

JAN 25 2012

A BILL FOR AN ACT

RELATING TO STATE EMPLOYMENT.

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

1 SECTION 1. Section 76-16, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The civil service to which this chapter applies shall
4 comprise all positions in the State now existing or hereafter
5 established and embrace all personal services performed for the
6 State, except the following:

7 (1) Commissioned and enlisted personnel of the Hawaii
8 national guard as such, and positions in the Hawaii
9 national guard that are required by state or federal
10 laws or regulations or orders of the national guard to
11 be filled from those commissioned or enlisted
12 personnel;

13 (2) Positions filled by persons employed by contract where
14 the director of human resources development has
15 certified that the service is special or unique or is
16 essential to the public interest and that, because of
17 circumstances surrounding its fulfillment, personnel
18 to perform the service cannot be obtained through

S.B. NO. 2834

- 1 normal civil service recruitment procedures. Any such
2 contract may be for any period not exceeding one year;
- 3 (3) Positions that must be filled without delay to comply
4 with a court order or decree if the director
5 determines that recruitment through normal recruitment
6 civil service procedures would result in delay or
7 noncompliance, such as the Felix-Cayetano consent
8 decree;
- 9 (4) Positions filled by the legislature or by either house
10 or any committee thereof;
- 11 (5) Employees in the office of the governor and office of
12 the lieutenant governor, and household employees at
13 Washington Place;
- 14 (6) Positions filled by popular vote;
- 15 (7) Department heads, officers, and members of any board,
16 commission, or other state agency whose appointments
17 are made by the governor or are required by law to be
18 confirmed by the senate;
- 19 (8) Judges, referees, receivers, masters, jurors, notaries
20 public, land court examiners, court commissioners, and
21 attorneys appointed by a state court for a special
22 temporary service;

S.B. NO. 2834

1 (9) One bailiff for the chief justice of the supreme court
2 who shall have the powers and duties of a court
3 officer and bailiff under section 606-14; one
4 secretary or clerk for each justice of the supreme
5 court, each judge of the intermediate appellate court,
6 and each judge of the circuit court; one secretary for
7 the judicial council; one deputy administrative
8 director of the courts; three law clerks for the chief
9 justice of the supreme court, two law clerks for each
10 associate justice of the supreme court and each judge
11 of the intermediate appellate court, one law clerk for
12 each judge of the circuit court, two additional law
13 clerks for the civil administrative judge of the
14 circuit court of the first circuit, two additional law
15 clerks for the criminal administrative judge of the
16 circuit court of the first circuit, one additional law
17 clerk for the senior judge of the family court of the
18 first circuit, two additional law clerks for the civil
19 motions judge of the circuit court of the first
20 circuit, two additional law clerks for the criminal
21 motions judge of the circuit court of the first
22 circuit, and two law clerks for the administrative
23 judge of the district court of the first circuit; and

S.B. NO. 2834

1 one private secretary for the administrative director
2 of the courts, the deputy administrative director of
3 the courts, each department head, each deputy or first
4 assistant, and each additional deputy, or assistant
5 deputy, or assistant defined in paragraph (16);

6 (10) First deputy and deputy attorneys general, the
7 administrative services manager of the department of
8 the attorney general, one secretary for the
9 administrative services manager, an administrator and
10 any support staff for the criminal and juvenile
11 justice resources coordination functions, and law
12 clerks;

13 (11) (A) Teachers, principals, vice-principals, complex
14 area superintendents, deputy and assistant
15 superintendents, other certificated personnel,
16 not more than twenty noncertificated
17 administrative, professional, and technical
18 personnel not engaged in instructional work;

19 (B) Effective July 1, 2003, teaching assistants,
20 educational assistants, bilingual/bicultural
21 school-home assistants, school psychologists,
22 psychological examiners, speech pathologists,
23 athletic health care trainers, alternative school

S.B. NO. 2834

1 work study assistants, alternative school
2 educational/supportive services specialists,
3 alternative school project coordinators, and
4 communications aides in the department of
5 education;

6 (C) The special assistant to the state librarian and
7 one secretary for the special assistant to the
8 state librarian; and

