

**CHAPTER 26**  
**EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS**

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Pilot project for efficiency measures to be included with budget documents submitted to the legislature; report to 2017 legislature; auditor report (no later than March 1, 2017). L 2015, c 67.

## **Cross References**

Access Hawaii committee (management of State's internet portal), see chapter 27G.

Council, board, and commission members; training on native Hawaiian and Hawaiian traditional and customary rights, see chapter 10, part III.

Emergency management, see chapter 127A.

Uniform electronic transactions act, see chapter 489E.

## **"PART I. ORGANIZATION, GENERALLY**

**§26-1 Office of the lieutenant governor.** (a) Except as otherwise provided by law, the lieutenant governor is designated the secretary of state for intergovernmental relations and shall perform the duties and functions heretofore exercised by the secretary of Hawaii. The duties and functions shall include but not be limited to recordation of all legislative and gubernatorial acts, certification of state documents, and maintenance of an official file of rules adopted by state departments as provided in chapter 91. The lieutenant governor may employ staff as necessary without regard to chapter 76.

(b) The lieutenant governor, with the approval of the governor, may designate some other officer of the government of the State to authenticate documents on behalf of the lieutenant governor during the lieutenant governor's temporary absence outside the State or during the lieutenant governor's illness whenever the documents require the signature of the lieutenant governor. The person shall affix the person's own signature to the document with the words, "for the lieutenant governor" following and the signature shall be deemed to satisfy the requirement of the lieutenant governor's signature on the document. The designation and approval shall be in writing and shall be filed in the office of the governor and a copy thereof, certified by the governor, shall be filed with the public archives. The person designated shall serve without additional compensation and the lieutenant governor shall be responsible

and liable on the lieutenant governor's official bond for all acts done by the person designated in the performance of the duties on behalf of the lieutenant governor.

(c) Nothing in this section shall be construed to authorize the person to exercise and discharge the powers and duties of the office of the governor as provided by the first paragraph of article V, section 4, of the Constitution of the State of Hawaii. The person shall not be authorized to exercise any powers whenever a successor to the lieutenant governor assumes the duties of the lieutenant governor pursuant to article V, section 4, of the Constitution of the State of Hawaii.

(d) The governor shall identify and direct other duties as necessary to the lieutenant governor.

(e) A lieutenant governor whose legal residence is on an island other than Oahu and who is required to remain away from the island of the lieutenant governor's legal residence but within the State overnight or longer while on official business shall receive an allowance to cover personal expenses such as board, lodging, and incidental expenses. The allowance authorized under this subsection shall be set at a daily single rate to be determined by a joint agreement between the senate president and speaker of the house of representatives. This rate shall:

- (1) Not exceed the greater of the maximum allowance for such expenses payable to any public officer or employee of the State; and
- (2) Be reasonably calculated to cover the expenses specified in this subsection.

(f) The allowance authorized under subsection (e) shall be in addition to and shall not supplant any portion of the salary of the lieutenant governor determined pursuant to section 26-51. The allowance shall be paid out of any available appropriation made by the legislature for expenses, other than the salary, of the lieutenant governor. [L Sp 1959 2d, c 1, §9; am L 1963, c 30, §1; am L 1965, c 96, §10; Supp, §14A-8; HRS §26-1; am L 1981, c 82, §5; gen ch 1985; am L 1987, c 213, §1; am L 1995, c 151, §2; am L Sp 1995, c 27, §§9, 15; am L 1998, c 137, §3; am L 1999, c 141, §3; am L 2000, c 253, §150; am L 2005, c 147, §1; am L 2013, c 51, §2; am L 2015, c 92, §1]

#### **Note**

Pacific-Asia institute for resilience and sustainability. L 2014, c 229.

" **§26-2 Order of succession to offices of governor and lieutenant governor.** (a) When the office of lieutenant governor is vacant by reason of the lieutenant governor's becoming governor, or the lieutenant governor's failure to qualify, or the lieutenant governor's removal from office, death, resignation, or otherwise, the powers and duties of the office of lieutenant governor shall devolve upon the president of the senate; or, if there is none or upon the president's failure to resign promptly from all legislative offices held by the president, then upon the speaker of the house of representatives; or if there is none or upon the speaker's failure to resign promptly from all legislative offices held by the speaker, then upon the attorney general, the director of finance, the comptroller, the director of taxation, and the director of human resources development in the order named; provided that any officer upon whom the powers and duties of the office of lieutenant governor devolve may decline the powers and duties without the officer's resignation from the office by virtue of the holding of which the officer qualifies to act as lieutenant governor, in which event the powers and duties will devolve upon the next officer listed in the order of succession.

