

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 despite the enactment of  
5 these Acts, there have been few conversions of civil service  
6 exempt positions to civil service positions and that conversions  
7 are 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 26-9, Hawaii Revised Statutes, is  
15 amended by amending subsection (o) to read as follows:

16           "(o) Every person licensed under any chapter within the  
17 jurisdiction of the department of commerce and consumer affairs  
18 and every person licensed subject to chapter 485A or registered



1 under chapter 467B shall pay upon issuance of a license, permit,  
2 certificate, or registration a fee and a subsequent annual fee  
3 to be determined by the director and adjusted from time to time  
4 to ensure that the proceeds, together with all other fines,  
5 income, and penalties collected under this section, do not  
6 surpass the annual operating costs of conducting compliance  
7 resolution activities required under this section. The fees may  
8 be collected biennially or pursuant to rules adopted under  
9 chapter 91, and shall be deposited into the special fund  
10 established under this subsection. Every filing pursuant to  
11 chapter 514E or section 485A-202(a)(26) shall be assessed, upon  
12 initial filing and at each renewal period in which a renewal is  
13 required, a fee that shall be prescribed by rules adopted under  
14 chapter 91, and that shall be deposited into the special fund  
15 established under this subsection. Any unpaid fee shall be paid  
16 by the licensed person, upon application for renewal,  
17 restoration, reactivation, or reinstatement of a license, and by  
18 the person responsible for the renewal, restoration,  
19 reactivation, or reinstatement of a license, upon the  
20 application for renewal, restoration, reactivation, or  
21 reinstatement of the license. If the fees are not paid, the  
22 director may deny renewal, restoration, reactivation, or



1 reinstatement of the license. The director may establish,  
2 increase, decrease, or repeal the fees when necessary pursuant  
3 to rules adopted under chapter 91. The director may also  
4 increase or decrease the fees pursuant to section 92-28.

5       There is created in the state treasury a special fund to be  
6 known as the compliance resolution fund to be expended by the  
7 director's designated representatives as provided by this  
8 subsection. Notwithstanding any law to the contrary, all  
9 revenues, fees, and fines collected by the department shall be  
10 deposited into the compliance resolution fund. Unencumbered  
11 balances existing on June 30, 1999, in the cable television fund  
12 under chapter 440G, the division of consumer advocacy fund under  
13 chapter 269, the financial institution examiners' revolving  
14 fund, section 412:2-109, the special handling fund, section  
15 414-13, and unencumbered balances existing on June 30, 2002, in  
16 the insurance regulation fund, section 431:2-215, shall be  
17 deposited into the compliance resolution fund. This provision  
18 shall not apply to the drivers education fund underwriters fee,  
19 sections 431:10C-115 and 431:10G-107, insurance premium taxes  
20 and revenues, revenues of the workers' compensation special  
21 compensation fund, section 386-151, the captive insurance  
22 administrative fund, section 431:19-101.8, the insurance



1 commissioner's education and training fund, section 431:2-214,  
2 the medical malpractice patients' compensation fund as  
3 administered under section 5 of Act 232, Session Laws of Hawaii  
4 1984, and fees collected for deposit in the office of consumer  
5 protection restitution fund, section 487-14, the real estate  
6 appraisers fund, section 466K-1, the real estate recovery fund,  
7 section 467-16, the real estate education fund, section 467-19,  
8 the contractors recovery fund, section 444-26, the contractors  
9 education fund, section 444-29, the condominium education trust  
10 fund, section 514B-71, and the mortgage foreclosure dispute  
11 resolution special fund, section 667-86. Any law to the  
12 contrary notwithstanding, the director may use the moneys in the  
13 fund to employ, without regard to chapter 76, hearings officers  
14 and attorneys. All other employees [~~may~~] shall be employed in  
15 accordance with chapter 76. Any law to the contrary  
16 notwithstanding, the moneys in the fund shall be used to fund  
17 the operations of the department. The moneys in the fund may be  
18 used to train personnel as the director deems necessary and for  
19 any other activity related to compliance resolution.

20 A separate special subaccount of the compliance resolution  
21 fund, to be known as the post-secondary education authorization  
22 special subaccount, shall be established for fees collected by



1 the department of commerce and consumer affairs pursuant to  
2 chapter 305J. The special subaccount shall be governed by  
3 section 305J-19.

