

# H.B. NO. 919

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## 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

- 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;

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

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

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

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

20 (B) Effective July 1, 2003, teaching assistants,  
21 educational assistants, bilingual/bicultural  
22 school-home assistants, school psychologists,

- 1                   psychological examiners, speech pathologists,  
2                   athletic health care trainers, alternative school  
3                   work study assistants, alternative school  
4                   educational/supportive services specialists,  
5                   alternative school project coordinators, and  
6                   communications aides in the department of  
7                   education;
- 8                   (C) The special assistant to the state librarian and  
9                   one secretary for the special assistant to the  
10                  state librarian; and
- 11                  (D) Members of the faculty of the University of  
12                  Hawaii, including research workers, extension  
13                  agents, personnel engaged in instructional work,  
14                  and administrative, professional, and technical  
15                  personnel of the university;
- 16                  (12) Employees engaged in special, research, or  
17                  demonstration projects approved by the governor;
- 18                  (13) (A) Positions filled by inmates, [~~kokua~~,] patients  
19                  of state institutions, persons with severe  
20                  physical or mental [~~handicaps~~] disabilities  
21                  participating in the work experience training

1                    programs [~~and students and positions filled~~  
2                    through ~~federally funded programs~~];

3                    (B) Positions filled with students in accordance with  
4                    guidelines for established state employment  
5                    programs; and

6                    (C) Positions that provide work experience training  
7                    or temporary public service employment that are  
8                    filled by persons entering the workforce or  
9                    persons transitioning into other careers under  
10                   programs such as the federal [~~Comprehensive~~  
11                   ~~Employment and Training Act of 1973;~~ Workforce  
12                   Investment Act of 1998, as amended, or the Senior  
13                   Community Service Employment Program of the  
14                   Employment and Training Administration of the  
15                   United States Department of Labor, or under other  
16                   similar state programs;

17                   (14) A custodian or guide at Iolani Palace, the Royal  
18                   Mausoleum, and Hulihee Palace;

19                   (15) Positions filled by persons employed on a fee,  
20                   contract, or piecework basis, who may lawfully perform  
21                   their duties concurrently with their private business  
22                   or profession or other private employment and whose

1 duties require only a portion of their time, if it is  
2 impracticable to ascertain or anticipate the portion  
3 of time to be devoted to the service of the State;

4 (16) Positions of first deputies or first assistants of  
5 each department head appointed under or in the manner  
6 provided in section 6, article V, of the state  
7 constitution; three additional deputies or assistants  
8 either in charge of the highways, harbors, and  
9 airports divisions or other functions within the  
10 department of transportation as may be assigned by the  
11 director of transportation, with the approval of the  
12 governor; four additional deputies in the department  
13 of health, each in charge of one of the following:  
14 behavioral health, environmental health, hospitals,  
15 and health resources administration, including other  
16 functions within the department as may be assigned by  
17 the director of health, with the approval of the  
18 governor; an administrative assistant to the state  
19 librarian; and an administrative assistant to the  
20 superintendent of education;

21 (17) Positions specifically exempted from this part by any  
22 other law; provided that all of the positions defined

1 by paragraph (9) shall be included in the position  
2 classification plan;

3 (18) Positions in the state foster grandparent program and  
4 positions for temporary employment of senior citizens  
5 in occupations in which there is a severe personnel  
6 shortage or in special projects;

7 (19) Household employees at the official residence of the  
8 president of the University of Hawaii;

9 (20) Employees in the department of education engaged in  
10 the supervision of students during meal periods in the  
11 distribution, collection, and counting of meal  
12 tickets, and in the cleaning of classrooms after  
13 school hours on a less than half-time basis;

14 (21) Employees hired under the tenant hire program of the  
15 Hawaii public housing authority; provided that except  
16 during the time period specified in paragraph (27),  
17 not more than twenty-six per cent of the authority's  
18 work force in any housing project maintained or  
19 operated by the authority shall be hired under the  
20 tenant hire program;

21 (22) Positions of the federally funded expanded food and  
22 nutrition program of the University of Hawaii that



1 require the hiring of nutrition program assistants who  
2 live in the areas they serve;

3 (23) Positions filled by [~~severely handicapped~~] persons  
4 with severe disabilities who are certified by the  
5 state vocational rehabilitation office that they are  
6 able to perform safely the duties of the positions;

7 (24) The sheriff;

8 (25) A gender and other fairness coordinator hired by the  
9 judiciary;

10 (26) Positions in the Hawaii national guard youth and adult  
11 education programs; and

12 (27) From July 1, 2012, to June 30, 2015, persons hired or  
13 contracted to perform repair, maintenance, or capital  
14 improvement projects work on vacant housing units  
15 under the jurisdiction of the Hawaii public housing  
16 authority.

17 The director shall determine the applicability of this  
18 section to specific positions.

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

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

1           " ~~[+]~~§78-2.6~~[+]~~ **Prospective employees; suitability for**  
2 **public employment.** All prospective employees, regardless of the  
3 positions they will assume, shall demonstrate their suitability  
4 for public employment by:

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

7           (2) Attesting that during the three-year period  
8 immediately preceding the date of application for  
9 employment, the person was not convicted of any  
10 controlled substance-related offense.

11 If an applicant fails to meet the suitability requirements of  
12 the employing jurisdiction, the applicant shall be disqualified  
13 from further employment consideration or deemed ineligible for  
14 appointment under section 76-29 on the basis of unsuitability  
15 for public employment.

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

21           SECTION 3. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect upon its approval;  
2 provided that the amendments made to section 76-16(b), Hawaii  
3 Revised Statutes, by this Act shall not be repealed when  
4 section 76-16(b) is reenacted on July 1, 2015, pursuant to  
5 Act 159, Session Laws of Hawaii 2012.

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7  
8

INTRODUCED BY:   
BY REQUEST

JAN 22 2013

# H.B. NO. 919

**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 of a controlled-substance-related offense 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 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.