(b) When the lieutenant governor is temporarily absent from the State or is temporarily disabled, the powers and duties of the office of the lieutenant governor shall devolve upon the foregoing officers, other than the president of the senate and the speaker of the house, in the order named.

(c) The powers and duties of any officer acting as lieutenant governor under this section shall include the powers and duties of the office of governor when that office is vacant, or when the governor is absent from the State or is unable to exercise and discharge the powers and duties of the governor's office, in addition to the other powers and duties of the lieutenant governor.

No person other than the elected governor or lieutenant governor shall become governor, provision being made by this section only for an acting governor.

(d) An officer succeeding to the powers and duties of the lieutenant governor, under subsection (b) of this section, may designate an officer in the office of the lieutenant governor to perform any or all functions other than those pertaining to the office of governor.

(e) During the period that any officer, under this section is exercising the powers and performing the duties of the office of governor or lieutenant governor by reason of a permanent vacancy therein, and not otherwise, the officer shall receive the compensation and perquisites of the governor or lieutenant governor, as the case may be.

(f) In a case covered by subsection (a), the taking of the oath of office by an officer, other than a legislative officer required to resign under subsection (a), shall be held to constitute the officer's resignation from the office by virtue of the holding of which the officer qualifies to act as lieutenant governor.

(g) No officer shall act as governor or lieutenant governor under subsection (a) or (b) of this section, unless the officer is eligible to the office of governor under the constitution. No officer other than a legislative officer shall act as governor or lieutenant governor under this section unless the officer has been appointed and confirmed prior to the time the powers and duties of the office of governor or of lieutenant governor devolve upon the officer. No officer shall act as governor or lieutenant governor under this section if the officer is under impeachment at the time the powers and duties of the office of governor or lieutenant governor devolve upon the officer. [L 1965, c 262, §1; Supp, §14A-8.5; HRS §26-2; gen ch 1985; am L 1994, c 56, §21]

#### Case Notes

Section provides order of succession that applies only after respective officers have properly been elected to public office; it does not relieve prospective candidate from compliance with Hawaii constitution, article V, §2 during the qualification and nomination process. 81 H. 230, 915 P.2d 704.

" **§26-3 Position of administrative director created.** The governor shall appoint, and may remove, an administrative director, without regard to chapter 76. The administrative director shall be experienced in the operations of government. The administrative director shall assist the governor by gathering and collating information concerning the functioning of the state government, by establishing and maintaining liaison among the several departments, by preparing the agenda for cabinet meetings, by administering management improvement programs, and in such other manner as the governor may direct.

The administrative director shall be a member of the state employees' retirement system and shall be included under the operations of the federal social security program or any other state or federal employee benefit program generally applicable to officers and employees of the State. [L 1959, c 273, §§1, 2; am L 1962, c 28, §24; am L 1965, c 223, §8(a); Supp, §14A-7; HRS §26-3; gen ch 1985; am L 2000, c 253, §150]

" **§26-4 Structure of government.** Under the supervision of the governor, all executive and administrative offices, departments, and instrumentalities of the state government and their respective functions, powers, and duties shall be allocated among and within the following principal departments that are hereby established:

- (1) Department of human resources development (Section 26-5)
- (2) Department of accounting and general services (Section 26-6)
- (3) Department of the attorney general (Section 26-7)
- (4) Department of budget and finance (Section 26-8)
- (5) Department of commerce and consumer affairs (Section 26-9)
- (6) Department of taxation (Section 26-10)
- (7) University of Hawaii (Section 26-11)
- (8) Department of education (Section 26-12)
- (9) Department of health (Section 26-13)
- (10) Department of human services (Section 26-14)
- (11) Department of land and natural resources (Section 26-15)
- (12) Department of agriculture (Section 26-16)
- (13) Department of Hawaiian home lands (Section 26-17)
- (14) Department of business, economic development, and tourism (Section 26-18)
- (15) Department of transportation (Section 26-19)
- (16) Department of labor and industrial relations (Section 26-20)
- (17) Department of defense (Section 26-21)
- (18) Department of public safety (Section 26-14.6). [L Sp 1959 2d, c 1, §3; am L 1961, c 132, §1(a); am L 1963, c 2, §1 and c 114, §§2, 4; Supp, §14A-1; HRS §26-4; am L 1970, c 105, §4; am L 1982, c 204, §8; am L 1987, c 336, §3(1), c 338, §1(2), and c 339, §2(1); am L 1989, c 211, §§3, 4; am L 1990, c 293, §8; am L 1991, c 293, §§1, 5; am L 1994, c 56, §1]

#### **Cross References**

Hawaii health authority, see chapter 322H.