4 As used in this subsection, unless otherwise required by  
5 the context, "compliance resolution" means a determination of  
6 whether:

- 7 (1) Any licensee or applicant under any chapter subject to  
8 the jurisdiction of the department of commerce and  
9 consumer affairs has complied with that chapter;
- 10 (2) Any person subject to chapter 485A has complied with  
11 that chapter;
- 12 (3) Any person submitting any filing required by chapter  
13 514E or section 485A-202(a)(26) has complied with  
14 chapter 514E or section 485A-202(a)(26);
- 15 (4) Any person has complied with the prohibitions against  
16 unfair and deceptive acts or practices in trade or  
17 commerce; or
- 18 (5) Any person subject to chapter 467B has complied with  
19 that chapter;

20 and includes work involved in or supporting the above functions,  
21 licensing, or registration of individuals or companies regulated



1 by the department, consumer protection, and other activities of  
2 the department.

3 The director shall prepare and submit an annual report to  
4 the governor and the legislature on the use of the compliance  
5 resolution fund. The report shall describe expenditures made  
6 from the fund including non-payroll operating expenses."

7 SECTION 3. Section 76-16, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

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

13 (1) Commissioned and enlisted personnel of the Hawaii  
14 National Guard as such, and positions in the Hawaii  
15 National Guard that are required by state or federal  
16 laws or regulations or orders of the National Guard to  
17 be filled from those commissioned or enlisted  
18 personnel;

19 (2) Positions filled by persons employed by contract where  
20 the director of human resources development has  
21 certified that the service is special or unique or is  
22 essential to the public interest and that, because of



1           circumstances surrounding its fulfillment, personnel  
2           to perform the service cannot be obtained through  
3           normal civil service recruitment procedures. Any such  
4           contract may be for any period not exceeding one year;

5           (3) Positions that must be filled without delay to comply  
6           with a court order or decree if the director  
7           determines that recruitment through normal recruitment  
8           civil service procedures would result in delay or  
9           noncompliance, such as the Felix-Cayetano consent  
10          decree;

11          (4) Positions filled by the legislature or by either house  
12          or any committee thereof;

13          (5) Employees in the office of the governor and office of  
14          the lieutenant governor, and household employees at  
15          Washington Place;

16          (6) Positions filled by popular vote;

17          (7) Department heads, officers, and members of any board,  
18          commission, or other state agency whose appointments  
19          are made by the governor or are required by law to be  
20          confirmed by the senate;

21          (8) Judges, referees, receivers, masters, jurors, notaries  
22          public, land court examiners, court commissioners, and



1 attorneys appointed by a state court for a special  
2 temporary service;

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





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

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

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



1           (B) Effective July 1, 2003, teaching assistants,  
2           educational assistants, bilingual/bicultural  
3           school-home assistants, school psychologists,  
4           psychological examiners, speech pathologists,  
5           athletic health care trainers, alternative school  
6           work study assistants, alternative school  
7           educational/supportive services specialists,  
8           alternative school project coordinators, and  
9           communications aides in the department of  
10          education;

11          (C) The special assistant to the state librarian and  
12          one secretary for the special assistant to the  
13          state librarian; and

14          (D) Members of the faculty of the University of  
15          Hawaii, including research workers, extension  
16          agents, personnel engaged in instructional work,  
17          and administrative, professional, and technical  
18          personnel of the university;

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

21          (13) (A) Positions filled by inmates, patients of state  
22          institutions, persons with severe physical or



1                    mental disabilities participating in the work  
2                    experience training 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 Workforce Investment  
11                   Act of 1998, as amended, or the Senior Community  
12                   Service Employment Program of the Employment and  
13                   Training Administration of the United States  
14                   Department of Labor, or under other similar state  
15                   programs;

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

18                   (15) Positions filled by persons employed on a fee,  
19                   contract, or piecework basis, who may lawfully perform  
20                   their duties concurrently with their private business  
21                   or profession or other private employment and whose  
22                   duties require only a portion of their time, if it is



