

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO POSITIONS IN STATE GOVERNMENT.

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

1           SECTION 1. The legislature finds that chapter 76, Hawaii  
2 Revised Statutes, requires that public employee positions  
3 authorized by the legislature and established to provide  
4 personnel services be governed by the civil service law, with  
5 certain exemptions. Two of those exemptions are currently found  
6 in section 76-16(b) (3) and (12), Hawaii Revised Statutes, and  
7 relate to employees required to comply with a court order or  
8 decree without delay or those necessary for a special, research,  
9 or demonstration project.

10           The legislature also finds that those civil service  
11 exemptions have been incorrectly cited by some executive  
12 agencies not just to exempt legislatively authorized positions  
13 from the civil service but as the legal authority to create  
14 positions not authorized by the legislature in the general or  
15 supplemental appropriations act. The legislature finds that  
16 nothing in section 76-16(b), Hawaii Revised Statutes, authorizes  
17 the governor or an executive agency to create any position in  
18 state government.



1           The legislature further finds that it is necessary for the  
2 legislature to correct the misinterpretation of section 76-  
3 16(b), Hawaii Revised Statutes, and to exert more control over  
4 the creation of positions in state government. Legislation is  
5 needed to prohibit an executive agency or the judiciary from  
6 expending moneys to fill a permanent or temporary position not  
7 authorized by the legislature in the applicable general or  
8 supplemental appropriations act, except under certain  
9 circumstances.

10           The purpose of this Act is to correct the misinterpretation  
11 of section 76-16(b), Hawaii Revised Statutes, and to provide the  
12 executive and the judiciary express statutory authority to  
13 create positions exempt from the civil service not authorized by  
14 the general or supplemental appropriations act, under certain  
15 circumstances. More specifically, this Act permits:

- 16           (1) An executive agency, with the approval of the  
17                 governor, to establish and fill a legislatively  
18                 unauthorized position if required to comply with a  
19                 court order or decree without delay; and
- 20           (2) The governor and the judiciary to establish and fill a  
21                 legislatively unauthorized position required for a  
22                 special, research, or demonstration project.



1 SECTION 2. Chapter 26, Hawaii Revised Statutes, is amended  
2 by adding a new section to part II to be appropriately  
3 designated and to read as follows:

4 "§26-A Creation of position not authorized in general or  
5 supplemental appropriations act. (a) For the purpose of this  
6 section, a "position not authorized by the general or  
7 supplemental appropriations act" means a position that does not  
8 comport with section 37-A(a).

9 (b) An executive agency, with the approval of the  
10 governor, may establish and fill a position not authorized by  
11 the general or supplemental appropriations act if:

12 (1) The position is required to be filled to comply with a  
13 court order or decree if the director of human  
14 resources development determines that recruitment  
15 through normal civil service procedures would result  
16 in delay or noncompliance; and

17 (2) An appropriation to fund the position is available to  
18 the executive agency.

19 (c) The governor may establish and fill a position not  
20 authorized by the general or supplemental appropriations act if:



1       (1) The position is required for a special, research, or  
2           demonstration project, as determined by the governor;  
3           and

4       (2) An appropriation to fund the position is available to  
5           the governor or another executive agency.

6       The governor may assign the position to any executive agency or  
7       retain the position under the governor's office.

8       (d) A position established pursuant to this section shall  
9       be eliminated no later than the last day of the fiscal year  
10       following the fiscal year in which the position was established;  
11       provided that the position may continue after that day if re-  
12       established pursuant to subsection (b) or (c) or authorized by a  
13       general or supplemental appropriations act or other law.

14       (e) The reporting requirement of section 37-A shall apply  
15       to each position established pursuant to this section during a  
16       fiscal year."

17       SECTION 3. Chapter 37, Hawaii Revised Statutes, is amended  
18       by adding a new section to part IV to be appropriately  
19       designated and to read as follows:

20       "§37-A Expenditure only for authorized position. (a) For  
21       the purpose of this section, a position shall be deemed



1 "authorized by the general or supplemental appropriation act" if  
2 it is:

3 (1) Listed in the budget details or form submitted to the  
4 legislature by an executive agency, governor, or  
5 department of budget and finance to support the  
6 agency's request for an appropriation in the proposed  
7 general or supplemental appropriations act;

8 (2) Within the position count ceiling for the executive  
9 agency in the enacted general or supplemental  
10 appropriations act; and

11 (3) Not expressly eliminated in a budget worksheet  
12 prepared by the last legislative conference or  
13 standing committee that reported out the version of  
14 the general or supplemental appropriations act finally  
15 passed by the legislature.