#### **Attorney General Opinions**

The office of the governor is a constitutional office established by §1 of article V of the state constitution and is not a principal department of the state executive branch listed

in this section; thus, any agency that is not temporary and for special purposes cannot be validly placed within the office of the governor. Att. Gen Op. 96-1.

### Case Notes

Administrative agency is not a "person" under Civil Rights Act, 42 USCA §1983. 396 F. Supp. 375.

Presumption of constitutionality applies to policies set by state agencies. 56 H. 601, 546 P.2d 1005.

" **§26-5 Department of human resources development.** (a) The department of human resources development shall be headed by a single executive to be known as the director of human resources development.

(b) The department shall administer the state human resources program, including human resources development and training, and central human resources services such as recruitment, examination, classification, pay administration, and payment of any claims as required under chapter 386.

(c) There shall be within the department of human resources development a board to be known as the merit appeals board which shall sit as an appellate body on matters set forth in section 76-14. The board shall consist of three members. All members shall have knowledge of public employment laws and prior experience with public employment; provided that at least one member's experience was with an employee organization as a member or an employee of that organization and at least one member's experience was with management. The governor shall consider the names of qualified individuals submitted by employee organizations or management before appointing the members of the board. The chairperson of the board shall be designated as specified in the rules of the board.

(d) The provisions of section 26-34 shall not apply and the board members shall be appointed by the governor for four-year terms and may be re-appointed without limitation; provided that the initial appointments shall be for staggered terms, as determined by the governor. The governor shall fill any vacancy by appointing a new member for a four-year term. The governor may remove for cause any member after due notice and public hearing.

(e) Nothing in this section shall be construed as in any manner affecting the civil service laws applicable to the several counties, the judiciary, or the Hawaii health systems corporation or its regional system boards, which shall remain the same as if this chapter had not been enacted.



(f) There is established in the state treasury the human resources development special fund, to be administered by the department of human resources development, which shall consist of: all revenues received by the department as a result of entrepreneurial efforts in securing new sources of funds not provided for in the department's budget for services rendered by the department, all revenues received by the department from the charging of participant fees for in-service training that are in addition to general fund appropriations in the department's budget for developing and operating in-service training programs, appropriations made by the legislature to the fund, and moneys directed to the department from any other source, including gifts, grants, and awards.

Moneys in the human resources development special fund shall be used for the following purposes:

- (1) Supporting the department's entrepreneurial initiatives, training activities, and programs;
- (2) Administrative costs of the department's entrepreneurial initiatives, training activities, and programs; and
- (3) Any other purpose deemed necessary by the director for the purpose of facilitating the department's entrepreneurial initiatives, training activities, and programs.

(g) The department of human resources development shall submit, no later than twenty days prior to the convening of each regular session [of the legislature] beginning with the regular session of 2007, a report of the number of exempt positions that were converted to civil service positions during the previous twelve months. The report shall include but not be limited to:

- (1) When the position was established;
- (2) The purpose of the position;
- (3) Rationale for the conversion; and
- (4) How many exempt positions remain in each state department after the conversions. [L Sp 1959 2d, c 1, §11; am L 1965, c 206, §1; Supp, §14A-10; HRS §26-5; am L 1969, c 41, §1; gen ch 1985; am L 1994, c 56, §2; am L 2000, c 253, §2; am L 2001, c 123, §9; am L 2006, c 300, §21; am L 2007, c 290, §3]

#### **Revision Note**

Subsection (g) is codified to this section pursuant to §23G-15.

#### **Cross References**

Commission on salaries, see §26-56.

" **§26-6 Department of accounting and general services.** (a)

The department of accounting and general services shall be headed by a single executive to be known as the comptroller.

(b) The department shall:

- (1) Preaudit and conduct after-the-fact audits of the financial accounts of all state departments to determine the legality of expenditures and the accuracy of accounts;
- (2) Report to the governor and to each regular session of the legislature as to the finances of each department of the State;
- (3) Administer the state risk management program;
- (4) Establish and manage motor pools;
- (5) Manage the preservation and disposal of all records of the State;
- (6) Undertake the program of centralized engineering and office leasing services, including operation and maintenance and lease buyback processing pursuant to subsection (d) of public buildings, for departments of the State;
- (7) Undertake the functions of the state surveyor;
- (8) Establish accounting and internal control systems;
- (9) Under the direction of the chief information officer, provide centralized computer information management and processing services;
- (10) Establish a program to provide a means for public access to public information and develop an information network for state government; and
- (11) Assume administrative responsibility for the office of information practices.

