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**A BILL FOR AN ACT**

RELATING TO EXEMPTIONS FROM CIVIL SERVICE.

**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) Position 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  
23          judge of the district court of the first circuit; and

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

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, patients of state  
17 institutions, persons with severe physical or  
18 mental disabilities participating in the work  
19 experience training programs;

20 (B) Positions filled with students in accordance with  
21 guidelines for established state employment  
22 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 Hawaii state  
23 constitution; three additional deputies or assistants

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

18       (17) Positions specifically exempted from this part by any  
19       other law; provided that:

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

1 (B) All of the positions defined by paragraph (9)  
2 shall be included in the position classification  
3 plan;

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

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

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

15 (21) Employees hired under the tenant hire program of the  
16 Hawaii public housing authority; provided that not  
17 more than twenty-six per cent of the authority's  
18 workforce 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 persons with severe disabilities  
4 who are certified by the state vocational  
5 rehabilitation office that they are able to perform  
6 safely the duties of the positions;

7 (24) The sheriff;

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

10 (26) Positions in the Hawaii National Guard youth and adult  
11 education programs[-];

12 (27) Notwithstanding any other law to the contrary,  
13 including paragraph (17), the following positions in  
14 the Med-QUEST division of the department of human  
15 services shall be permanently exempt: division  
16 administrator, finance officer, health care services  
17 branch administrator, medical director, clinical  
18 standards administrator, and research/health analytics  
19 manager;

20 (28) Notwithstanding any other law to the contrary,  
21 including paragraph (17), the following positions in  
22 the director's office of the department of human  
23 services shall be permanently exempt:

1           community/project development director, and policy  
2           director;

3           (29) Notwithstanding any other law to the contrary,  
4           including paragraph (17), all psychologist positions  
5           in the department of public safety shall be  
6           permanently exempt;

7           (30) Notwithstanding any other law to the contrary,  
8           including paragraph (17), the following positions in  
9           the correctional health care program of the department  
10          of public safety shall be permanently exempt: mental  
11          health branch administrator, mental health section  
12          administrators, and dentists;

13          (31) Notwithstanding any other law to the contrary,  
14          including paragraph (17), the following positions in  
15          the department of health shall be permanently exempt:  
16          physicians, dentists, forensic psychologists in the  
17          adult mental health division, and forensic  
18          psychologist supervisors in the adult mental health  
19          division;

20          (32) Notwithstanding any other law to the contrary,  
21          including paragraph (17), the following positions in  
22          the department of labor and industrial relations shall  
23          be permanently exempt: occupational safety and health

1 inspector positions, including supervising and  
 2 environmental health specialists, supervising and  
 3 occupational safety and health compliance officers,  
 4 and supervising and occupational safety and health  
 5 advisors; and

6 (33) Notwithstanding any other law to the contrary,  
 7 including paragraph (17), the following positions in  
 8 the state energy office in the department of business,  
 9 economic development and tourism shall be permanently  
 10 exempt: energy program managers, energy program  
 11 specialists, energy program assistants, and energy  
 12 analysts.

13 The director shall determine the applicability of this  
 14 section to specific positions.

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

17 SECTION 2. Statutory material to be repealed is bracketed  
 18 and stricken. New statutory material is underscored.

19 SECTION 3. This Act, upon its approval, shall take effect  
 20 on July 1, 2016.

21  
 22 INTRODUCED BY: \_\_\_\_\_



BY REQUEST

JAN 25 2016

**Report Title:**

Position Exemptions; Second Deputy Director Position, Department of Human Services; Restoration

**Description:**

Restores the second deputy director position for the Department of Human Services. Designates identified positions in the Director's Office of the Department of Human Services as permanently exempt. Converts identified positions in the Department of Health, the Department of Human Services, the Department of Public Safety, the Department of Labor and Industrial Relations, and the Department of Business, Economic Development and Tourism to permanent exempt status.