16 (b) Except as otherwise provided under subsection (c), no  
17 funds shall be expended to fill any permanent or temporary  
18 position in the executive branch unless the position is  
19 authorized by the general or supplemental appropriations act in  
20 effect when the funds are expended or encumbered.



1        (c) Subsection (b) shall not prohibit the expenditure of  
2 funds to fill the following positions not authorized by the  
3 general or supplemental appropriations act:

4        (1) Positions funded exclusively with trust funds;

5        (2) Positions funded exclusively with federal funds;

6        (3) Positions established pursuant to section 26-A; and

7        (4) Positions established by an executive agency for a  
8 program or project funded by an appropriation in an  
9 act other than the general or supplemental  
10 appropriations act.

11       (d) An executive agency that has filled a temporary or  
12 permanent position pursuant to this subsection during a fiscal  
13 year shall submit to the department of budget and finance a  
14 report listing the positions that were filled. The report shall  
15 be submitted not later than fifteen days prior to the end of the  
16 fiscal year.

17       The department of budget and finance shall submit the  
18 reports to the legislature within fifteen days of receipt. The  
19 department may submit a consolidated report rather than  
20 individual reports from each executive agency; provided that the  
21 consolidated report is submitted to the legislature by not later  
22 than the end of the fiscal year."



1 SECTION 4. Chapter 601, Hawaii Revised Statutes, is  
2 amended by adding to a new section to be appropriately  
3 designated and to read as follows:

4 "§601-A Expenditure only for authorized position. (a)

5 For the purpose of this section, a position shall be deemed  
6 "authorized by the judiciary general or supplemental  
7 appropriation act" if it is:

8 (1) Listed in the budget details or form submitted to the  
9 legislature by the judiciary to support the  
10 judiciary's request for an appropriation in the  
11 proposed judiciary general or supplemental  
12 appropriations act;

13 (2) Within the position count ceiling for the judiciary in  
14 the enacted judiciary general or supplemental  
15 appropriations act; and

16 (3) Not expressly eliminated in a budget worksheet  
17 prepared by the last legislative conference or  
18 standing committee that reported out the version of  
19 the judiciary general or supplemental appropriations  
20 act finally passed by the legislature.

21 (b) Except as otherwise provided under subsection (c), no  
22 funds shall be expended to fill any permanent or temporary



1 position in the judiciary unless the position is authorized by  
2 the judiciary general or supplemental appropriations act in  
3 effect when the funds are expended or encumbered.

4 (c) Subsection (b) shall not prohibit the expenditure of  
5 funds to fill the following positions not authorized by the  
6 judiciary general or supplemental appropriations act:

- 7 (1) Positions funded exclusively with trust funds;  
8 (2) Positions funded exclusively with federal funds;  
9 (3) Positions established for special, research, or  
10 demonstration project, as determined by the chief  
11 justice; and  
12 (4) Positions established by the judiciary for a program  
13 or project funded by an appropriation in an act other  
14 than the judiciary general or supplemental  
15 appropriations act.

16 The chief justice shall submit to the legislature and  
17 department of budget and finance a report listing the positions  
18 that were established and filled pursuant to this subsection  
19 during a fiscal year. The report shall be submitted within  
20 fifteen days of the end of the fiscal year."

21 SECTION 5. Section 76-16, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:





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

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

11          (2) Positions filled by persons employed by contract where  
12 the director of human resources development has  
13 certified that the service is special or unique or is  
14 essential to the public interest and that, because of  
15 circumstances surrounding its fulfillment, personnel  
16 to perform the service cannot be obtained through  
17 normal civil service recruitment procedures. Any such  
18 contract may be for any period not exceeding one year;

19          (3) Positions that must be filled without delay to comply  
20 with a court order or decree if the director  
21 determines that recruitment through normal  
22 [~~recruitment~~] civil service procedures would result in



