employee has:

5 (1) Successfully completed the initial probation period
6 required as part of the examination process to
7 determine the employee's fitness and ability for the
8 position; provided that, notwithstanding the minimum
9 time period of probation established under this
10 section, the definition of initial probation period in
11 section 76-11, or any rule adopted pursuant to this
12 chapter, a person occupying a position exempt from
13 civil service pursuant to section 76-16, and who
14 either:

15 (A) Transfers into a civil service position between
16 the effective date of Act _____, Session Laws of
17 Hawaii 2010, and 11:59 a.m. on the third
18 Wednesday in January 2011; or

19 (B) Voluntarily or involuntarily terminates
20 employment from a position that is exempt from
21 civil service pursuant to section 76-16 and,
22 within ninety days of that termination, is



1 subsequently hired in a civil service position
2 between the effective date of Act , Session
3 Laws of Hawaii 2010, and 11:59 a.m. on the third
4 Wednesday in January 2011,
5 shall have an initial probation period of not less
6 than twelve months commencing from the person's
7 initial appointment to the civil service position that
8 the person is transferring or being hired into; and
9 (2) Satisfied all requirements for employment prescribed
10 by this chapter and the qualifications prescribed by
11 section 78-1."

12 SECTION 6. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2020;
14 provided that section 5 of this Act shall be repealed on
15 December 31, 2012, and section 76-27(a)(1), Hawaii Revised
16 Statutes, shall be reenacted in the form in which it read on the
17 day prior to the effective date of this Act.



Report Title:

Public Service; Positions Insulated from Partiality; Non-Civil Service, Temporary Employees; Reports

Description:

Creates a temporary freeze on the hiring of individuals to perform work that has traditionally been done by State civil service employees. Requires every state agency to report to the legislature regarding all non-civil service, temporary employees for each quarterly period. Extends the initial probation period of certain civil service positions to 12 months. Effective July 1, 2020. (SB2626 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