(c) The state communication system shall be established to:

- (1) Facilitate implementation of the State's distributed information processing and information resource management plans;
- (2) Improve data, voice, and video communications in state government;
- (3) Provide a means for connectivity among the state, university, and county computer systems; and
- (4) Provide a long-term means for public access to public information.

(d) The department shall establish, coordinate, and manage a program to facilitate facility agreements between the State and private investors for the sale of facilities, excluding

facilities managed or controlled by the department of transportation, to private investors; provided that each facility agreement contains the following requirements:

- (1) The State shall sell the facility to the private investor, who shall:
  - (A) Renovate, improve, or construct a facility for the State and may maintain the facility; and
  - (B) Lease the facility to the State, pursuant to a building lease;
- (2) The land upon which the facility rests shall not be sold to the private investor; provided that the land may be leased at a nominal rate to the private investor for a term that would, at a minimum, allow the private investor to recover the capital investment that has been made to the facility, including depreciation; and
- (3) The State shall have the option of purchasing the facility from the private investor for the remaining balance of the debt service costs incurred by the private investor at any time.

For purposes of this subsection:

"Building lease" means a contract between the department of accounting and general services and a private investor in which the private investor leases an improved facility to the department for a specified period of time.

"Facility" means a building under the management and control of any state department.

"Facility agreement" means an agreement between the State and a private investor that, at a minimum, includes a description of the work to be done, the sale price for the facility, the duration of the agreement, the roles and responsibilities of the State and the private investor, and the terms and conditions for the lease.

"Private investor" means a nongovernmental entity.

(e) The department may adopt rules as may be necessary or desirable for the operation and maintenance of public buildings; for the operation and implementation of a program to provide a means for public access to the State's information network system and public information; and for the implementation of facility agreements pursuant to subsection (d). The rules shall be adopted pursuant to chapter 91.

(f) The King Kamehameha celebration commission shall be placed within the department of accounting and general services for administrative purposes. The functions, duties, and powers, subject to the administrative control of the comptroller, and the composition of the commission shall be as heretofore provided by law.

(g) The functions and authority heretofore exercised by the comptroller, board of commissioners of public archives, the archivist, the disposal committee, and the insurance management, surplus property management, and central purchasing functions of the bureau of the budget and the nonhighway functions of the department of public works as heretofore constituted are transferred to the department of accounting and general services established by this chapter.

(h) The department of accounting and general services shall preserve and protect Washington Place, including the grounds and the historic residence situated on its premises at Miller and Beretania Streets in Honolulu. The department shall administer, manage, operate, and maintain Washington Place and the trust fund created under subsection (i).

(i) There is established a trust fund in the state treasury to be known as the Washington Place trust fund, into which shall be deposited:

- (1) All rents and fees collected for the use of Washington Place and from activities conducted on the premises;
- (2) All other money received for the fund from any other source; and
- (3) All income and interest earned or accrued on moneys deposited into the trust fund.

All moneys deposited into the trust fund shall be expended by the department of accounting and general services and used exclusively to implement the provisions of subsection (h), including for staff salaries and fringe benefits, and shall not be transferred, nor subject to transfer, to the general fund or any other fund in the state treasury. [L Sp 1959 2d, c 1, §12; am L 1963, c 77, §2; Supp, §14A-11; HRS §26-6; am L 1970, c 19, §1; am L 1981, c 82, §6; am L 1994, c 45, §1 and c 186, §2; am L 1995, c 126, §1; am L 2005, c 22, §1; am L 2013, c 113, §1; am L 2015, c 92, §2 and c 177, §3; am L 2016, c 58, §2]

#### **Note**

Comprehensive system for asset management of public buildings, facilities, and sites. L 2011, c 54; L 2013, c 110.

Consolidation of functions, duties, etc. of the office of information management and technology and the information and communication services division under the office of enterprise technology services. L 2016, c 58, §§8 to 11.

#### **Cross References**

Access Hawaii committee (management of State's internet portal), see chapter 27G.

Use of vacant department facilities for public charter schools, see §302D-35.

" **§26-7 Department of the attorney general.** The department of the attorney general shall be headed by a single executive to be known as the attorney general.

