

JAN 23 2014

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# A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYMENT.

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

1 SECTION 1. Act 253, Session Laws of Hawaii 2000, and Act  
2 300, Session Laws of Hawaii 2006, sought to reduce the number of  
3 civil service exempt employees in public service within the  
4 State. The legislature finds that since the enactment of these  
5 Acts, there have been few conversions of civil service exempt  
6 positions to civil service positions and conversions are  
7 overdue.

8 The purpose of this Act is to amend sections of the Hawaii  
9 Revised Statutes to conform with Act 253, Session Laws of Hawaii  
10 2000, which placed restrictions on the creation of civil service  
11 exempt positions and required the annual review of exempt  
12 positions to determine whether exempt positions should remain  
13 exempt or be converted to civil service positions.

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

16 "(b) The civil service to which this chapter applies shall  
17 comprise all positions in the State now existing or hereafter



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1 established and embrace all personal services performed for the  
2 State, except the following:

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

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

17 (3) Positions that must be filled without delay to comply  
18 with a court order or decree if the director  
19 determines that recruitment through normal recruitment  
20 civil service procedures would result in delay or  
21 noncompliance, such as the Felix-Cayetano consent  
22 decree;



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



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



1 the attorney general, one secretary for the  
2 administrative services manager, an administrator and  
3 any support staff for the criminal and juvenile  
4 justice resources coordination functions, and law  
5 clerks;

6 (11) (A) Teachers, principals, vice-principals, complex  
7 area superintendents, deputy and assistant  
8 superintendents, other certificated personnel,  
9 not more than twenty noncertificated  
10 administrative, professional, and technical  
11 personnel not engaged in instructional work;

12 (B) Effective July 1, 2003, teaching assistants,  
13 educational assistants, bilingual/bicultural  
14 school-home assistants, school psychologists,  
15 psychological examiners, speech pathologists,  
16 athletic health care trainers, alternative school  
17 work study assistants, alternative school  
18 educational/supportive services specialists,  
19 alternative school project coordinators, and  
20 communications aides in the department of  
21 education;



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

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

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

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

15 (B) Positions filled with students in accordance with  
16 guidelines for established state employment  
17 programs; and

18 (C) Positions that provide work experience training  
19 or temporary public service employment that are  
20 filled by persons entering the workforce or  
21 persons transitioning into other careers under  
22 programs such as the federal Workforce



1 Investment Act of 1998, as amended, or the Senior  
2 Community Service Employment Program of the  
3 Employment and Training Administration of the  
4 United States Department of Labor, or under other  
5 similar state programs;

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

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

15 (16) Positions of first deputies or first assistants of  
16 each department head appointed under or in the manner  
17 provided in section 6, article V, of the state  
18 constitution; three additional deputies or assistants  
19 either in charge of the highways, harbors, and  
20 airports divisions or other functions within the  
21 department of transportation as may be assigned by the  
22 director of transportation, with the approval of the



1 governor; four additional deputies in the department  
2 of health, each in charge of one of the following:  
3 behavioral health, environmental health, hospitals,  
4 and health resources administration, including other  
5 functions within the department as may be assigned by  
6 the director of health, with the approval of the  
7 governor; an administrative assistant to the state  
8 librarian; and an administrative assistant to the  
9 superintendent of education;

10 (17) Positions specifically exempted from this part by any  
11 other law; provided that ~~[all]~~:

12 (A) Any exemption created after July 1, 2014, shall  
13 expire three years after its enactment unless  
14 affirmatively extended by an act of the  
15 legislature; and

16 (B) All of the positions defined by paragraph (9)  
17 shall be included in the position classification  
18 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;





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

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

21           SECTION 4. Section 206E-4, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "**§206E-4 Powers; generally.** Except as otherwise limited  
2 by this chapter, the authority may:

- 3           (1) Sue and be sued;
- 4           (2) Have a seal and alter the same at pleasure;
- 5           (3) Make and execute contracts and all other instruments  
6                 necessary or convenient for the exercise of its powers  
7                 and functions under this chapter;
- 8           (4) Make and alter bylaws for its organization and  
9                 internal management;
- 10          (5) Make rules with respect to its projects, operations,  
11                 properties, and facilities, which rules shall be in  
12                 conformance with chapter 91;
- 13          (6) Through its executive director appoint officers, and  
14                 agents, [~~and employees,~~] prescribe their duties and  
15                 qualifications, and fix their salaries, without regard  
16                 to chapter 76[+], and appoint employees in accordance  
17                 with chapter 76;
- 18          (7) Prepare or cause to be prepared a community  
19                 development plan for all designated community  
20                 development districts;
- 21          (8) Acquire, reacquire, or contract to acquire or  
22                 reacquire by grant or purchase real, personal, or