1 impracticable to ascertain or anticipate the portion  
2 of time to be devoted to the service of the State;  
3 (16) Positions of first deputies or first assistants of  
4 each department head appointed under or in the manner  
5 provided in section 6, article V, of the state  
6 constitution; three additional deputies or assistants  
7 either in charge of the highways, harbors, and  
8 airports divisions or other functions within the  
9 department of transportation as may be assigned by the  
10 director of transportation, with the approval of the  
11 governor; four additional deputies in the department  
12 of health, each in charge of one of the following:  
13 behavioral health, environmental health, hospitals,  
14 and health resources administration, including other  
15 functions within the department as may be assigned by  
16 the director of health, with the approval of the  
17 governor; an administrative assistant to the state  
18 librarian; and an administrative assistant to the  
19 superintendent of education;  
20 (17) Positions specifically exempted from this part by any  
21 other law; provided that [all]:



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

5           (B) All of the positions defined by paragraph (9)  
6           shall be included in the position classification  
7           plan;

8           (18) Positions in the state foster grandparent program and  
9           positions for temporary employment of senior citizens  
10           in occupations in which there is a severe personnel  
11           shortage or in special projects;

12           (19) Household employees at the official residence of the  
13           president of the University of Hawaii;

14           (20) Employees in the department of education engaged in  
15           the supervision of students during meal periods in the  
16           distribution, collection, and counting of meal  
17           tickets, and in the cleaning of classrooms after  
18           school hours on a less than half-time basis;

19           (21) Employees hired under the tenant hire program of the  
20           Hawaii public housing authority; provided that except  
21           during the time period specified in paragraph (27),  
22           not more than twenty-six per cent of the authority's



- 1 workforce in any housing project maintained or  
2 operated by the authority shall be hired under the  
3 tenant hire program;
- 4 (22) Positions of the federally funded expanded food and  
5 nutrition program of the University of Hawaii that  
6 require the hiring of nutrition program assistants who  
7 live in the areas they serve;
- 8 (23) Positions filled by persons with severe disabilities  
9 who are certified by the state vocational  
10 rehabilitation office that they are able to perform  
11 safely the duties of the positions;
- 12 (24) The sheriff;
- 13 (25) A gender and other fairness coordinator hired by the  
14 judiciary;
- 15 (26) Positions in the Hawaii National Guard youth and adult  
16 education programs; and
- 17 (27) From July 1, 2012, to June 30, 2015, persons hired or  
18 contracted to perform repair, maintenance, or capital  
19 improvement projects work on vacant housing units  
20 under the jurisdiction of the Hawaii public housing  
21 authority.



1           The director shall determine the applicability of this  
2 section to specific positions.

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

5           SECTION 4. Section 412:2-109, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7           "(b) The commissioner may appoint financial institution  
8 examiners, [~~in accordance with chapter 76,~~] who shall examine  
9 the affairs, transactions, accounts, records, documents, and  
10 assets of financial institutions[-]; provided that the financial  
11 institution examiners shall be appointed in accordance with  
12 chapter 76. The commissioner may also [~~may~~] appoint  
13 administrative support personnel, [~~in accordance with chapter~~  
14 ~~76,~~] who shall assist and support the examiners[-]; provided  
15 that the administrative support personnel shall be appointed in  
16 accordance with chapter 76. The commissioner may pay the  
17 salaries of the financial institution examiners and  
18 administrative support personnel from the compliance resolution  
19 fund."

20           SECTION 5. Section 440G-12, Hawaii Revised Statutes, is  
21 amended by amending subsection (d) to read as follows:



1           "(d) The director may appoint, without regard to chapter  
2 76, an administrator and one or more attorneys for purposes of  
3 enforcing this chapter. The director shall define their powers  
4 and duties and fix their compensation. The director may also  
5 appoint professional, clerical, stenographic, and other staff as  
6 may be necessary for the proper administration and enforcement  
7 of this chapter; provided that they are appointed subject to  
8 chapter 76."

9           SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11           SECTION 7. This Act shall take effect upon its approval;  
12 provided that the amendments made to section 76-16(b), Hawaii  
13 Revised Statutes, by this Act shall not be repealed when section  
14 76-16(b), Hawaii Revised Statutes, is reenacted on July 1, 2015,  
15 pursuant to section 5 of Act 159, Session Laws of Hawaii 2012.

16

INTRODUCED BY: *Randy de Be*

*Chris He*





# S.B. NO. 3075

**Report Title:**

Civil Service

**Description:**

Conforms 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.*