*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: HUMAN RESOURCES DEVELOPMENT

TITLE: A BILL FOR AN ACT RELATING TO EXEMPTIONS FROM CIVIL SERVICE.

PURPOSE: To restore the second Deputy Director position at the Department of Human Services. To designate new positions in the Director's Office of the Department of Human Services (Community/Project Development Director, Policy Director) as permanently exempt. To convert identified positions in the Department of Health, Department of Human Services, Department of Public Safety, and Department of Labor and Industrial Relations to permanent exempt status. To designate exempt positions in the State Energy Office in the Department of Business, Economic Development and Tourism as permanently exempt.

MEANS: Amend section 76-16(b), Hawaii Revised Statutes.

JUSTIFICATION: Department of Health:

Seeking permanent exemption for physicians, dentists, forensic psychologists, and forensic psychologist supervisors employed by the Department of Health. Permanently exempting these positions from civil service would allow for the recruitment and retention of highly qualified individuals in these critical medical, dental, and forensic mental health provider positions, and would ensure that Department of Health programs will be sustainable in the future.

The Department of Health provides leadership to the State in addressing the physical, psychological, and environmental health needs of the entire state population. Physician and dentist positions within the

department play a crucial role by providing expertise for policy and decision-making in such areas as adult/children mental health, intellectual/developmental disabilities, environmental health, disease outbreak, emergency medical services, oral health, and infant/adolescent health.

Physicians and dentists also provide critical direct services to patients - many of whom come from vulnerable populations such as the mentally ill, intellectually/developmentally disabled, and infants/adolescents - in healthcare settings.

In addition to traditional public health and population health activities, the department plays a critical role in the State's justice system with regard to examination of a criminal defendant's fitness to stand trial and penal responsibility. Forensic psychologists require specialized training and expertise beyond general clinical knowledge and experience for the proper administration of a court-ordered examination. The expert opinions and conclusions provided in a court-ordered examination, written report, and testimony are heavily considered by the judiciary, and accordingly, are a significant factor in legal claims and defenses available to a defendant, subsequent adjudication, and the final ruling of the court.

The department has experienced difficulties in not only attracting qualified candidates for these types of positions, but also retaining existing quality employees, due to the inadequacy of the civil service salaries that can be offered to individuals. In the case of court-ordered examinations, specifically, long-standing recruitment challenges for forensic psychologists and forensic psychologist supervisors are exacerbated by a steady increase in demand for court-ordered examinations,

approximately 58 percent over the last six years.

The inability to provide quality care and forensic mental health expertise due to the lack of skilled physician, dentist, forensic psychologist, and forensic psychologist supervisor positions increases operating costs due to the need for expensive contracts with private practitioners, and exposes the department to possible expensive litigation.

Department of Human Services:

Seeking to restore the second Deputy Director position and designate new Community/Project Development Director and Policy Director positions in the Director's office as permanently exempt. Also seeking permanent exemption for six management level positions in the Med-QUEST Division.

The second Deputy Director position is needed to ensure effective management of the department's diverse and complex programs affecting the poor and vulnerable adults and children statewide. With the wide array of services offered by the department's programs, each with its own set of laws and regulations, the breadth of knowledge necessary to provide effective management is extensive and difficult to develop. The department also manages significant federal and state funds and processes vast amounts of information, and is currently engaged in investing in an enterprise integrated eligibility system to better serve recipients of public benefits and the state's vulnerable populations.

The Community/Project Development Director and Policy Director positions will assist with managing the numerous projects assigned to the department, including addressing homelessness; the individual and family functions of the State-based Marketplace

using the Federal Platform (SBM-FP, previously under the Hawaii Health Connector); ensuring continued access to health coverage for State residents from the Compact of Free Association nations; and building a collaborative and integrated multi-generational service model for children and families. The new mandates and initiatives have increased the demands on the Director's Office as they may require changes to the operations of multiple divisions, and coordination with and participation of other state and federal agencies, community agencies and key stakeholders.