9 (D) Members of the faculty of the University of
10 Hawaii, including research workers, extension
11 agents, personnel engaged in instructional work,
12 and administrative, professional, and technical
13 personnel of the university;

14 (12) Employees engaged in special, research, or
15 demonstration projects approved by the governor;

16 (13) (A) Positions filled by inmates, [~~kekua~~] patients
17 of state institutions, persons with severe
18 physical or mental [~~handicaps~~] disabilities
19 participating in the work experience training
20 programs [~~, and students and positions filled~~
21 ~~through federally funded programs~~];

S.B. NO. 2834

- 1 (B) Positions filled with students in accordance with
2 guidelines for established state employment
3 programs; and
- 4 (C) Positions that provide work experience training
5 or temporary public service employment that are
6 filled by persons entering the workforce or
7 persons transitioning into other careers under
8 programs such as the federal [~~Comprehensive~~
9 ~~Employment and Training Act of 1973;~~] Workforce
10 Investment Act of 1998, as amended, or Senior
11 Community Services Employment Program, or under
12 other similar state programs;
- 13 (14) A custodian or guide at Iolani Palace, the Royal
14 Mausoleum, and Hulihee Palace;
- 15 (15) Positions filled by persons employed on a fee,
16 contract, or piecework basis, who may lawfully perform
17 their duties concurrently with their private business
18 or profession or other private employment and whose
19 duties require only a portion of their time, if it is
20 impracticable to ascertain or anticipate the portion
21 of time to be devoted to the service of the State;
- 22 (16) Positions of first deputies or first assistants of
23 each department head appointed under or in the manner

S.B. NO. 2834

1 provided in section 6, article V, of the Hawaii State
2 Constitution; three additional deputies or assistants
3 either in charge of the highways, harbors, and
4 airports divisions or other functions within the
5 department of transportation as may be assigned by the
6 director of transportation, with the approval of the
7 governor; four additional deputies in the department
8 of health, each in charge of one of the following:
9 behavioral health, environmental health, hospitals,
10 and health resources administration, including other
11 functions within the department as may be assigned by
12 the director of health, with the approval of the
13 governor; an administrative assistant to the state
14 librarian; and an administrative assistant to the
15 superintendent of education;

16 (17) Positions specifically exempted from this part by any
17 other law; provided that all of the positions defined
18 by paragraph (9) shall be included in the position
19 classification plan;

20 (18) Positions in the state foster grandparent program and
21 positions for temporary employment of senior citizens
22 in occupations in which there is a severe personnel
23 shortage or in special projects;

S.B. NO. 2834

- 1 (19) Household employees at the official residence of the
2 president of the University of Hawaii;
- 3 (20) Employees in the department of education engaged in
4 the supervision of students during meal periods in the
5 distribution, collection, and counting of meal
6 tickets, and in the cleaning of classrooms after
7 school hours on a less than half-time basis;
- 8 (21) Employees hired under the tenant hire program of the
9 Hawaii public housing authority; provided that not
10 more than twenty-six per cent of the authority's work
11 force in any housing project maintained or operated by
12 the authority shall be hired under the tenant hire
13 program;
- 14 (22) Positions of the federally funded expanded food and
15 nutrition program of the University of Hawaii that
16 require the hiring of nutrition program assistants who
17 live in the areas they serve;
- 18 (23) Positions filled by [~~severely handicapped~~] persons
19 with severe disabilities who are certified by the
20 state vocational rehabilitation office that they are
21 able to perform safely the duties of the positions;
- 22 (24) The sheriff;

1 (25) A gender and other fairness coordinator hired by the
2 judiciary; and

3 (26) Positions in the Hawaii national guard youth and adult
4 education programs.

5 The director shall determine the applicability of this
6 section to specific positions.

7 Nothing in this section shall be deemed to affect the civil
8 service status of any incumbent as it existed on July 1, 1955."