The department shall administer and render state legal services, including furnishing of written legal opinions to the governor, legislature, and such state departments and officers as the governor may direct; represent the State in all civil actions in which the State is a party; approve as to legality and form all documents relating to the acquisition of any land or interest in lands by the State; and, unless otherwise provided by law, prosecute cases involving violations of state laws and cases involving agreements, uniform laws, or other matters which are enforceable in the courts of the State. The attorney general shall be charged with such other duties and have such authority as heretofore provided by common law or statute.

There shall be within the department of the attorney general a commission to be known as the commission to promote uniform legislation which shall sit in an advisory capacity to the attorney general and to the legislature on matters relating to the promotion of uniform legislation. The composition of the commission shall be as heretofore provided for the commission to promote uniform legislation existing immediately prior to November 25, 1959. The members of the commission shall be nominated, and by and with the advice and consent of the senate, appointed by the governor for terms of four years each, provided that each member shall hold office until the member's successor is appointed and qualified; and provided also that the provisions of section 26-34, limiting the appointment of members of boards and commissions to two terms and the duration of membership to not more than eight consecutive years shall not be applicable.

The functions and authority heretofore exercised by the attorney general, high sheriff, and the commission to promote uniform legislation as heretofore constituted are transferred to the department of the attorney general established by this chapter. [L Sp 1959 2d, c 1, §13; am L 1965, c 127, §1; Supp, §14A-12; HRS §26-7; am L 1969, c 123, §1 and c 175, §12; am L 1975, c 20, §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

**Attorney General Opinions**

This statute is constitutional, with regard to the use of the phrase "appointed and qualified" [pertaining to the commission to promote uniform legislation] to describe when a successor's appointment terminates a holdover member's position. Att. Gen. Op. 16-3.

### Case Notes

Compromise agreement resolving legal claim against board of land and natural resources was not binding on State without attorney general's approval. 57 H. 259, 554 P.2d 761.

Attorney general may represent a state employee in a civil action while prosecuting the same employee in a criminal matter. 71 H. 598, 801 P.2d 548.

Without express authorization of employees' retirement system board, attorney general lacked power to file appeal on board's behalf from circuit court's final order; where attorney general perceived conflict of interest with board, attorney general was ethically obligated to recommend retention of other counsel to represent board and take other appropriate action. 87 H. 152, 952 P.2d 1215.

" **§26-8 Department of budget and finance.** (a) The department of budget and finance shall be headed by a single executive to be known as the director of finance.

(b) The department shall:

- (1) Undertake the preparation and execution of the executive budget of the state government;
- (2) Conduct a systematic and continuous review of the finances, organization, and methods of each department of the State to assist each department in achieving the most effective expenditure of all public funds and to determine that such expenditures are in accordance with the budget laws and controls in force;
- (3) Have custody of state funds and be responsible for the safekeeping, management, investment, and disbursement thereof; and
- (4) Administer state debts.

(c) The functions and authority heretofore exercised by the bureau of the budget (except for insurance management, surplus property management, and central purchasing transferred to the department of accounting and general services) and the funds custody, cash management, debt management, and administering of veterans loan functions of the treasurer as heretofore constituted are transferred to the department of budget and finance established by this chapter.

(d) The employees' retirement system as constituted by chapter 88 is placed within the department of budget and finance for administrative purposes. The functions, duties, and powers, subject to the administrative control of the director of finance, and the composition of the board of trustees of the employees' retirement system shall be as heretofore provided by law. [L Sp 1959 2d, c 1, §14; am L 1963, c 114, §2; Supp, §14A-13; HRS §26-8; am L 1971, c 107, §4; am L 1976, c 165, §7; am L Sp 1988, c 1, §4; am L 1989, c 26, §1; am L 1992, c 308, §3; am L 1995, c 126, §2; am L 1997, c 350, §3; am L 2014, c 108, §2]

#### **Note**

Distribution of cigarette tax revenues study; findings and recommendations to legislature and governor by November 1, 2016. L 2016, c 88.

Pilot project for efficiency measures to be included with budget documents submitted to the legislature; report to 2017 legislature; auditor report (no later than March 1, 2017). L 2015, c 67.

#### **Case Notes**

Budget expenditures of the department of education, discussed. 70 H. 253, 768 P.2d 1279.

" **§26-9 Department of commerce and consumer affairs.** (a) The department of commerce and consumer affairs shall be headed by a single executive to be known as the director of commerce and consumer affairs.