The Med-QUEST Division (MQD) Medicaid program is the most effective and cost efficient way to provide health care coverage to low-income adults and children. The program is complex as it requires compliance with complex federal regulations and integration of current health care trends in service delivery, while meeting the unique needs of Hawaii's population. The MQD seeks permanent exemption for six management level positions (Division Administrator, Finance Officer, Health Care Services Branch Administrator, Medical Director, Clinical Standards Administrator, and Research/Health Analytics Manager) because they require unique knowledge and experience typically gained through employment in health care-related organizations (e.g., hospitals, clinics, and insurance companies) or the federal government, or require clinical credentials or licenses. A permanent exemption for these positions is necessary to allow flexibility to hire and retain highly qualified staff to manage critical on-going functions over the \$2 billion medical assistance programs.



Department of Public Safety:

Seeking permanent exemption for all psychologists in the Department of Public Safety. Also seeking permanent exemption for the following positions in the Correctional Health Care Program: Mental Health Branch Administrator, Mental Health Section Administrators, and Dentists. Making these positions exempt would facilitate filling of the positions, which has consistently been a challenge due to the unique nature of providing mental health services within the correctional setting. Disruptive behavior is more prevalent among the incarcerated mentally ill and more challenging to manage than those committed to the Hawaii State Hospital or other mental health treatment facilities. These positions are an integral part of the State's ability to comply with a settlement agreement entered into between the Department of Public Safety and the United States Department of Justice to improve mental health services available to persons incarcerated at the Oahu Community Correctional Center.

Department of Labor and Industrial Relations:

Seeking permanent exemption for certain positions in the Hawaii Occupational Safety and Health Division (HIOSH). The Occupational Safety and Health Act of 1970 provides for states to assume responsibility for the development and enforcement of their own occupational safety and health programs approved and monitored by the Occupational Safety and Health Administration (OSHA). HIOSH, like many other state-run programs, historically has encountered difficulty in recruiting and retaining qualified inspectors due to the inability to compete with the private sector.

The U.S. Government Accountability Office (GAO) issued a report to Congress in April 2013 that identified staffing as the primary problem experienced by state-run programs. "States have difficulty filling vacant inspector positions, obtaining training for inspectors, and retaining qualified inspectors... . Retaining qualified inspectors is another challenge among states. Officials noted that, once state inspectors are trained, they often leave for higher paying positions in the private sector or federal government." GAO-13-320, *Workplace Safety and Health: OSHA Can Better Respond to State-Run Programs*.

Enabling HIOSH to use exempt positions will help HIOSH more effectively recruit and retain inspectors and help prevent their loss to the private sector. A stronger HIOSH will lower injury and illness rates and therefore workers' compensation premiums.

Department of Business, Economic Development and Tourism:

Seeking permanent exemption for the following exempt positions in the State Energy Office: Energy Program Managers, Energy Program Specialists, Energy Program Assistants, and Energy Analysts. Permanently exempting these positions would allow for retention of uniquely skilled individuals and recruitment of individuals skilled in new energy technologies as these technologies are invented. The exempt positions are needed for sustained support for Hawaii's clean energy initiative and renewable portfolio standards goal of achieving 100 percent renewable energy for power generation by 2045.

Impact on the public: Sustained high quality services to the public, including for vulnerable populations (e.g., children,

vulnerable adults, and persons with mental illness).

Impact on the department and other agencies:

No impact on the Department of Human Resources Development. The Department of Health, Department of Human Services, Department of Public Safety, Department of Labor and Industrial Relations, and Department of Business, Economic Development and Tourism would benefit from enhanced ability to hire and retain highly qualified individuals to support their critical programs and services to the public.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES: Department of Health, Department of Human Services, Department of Public Safety, Department of Labor and Industrial Relations, and Department of Business, Economic Development and Tourism.

EFFECTIVE DATE: July 1, 2016.