- 1 delay or noncompliance, such as the Felix-Cayetano  
2 consent decree;
- 3 (4) Positions filled by the legislature or by either house  
4 or any committee thereof;
- 5 (5) Employees in the office of the governor and office of  
6 the lieutenant governor, and household employees at  
7 Washington Place;
- 8 (6) Positions filled by popular vote;
- 9 (7) Department heads, officers, and members of any board,  
10 commission, or other state agency whose appointments  
11 are made by the governor or are required by law to be  
12 confirmed by the senate;
- 13 (8) Judges, referees, receivers, masters, jurors, notaries  
14 public, land court examiners, court commissioners, and  
15 attorneys appointed by a state court for a special  
16 temporary service;
- 17 (9) One bailiff for the chief justice of the supreme court  
18 who shall have the powers and duties of a court  
19 officer and bailiff under section 606-14; one  
20 secretary or clerk for each justice of the supreme  
21 court, each judge of the intermediate appellate court,  
22 and each judge of the circuit court; one secretary for



1 the judicial council; one deputy administrative  
2 director of the courts; three law clerks for the chief  
3 justice of the supreme court, two law clerks for each  
4 associate justice of the supreme court and each judge  
5 of the intermediate appellate court, one law clerk for  
6 each judge of the circuit court, two additional law  
7 clerks for the civil administrative judge of the  
8 circuit court of the first circuit, two additional law  
9 clerks for the criminal administrative judge of the  
10 circuit court of the first circuit, one additional law  
11 clerk for the senior judge of the family court of the  
12 first circuit, two additional law clerks for the civil  
13 motions judge of the circuit court of the first  
14 circuit, two additional law clerks for the criminal  
15 motions judge of the circuit court of the first  
16 circuit, and two law clerks for the administrative  
17 judge of the district court of the first circuit; and  
18 one private secretary for the administrative director  
19 of the courts, the deputy administrative director of  
20 the courts, each department head, each deputy or first  
21 assistant, and each additional deputy, or assistant  
22 deputy, or assistant defined in paragraph (16);



- 1           (10) First deputy and deputy attorneys general, the  
2           administrative services manager of the department of  
3           the attorney general, one secretary for the  
4           administrative services manager, an administrator and  
5           any support staff for the criminal and juvenile  
6           justice resources coordination functions, and law  
7           clerks;
- 8           (11) (A) Teachers, principals, vice-principals, complex  
9           area superintendents, deputy and assistant  
10          superintendents, other certificated personnel,  
11          not more than twenty noncertificated  
12          administrative, professional, and technical  
13          personnel not engaged in instructional work;
- 14          (B) Effective July 1, 2003, teaching assistants,  
15          educational assistants, bilingual/bicultural  
16          school-home assistants, school psychologists,  
17          psychological examiners, speech pathologists,  
18          athletic health care trainers, alternative school  
19          work study assistants, alternative school  
20          educational/supportive services specialists,  
21          alternative school project coordinators, and



1                   communications aides in the department of  
2                   education;

3                   (C) The special assistant to the state librarian and  
4                   one secretary for the special assistant to the  
5                   state librarian; and

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

11               (12) Employees engaged in special, research, or  
12               demonstration projects approved by the governor[+] for  
13               the executive branch or chief justice for the judicial  
14               branch, as applicable;

15               (13) (A) Positions filled by inmates, patients of state  
16               institutions, persons with severe physical or  
17               mental disabilities participating in the work  
18               experience training programs;

19               (B) Positions filled with students in accordance with  
20               guidelines for established state employment  
21               programs; and



1 (C) Positions that provide work experience training  
2 or temporary public service employment that are  
3 filled by persons entering the workforce or  
4 persons transitioning into other careers under  
5 programs such as the federal Workforce Investment  
6 Act of 1998, as amended, or the Senior Community  
7 Service Employment Program of the Employment and  
8 Training Administration of the United States  
9 Department of Labor, or under other similar state  
10 programs;

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

13 (15) Positions filled by persons employed on a fee,  
14 contract, or piecework basis, who may lawfully perform  
15 their duties concurrently with their private business  
16 or profession or other private employment and whose  
17 duties require only a portion of their time, if it is  
18 impracticable to ascertain or anticipate the portion  
19 of time to be devoted to the service of the State;

20 (16) Positions of first deputies or first assistants of  
21 each department head appointed under or in the manner  
22 provided in section 6, article V, of the state