(b) The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws and rules governing the licensing and operation of, and register and supervise the conduct of, trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

(c) The board of acupuncture, board of public accountancy, board of barbering and cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of massage therapy, Hawaii medical board, motor vehicle industry licensing board, motor vehicle repair industry board, board of naturopathic medicine, board of nursing, board of examiners in

optometry, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, 514B, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.

The public utilities commission shall be placed, for administrative purposes only, within the department of commerce and consumer affairs. Notwithstanding section 26-9(e), (f), (g), (h), (j), (k), (l), (m), (n), (p), (q), (r), and (s), and except as permitted by sections 269-2 and 269-3, the department of commerce and consumer affairs shall not direct or exert authority over the day-to-day operations or functions of the commission.

(d) Except as otherwise provided by this chapter, the functions, duties, and powers, subject to the administrative control of the director of commerce and consumer affairs, and the composition of each board and commission shall be as provided by law.

(e) Notwithstanding any provision to the contrary, the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees under the administrative control of this department shall be determined by the director of commerce and consumer affairs subject only to applicable personnel laws.

(f) The director of commerce and consumer affairs may appoint a hearings officer or officers not subject to chapter 76 to hear and decide any case or controversy regarding licenses and the application and enforcement of rules involving any of the boards, commissions, or regulatory programs within the department of commerce and consumer affairs. The hearings officer or officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and a recommended decision; provided that the conclusions and decisions shall be subject to review and redetermination by the officer, board, or commission which would have heard the case in the first instance in the absence of a hearings officer. The review shall be conducted in accordance with chapter 91.

(g) The director of commerce and consumer affairs may appoint an information officer not subject to chapter 76 who shall ensure the prompt and efficient handling of consumer inquiries and the development of a strong consumer education program.



(h) The director may appoint a complaints and enforcement officer not subject to chapter 76 who shall facilitate the receipt, arbitration, investigation, prosecution, and hearing of complaints regarding any person who furnishes commodities, services, or real estate for which a license, registration, or certificate is required from the department or any board, commission, or regulatory program thereunder. In representing the State in bringing any action to enjoin unlicensed, unregistered, or uncertified activities, the department of commerce and consumer affairs' attorneys shall be empowered to exercise all authority granted to the attorney general and to the director of the office of consumer protection under sections 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c), and 480-22, as these sections now exist and as they subsequently may be amended. The attorneys also shall be empowered to exercise all authority granted to the attorney general and to the responsible attorneys of the various counties under section 92F-13 in all cases involving documents and records within the custody or control of the regulated industries complaints office.

(i) The functions and authority previously exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as constituted are transferred to the department of commerce and consumer affairs established by this chapter.

(j) In the course of an investigation of matters affecting the interest of consumers, depositors, or investors, or of any other matter within the jurisdiction of the department, the director shall have the power to subpoena witnesses, examine witnesses under oath, and require the production of books, papers, documents, or objects that the director deems relevant or material to the inquiry. Upon application by the director, obedience to the subpoena may be enforced by the circuit court in the county in which the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

The director shall appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section may serve subpoenas and serve process and orders pursuant to section 634-21. Nothing in this subsection shall be construed to entitle persons appointed and commissioned by the director to retirement benefits applicable to police officers under chapter 88.

(k) The director may adopt, amend, or repeal rules pursuant to chapter 91 to effectuate the purposes of all laws within the jurisdiction of the department of commerce and

consumer affairs. The director's authority to adopt rules shall not modify, impair, or otherwise affect the power of boards and commissions placed within the department of commerce and consumer affairs for administrative purposes from adopting, amending, or repealing rules, except as provided for in subsection (1).

(1) Any law to the contrary notwithstanding, the director of commerce and consumer affairs may:

- (1) Establish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, licensure, or any other administrative process for all laws within the jurisdiction of the department. Amendments to fee assessments shall be made pursuant to chapter 91;
- (2) Assess fees for copies in any form of media of the computerized records of the business registration division or for electronic access to the computerized information on a one-time or on-going basis. The fees charged for the copies or access may include billing service fees, network usage fees, and computer consultant fees. In adopting these fees, the director shall take into account the intent to make the division self-supporting. To this end, the fees may reflect the commercial value of the service or information provided. In the case of requests for records by a nonprofit organization, the director may reduce or waive the fees. This paragraph shall control in any instance where there is a conflict between this paragraph and any other statute; and
- (3) Assess fees for copies of consumer and business educational publications prepared or issued by the department. Fees collected under this paragraph shall be deposited into the compliance resolution fund under subsection (o). In the case of requests for copies by a nonprofit organization, the director may reduce or waive the fees. For purposes of this paragraph, "consumer and business educational publications" does not include copies of statutes or administrative rules.