1 mixed property or any interest therein; to own, hold,  
2 clear, improve, and rehabilitate, and to sell, assign,  
3 exchange, transfer, convey, lease, or otherwise  
4 dispose of or encumber the same;

5 (9) Acquire or reacquire by condemnation real, personal,  
6 or mixed property or any interest therein for public  
7 facilities, including but not limited to streets,  
8 sidewalks, parks, schools, and other public  
9 improvements;

10 (10) By itself, or in partnership with qualified persons,  
11 acquire, reacquire, construct, reconstruct,  
12 rehabilitate, improve, alter, or repair or provide for  
13 the construction, reconstruction, improvement,  
14 alteration, or repair of any project; own, hold, sell,  
15 assign, transfer, convey, exchange, lease, or  
16 otherwise dispose of or encumber any project, and in  
17 the case of the sale of any project, accept a purchase  
18 money mortgage in connection therewith; and repurchase  
19 or otherwise acquire any project that the authority  
20 has theretofore sold or otherwise conveyed,  
21 transferred, or disposed of;



- 1           (11) Arrange or contract for the planning, replanning,  
2                   opening, grading, or closing of streets, roads,  
3                   roadways, alleys, or other places, or for the  
4                   furnishing of facilities or for the acquisition of  
5                   property or property rights or for the furnishing of  
6                   property or services in connection with a project;
- 7           (12) Grant options to purchase any project or to renew any  
8                   lease entered into by it in connection with any of its  
9                   projects, on terms and conditions as it deems  
10                  advisable;
- 11          (13) Prepare or cause to be prepared plans, specifications,  
12                   designs, and estimates of costs for the construction,  
13                   reconstruction, rehabilitation, improvement,  
14                   alteration, or repair of any project, and from time to  
15                   time to modify the plans, specifications, designs, or  
16                   estimates;
- 17          (14) Provide advisory, consultative, training, and  
18                   educational services, technical assistance, and advice  
19                   to any person, partnership, or corporation, either  
20                   public or private, to carry out the purposes of this  
21                   chapter, and engage the services of consultants on a



- 1 contractual basis for rendering professional and
- 2 technical assistance and advice;
- 3 (15) Procure insurance against any loss in connection with
- 4 its property and other assets and operations in
- 5 amounts and from insurers as it deems desirable;
- 6 (16) Contract for and accept gifts or grants in any form
- 7 from any public agency or from any other source;
- 8 (17) Do any and all things necessary to carry out its
- 9 purposes and exercise the powers given and granted in
- 10 this chapter; and
- 11 (18) Allow satisfaction of any affordable housing
- 12 requirements imposed by the authority upon any
- 13 proposed development project through the construction
- 14 of reserved housing, as defined in section 206E-101,
- 15 by a person on land located outside the geographic
- 16 boundaries of the authority's jurisdiction; provided
- 17 that the authority shall not permit any person to make
- 18 cash payments in lieu of providing reserved housing,
- 19 except to account for any fractional unit that results
- 20 after calculating the percentage requirement against
- 21 residential floor space or total number of units
- 22 developed. The substituted housing shall be located



1 on the same island as the development project and  
2 shall be substantially equal in value to the required  
3 reserved housing units that were to be developed on  
4 site. The authority shall establish the following  
5 priority in the development of reserved housing:

- 6 (A) Within the community development district;
- 7 (B) Within areas immediately surrounding the  
8 community development district;
- 9 (C) Areas within the central urban core;
- 10 (D) In outlying areas within the same island as the  
11 development project.

12 The Hawaii community development authority shall  
13 adopt rules relating to the approval of reserved  
14 housing that are developed outside of a community  
15 development district. The rules shall include, but  
16 are not limited to, the establishment of guidelines to  
17 ensure compliance with the above priorities."