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

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

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



- 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 except  
10 during the time period specified in paragraph (27),  
11 not more than twenty-six per cent of the authority's  
12 workforce in any housing project maintained or  
13 operated by the authority shall be hired under the  
14 tenant hire program;
- 15 (22) Positions of the federally funded expanded food and  
16 nutrition program of the University of Hawaii that  
17 require the hiring of nutrition program assistants who  
18 live in the areas they serve;
- 19 (23) Positions filled by persons with severe disabilities  
20 who are certified by the state vocational  
21 rehabilitation office that they are able to perform  
22 safely the duties of the positions;





- 1 (24) The sheriff;
- 2 (25) A gender and other fairness coordinator hired by the
- 3 judiciary;
- 4 (26) Positions in the Hawaii National Guard youth and adult
- 5 education programs; and
- 6 (27) From July 1, 2012, to June 30, 2015, persons hired or
- 7 contracted to perform repair, maintenance, or capital
- 8 improvement projects work on vacant housing units
- 9 under the jurisdiction of the Hawaii public housing
- 10 authority.

11 The director shall determine the applicability of this  
12 section to specific positions.

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

15 This section shall not be deemed to authorize the creation  
16 of a position exempted from civil service under this subsection.  
17 Such an exempt position may be created only if specifically  
18 authorized by law, including an act making an appropriation."

19 SECTION 6. Section 302A-1116, Hawaii Revised Statutes, is  
20 amended to read as follows:



1 "[+]§302A-1116[+] Authority to create temporary positions.

2 The department may create temporary positions as it deems  
3 necessary; provided that:

4 (1) The department's expenditures shall not exceed its  
5 allocated budget;

6 (2) The term of each position shall not exceed one year;  
7 [and]

8 (3) The department shall report the creation of temporary  
9 positions to the department of budget and finance[-];

10 and

11 (4) The creation of the position does not violate section  
12 26-A or 37-A."

13 SECTION 7. Section 601-2, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15 "(b) The chief justice shall possess the following powers,  
16 subject to such rules as may be adopted by the supreme court:

17 (1) To assign circuit judges from one circuit to another;

18 (2) In a circuit court with more than one judge, (A) to  
19 make assignments of calendars among the circuit judges  
20 for such period as the chief justice may determine

21 and, as deemed advisable from time to time, to change  
22 assignments of calendars or portions thereof (but not



1 individual cases) from one judge to another, and (B)  
2 to appoint one of the judges, for such period as the  
3 chief justice may determine, as the administrative  
4 judge to manage the business of the court, subject to  
5 the rules of the supreme court and the direction of  
6 the chief justice;

7 (3) To prescribe for all of the courts a uniform system of  
8 keeping and periodically reporting statistics of their  
9 business;

10 (4) To procure from all of the courts estimates for their  
11 appropriations; with the cooperation of the  
12 representatives of the court concerned to review and  
13 revise them as the chief justice deems necessary for  
14 equitable provisions for the various courts according  
15 to their needs and to present the estimates, as  
16 reviewed and revised by the chief justice, to the  
17 legislature as collectively constituting a unified  
18 budget for all of the courts;

19 (5) To exercise exclusive authority over the preparation,  
20 explanation, and administration of the judiciary  
21 budget, programs, plans, and expenditures, including  
22 without limitation policies and practices of financial



1 administration and the establishment of guidelines as  
 2 to permissible expenditures, provided that all  
 3 expenditures of the judiciary shall be in conformance  
 4 with program appropriations and provisions of the  
 5 legislature, [~~and~~] all powers of administration over  
 6 judiciary personnel that are specified in Title 7[~~+~~],  
 7 and other law; and

8 (6) To do all other acts which may be necessary or  
 9 appropriate for the administration of the judiciary."

10 SECTION 8. In codifying the new sections added by sections  
 11 2 and 3 of this Act, the revisor of statutes shall substitute  
 12 appropriate section numbers for the letters used in designating  
 13 the new sections in this Act.

14 SECTION 9. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect on July 1, 2014;  
 17 provided that the amendments made to section 76-16(b), Hawaii  
 18 Revised Statutes, by this Act shall not be repealed when section  
 19 76-16(b) is reenacted on July 1, 2015, pursuant to Act 159,  
 20 Session Laws of Hawaii 2012.

21  
 INTRODUCED BY: Arvid J. Lee

# S.B. NO. 2412

**Report Title:**

State Positions; Authorization

**Description:**

Establishes provisions restricting the establishment and filling of permanent and temporary positions not authorized by an executive or judiciary general or supplemental appropriations act.

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