The fees collected by the professional and vocational licensing division and the business registration division shall be deposited into the compliance resolution fund under subsection (o).

The director may appoint program specialists, not subject to chapter 76, to assist with the activities of the professional and vocational licensing division.

(m) Notwithstanding section 92-17 or any other law to the contrary, all boards, commissions, and regulatory programs placed within the department of commerce and consumer affairs for administrative purposes shall delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the department.

(n) Each board and commission, as well as the director, by written order, may delegate to the executive secretary or other personnel of the department any of its powers or duties as it deems reasonable and proper for the administration of the licensing laws that are within the jurisdiction of the department of commerce and consumer affairs. The delegated powers and duties may be exercised by the executive secretary or other personnel of the department in the name of the board, commission, or the director. However, neither a board, a commission, nor the director shall delegate the authority to adopt, amend, or repeal rules or take final disciplinary action against a licensee.

(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485A-202(a)(26) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, sections 431:10C-115 and 431:10G-107, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium education trust fund, section 514B-71, and the mortgage foreclosure dispute resolution special fund, section 667-86. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

A separate special subaccount of the compliance resolution fund, to be known as the post-secondary education authorization special subaccount, shall be established for fees collected by the department of commerce and consumer affairs pursuant to chapter 305J. The special subaccount shall be governed by section 305J-19.

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

- (1) Any licensee or applicant under any chapter subject to

- the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
  - (3) Any person submitting any filing required by chapter 514E or section 485A-202(a)(26) has complied with chapter 514E or section 485A-202(a)(26);
  - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
  - (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

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

(p) Any law to the contrary notwithstanding, the department of commerce and consumer affairs, or any board or commission placed within it for administrative purposes, may contract with professional testing services to prepare, administer, and grade examinations and tests for license applicants. For these purposes, the department may require applicants to pay the examination fee directly to the testing agency.

(q) Any law to the contrary notwithstanding, when any type of bond or insurance required to be maintained by any licensee under a regulatory program of the department of commerce and consumer affairs, or of any board or commission assigned to the department of commerce and consumer affairs, cannot reasonably be secured, the department, board, or commission may provide by rule for alternative forms of security to the consumer so long as that alternate security is no less than that provided by the type of bond or insurance initially required.

(r) Notwithstanding any other law to the contrary, the department of commerce and consumer affairs, or any board or commission placed within it for administrative purposes, may change any license renewal date by rules adopted in accordance with chapter 91.

(s) The director of commerce and consumer affairs may establish advisory committees, the members of which shall serve as consultants to the boards and to the director in their review of licensees referred for possible disciplinary action and as experts to the department for investigations and professional

vocational licensing matters. Each advisory committee shall be appointed by the director from a list of licensees submitted annually by the board or by referral from the regulated industry for which an advisory committee is appointed. Each member of the committee shall serve until a new committee is established or until the particular case for which the member was designated a consultant or expert has been concluded.

All members of the advisory committee shall serve voluntarily and without compensation, but shall be paid reasonable allowances for travel and expenses that may be incurred as a result of performance of their duties on the committee. The costs shall be paid by the department.

Any member of the advisory committee shall be immune from civil liability for any act done in connection with this subsection. [L Sp 1959 2d, c 1, pt of §15; am L 1963, c 21, §1, c 111, §2, c 114, §4, and c 136, §1; Supp, §14A-14; HRS §26-9; am L 1970, c 63, §2; am L 1976, c 18, §1 and c 165, §8; am L 1980, c 92, §1; am L 1981, c 75, §1, c 82, §7, and c 136, §1; am L 1982, c 60, §1, c 203, §1, and c 204, §1; am L 1983, c 54, §1, c 124, §2, c 153, §5, and c 224, §2; am L 1984, c 45, §2, c 97, §1, and c 213, §7; am L 1985, c 58, §1, c 68, §1, c 115, §1, and c 276, §2; am L 1986, c 140, §1; am L 1988, c 101, §2, c 126, §1, and c 141, §4; am L 1989, c 211, §10; am L 1990, c 166, §3, c 281, §11, and c 285, §3; am L 1991, c 47, §1; am L 1993, c 173, §1, c 280, §24, and c 322, §1; am L 1994, c 279, §2; am L 1995, c 198, §2; am L 1997, c 87, §1, c 88, §1, c 223, §1, c 225, §1, c 231, §1, c 235, §1, and c 301, §2; am L 1999, c 129, §1 and c 248, §2; am L 2000, c 253, §150; am L 2002, c 16, §2, c 39, §1, and c 40, §1; am L 2004, c 116, §1 and c 164, §§4, 5; am L 2005, c 22, §2; am L 2006, c 229, §2 and c 300, §3; am L 2008, c 9, §3 and c 28, §3; am L 2009, c 77, §1 and c 129, §2; am L Sp 2009, c 22, §11(1); am L 2011, c 48, §§7, 45(5); am L 2012, c 182, §49; am L 2013, c 180, §4; am L 2014, c 108, §3]