9 SECTION 2. Section 78-2.6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 " ~~[†]~~§78-2.6~~[†]~~ **Prospective employees; suitability for**
12 **public employment.** All prospective employees, regardless of the
13 positions they will assume, shall demonstrate their suitability
14 for public employment by:

15 (1) Passing a pre-employment controlled substance drug
16 test if required by the employing jurisdiction; and

17 (2) Attesting that during the three-year period
18 immediately preceding the date of application for
19 employment, the person was not convicted of any
20 controlled substance-related offense.

21 If an applicant fails to meet the suitability requirements of
22 the employing jurisdiction, the applicant shall be disqualified
23 from further employment consideration or deemed ineligible for

S.B. NO. 2834

1 appointment under section 76-29 on the basis of unsuitability
2 for public employment.

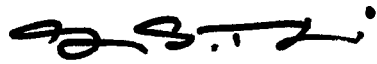
3 Notwithstanding paragraph (2), for positions described in
4 section 76-16(b)(13)(C), an applicant shall not be automatically
5 disqualified from employment based on a controlled substance-
6 related offense, provided that reasonable safeguards are in
7 place to protect employees and the public."

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____



BY REQUEST

S.B. NO. 2834

Report Title:

Civil Service; Exemptions; State Employment

Description:

Clarifies exemptions from civil service for federally funded work experience programs and temporary public service employment; allows persons with criminal conviction to participate in such programs provided reasonable safeguards are in place.

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

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO STATE EMPLOYMENT.

PURPOSE: To enable the state to further implement the work experience training programs and temporary public service employment.

MEANS: Amend sections 76-16(b) and 78-2.6, Hawaii Revised Statutes.

JUSTIFICATION: The Hawaii civil service law requires the filling of all positions by civil service recruitment procedures, unless expressly exempted. The proposed amendment clarifies that participants in federally funded programs such as work experience training and temporary public service employment are included in the express exemptions. The proposed amendment also makes housekeeping changes to update the description of several existing exemptions.

Section 78-2.6 prohibits hiring of a person who had a criminal conviction for a controlled substance-related offense in the last three years. This prohibition precludes offenders, including those in the Going Home project that was operated on Hawaii County, from being hired into work experience training. The Going Home project has been a successful model of partnerships with the Department of Public Safety, substance abuse rehabilitation agencies, and other public agencies to reintegrate prisoners into the community prior to and after release from prison.

Other target groups that may be prevented from participating in work experience training due to controlled substance-related convictions include youth, senior citizens, job seekers who lack skills and experience, persons with disabilities, welfare recipients, and long-term unemployed.

The proposed amendment will allow controlled substance abuse-related offenders and other target groups to be considered for hiring through work experience training, provided reasonable safeguards are in place to protect employees and the public.

Participants in work experience training will acquire good work habits and skills that will enhance their ability to secure jobs after completion of training.

The proposed amendment will allow the state to implement temporary public service employment if federal or state funds become available for this purpose. For example, the department currently can apply for federal funds in the event of major natural disasters to subsidize temporary public service employment to help clean up roads, schools, and other public facilities and to restore essential government services. The current section 78-2.6 would not allow the hiring of persons with controlled substance-related convictions into temporary public service employment despite reasonable safeguards being in place to protect employees and the public. The proposed amendment will allow positions to be filled to meet public needs.

Housekeeping changes include deleting the word "kokuas" and replacing "handicapped" with "disabilities."

Impact on the public: Participants who complete work experience training will be better equipped to compete for jobs elsewhere. As they get other jobs, they will reduce or eliminate reliance on benefits such as unemployment insurance and welfare assistance. Criminal offenders are less likely to return to prison if they are working, thus, work experience training helps contribute toward lower recidivism rates.

Temporary public service jobs will help restore essential government services after natural disasters and reduce unemployment.

Impact on the department and other agencies:

The department would be better able to carry out its mission of developing a qualified workforce that enables businesses to compete successfully, improve lives of target populations, and enhance community well-being. Other departments will also be positively affected. These amendments will help them carry out their missions and allow for future collaborations.

GENERAL FUNDS: None.

OTHER FUNDS: Federal.

PPBS PROGRAM
DESIGNATION: LBR 111.

OTHER AFFECTED
AGENCIES: Department of Human Resources Development
Department of Human Services
Department of Public Safety

EFFECTIVE DATE: Upon approval.