18 SECTION 5. Section 342G-12.5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§342G-12.5 Recycling coordinator.** There is established a  
21 position of assistant to the coordinator of the office of solid  
22 waste management to be known as the recycling coordinator. The



1 position [~~may~~] shall be appointed by the director in accordance  
2 with chapter 76."

3 SECTION 6. Section 346D-8, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§346D-8 Personnel exempt.** The department of human  
6 services [~~may~~] shall employ civil service personnel in  
7 accordance with chapter 76 to service the waiver programs."

8 SECTION 7. Section 371K-3, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§371K-3 General functions, duties, and powers of the**  
11 **executive director.** The executive director shall:

12 (1) Serve as the principal official in state government  
13 responsible for the coordination of programs for the  
14 needy, poor, and disadvantaged persons, refugees, and  
15 immigrants;

16 (2) Oversee, supervise, and direct the performance by  
17 subordinates of activities in such areas as planning,  
18 evaluation, and coordination of programs for  
19 disadvantaged persons, refugees, and immigrants and  
20 development of a statewide service delivery network;

21 (3) Assess the policies and practices of public and  
22 private agencies impacting on the disadvantaged and





- 1           conduct advocacy efforts on behalf of the  
2           disadvantaged, refugees, and immigrants;
- 3           (4) Devise and recommend legislative and administrative  
4           actions for the improvement of services for the  
5           disadvantaged, refugees, and immigrants;
- 6           (5) Serve as a member of advisory boards and panels of  
7           state agencies in such areas as child development  
8           programs, elder programs, social services programs,  
9           health and medical assistance programs, refugee  
10          assistance programs, and immigrant services programs;
- 11          (6) Administer funds allocated for the office of community  
12          services; and apply for, receive, and disburse grants  
13          and donations from all sources for programs and  
14          services to assist the disadvantaged, refugees, and  
15          immigrants;
- 16          (7) Adopt, amend, and repeal rules pursuant to chapter 91  
17          for purposes of this chapter;
- 18          (8) Retain [~~such~~] staff as may be necessary for the  
19          purposes of this chapter, who [~~may be exempt from~~]  
20          shall be employed in accordance with chapter 76; and
- 21          (9) Contract for services as may be necessary for the  
22          purposes of this chapter."



1 SECTION 8. Section 373C-33, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§373C-33 Personnel.** The department of labor and  
4 industrial relations [~~may~~] shall establish positions and hire  
5 necessary personnel for the purposes of this part in accordance  
6 with chapter 76."

7 SECTION 9. Section 383-128, Hawaii Revised Statutes, is  
8 amended by amending subsection (k) to read as follows:

9 "(k) The director may establish positions and hire  
10 necessary personnel to establish and administer the employment  
11 and training fund; provided that after the effective date of Act  
12 \_\_\_\_\_ , Session Laws of Hawaii 2014, positions shall be established  
13 and personnel hired in accordance with chapter 76."

14 SECTION 10. Section 802-12, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§802-12 Organization of office; assistance.** Subject to  
17 the approval of the defender council, the state public defender  
18 may employ assistant state public defenders and other employees,  
19 including investigators, as may be necessary to discharge the  
20 function of the office. Assistant state public defenders shall  
21 be qualified to practice before the supreme court of this State.  
22 Assistant state public defenders shall be appointed without



1 regard to chapter 76 and shall serve at the pleasure of the  
2 state public defender. All other employees [~~may~~] shall be  
3 appointed in accordance with chapter 76. An assistant state  
4 public defender may be employed on a part-time basis, and when  
5 so employed, the assistant public defender may engage in the  
6 general practice of law, other than in the practice of criminal  
7 law."

8 SECTION 11. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 12. In printing this Act, the revisor of statutes  
11 shall insert in section 9 of this Act the corresponding Act  
12 number of this Act.

13 SECTION 13. This Act shall take effect upon its approval;  
14 provided that the amendments made to section 76-16(b), Hawaii  
15 Revised Statutes, by this Act shall not be repealed when section  
16 76-16(b), Hawaii Revised Statutes, is reenacted on July 1, 2015,  
17 pursuant to section 5 of Act 159, Session Laws of Hawaii 2012.

18

INTRODUCED BY:



# S.B. NO. 3060

**Report Title:**

Civil Service

**Description:**

Conforms with restrictions placed on the creation of civil service exempt positions and annual review requirements.

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