### **Cross References**

Uniform professional and vocational licensing act, see chapter 436B.

### **Case Notes**

Director of regulatory agencies as protector of consumer's interest is party to proceeding before PUC. 54 H. 663, 513 P.2d 1376.

" **§26-10 Department of taxation.** (a) The department of taxation shall be headed by a single executive to be known as the director of taxation.

(b) The department shall administer and enforce the tax revenue laws of the State and collect all taxes and other payments payable thereunder.

(c) The director of taxation shall visit low-income communities to assist taxpayers in the preparation of tax filings. The qualification of and the visitation to specific low-income communities shall be at the discretion of the director; provided that the visitation shall be on an annual basis and statewide.

(d) There shall be within the department of taxation a board of review for each taxation district and a tax appeal court. The composition of each board of review and the tax appeal court and its respective functions, duties, and powers shall be as heretofore provided by law for the boards of review and tax appeal court existing immediately prior to November 25, 1959.

(e) The functions and authority heretofore exercised by the office of tax commissioner as heretofore constituted are transferred to the department of taxation established by this chapter. [L Sp 1959 2d, c 1, §16; Supp, §14A-15; am L 1967, c 37, §1(1); HRS §26-10; am L 2008, c 202, §3]

#### Case Notes

Where regulatory fees assessed against insurers by the insurance commissioner, an officer of the executive branch, for payment into the insurance regulation fund under §431:2-215 were transferred by the legislature via transfer bills from the insurance division into the general fund, and the regulatory fees became available for general purposes as if derived from general tax revenues, the transfers violated the separation of powers doctrine under the Hawaii constitution, article VIII, §3, and subsection (b). 120 H. 51, 201 P.3d 564.

" **§26-11 University of Hawaii.** (a) The University of Hawaii shall be headed by an executive board to be known as the board of regents.

The board shall consist of fifteen members. At least one member shall be a University of Hawaii student at the time of the initial appointment. This member may be reappointed for one additional term even though the member may no longer be a student at the time of reappointment. The governor shall reduce the terms of those initially appointed to each seat on the board of regents to provide, as far as practicable, for the expiration

of three terms each year; provided that the term of the student member shall not be reduced.

At least twelve members, except for the student member, shall represent and reside in the specified geographic areas as follows:

- (1) Two members from the county of Hawaii;
- (2) Two members from the county of Maui;
- (3) One member from the county of Kauai; and
- (4) Seven members from the city and county of Honolulu.

The board shall have the power, in accordance with the Hawaii constitution and with law, to formulate policy and to exercise control over the university through its executive officer, the president of the university. The board shall have exclusive jurisdiction over the internal organization and management of the university.

(b) The board of regents shall appoint and may remove an executive officer to be known as the president of the University of Hawaii.

The University of Hawaii as heretofore constituted as a body corporate is continued as the University of Hawaii established by this chapter. [L Sp 1959 2d, c 1, §17; am imp HB 253 (1964) and election Nov 3, 1964; Supp, §14A-16; HRS §26-11; am L 1971, c 143, §1; am L 1979, c 86, §3; am L 1996, c 266, §1; am L 1997, c 342, §1; am L 2007, c 56, §3; am L Sp 2008, c 9, §2]

### **Attorney General Opinions**

The university is a constitutionally independent corporation and not an administrative or executive agency; the president need not satisfy the three-year residence requirement. Att. Gen. Op. 61-84.

Cited regarding regents' authority to delegate limited investment authority to external investment managers. Att. Gen. Op. 78-1.

" **§26-12 Department of education.** The department of education shall be headed by an executive board to be known as the board of education.

Under policies established by the board, the superintendent shall administer programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary school levels, adult education, school library services, health education and instruction (not including dental health treatment transferred to the department of health), and such other programs as may be established by



law. The state librarian, under policies established by the board of education, shall be responsible for the administration of programs relating to public library services and transcribing services for the blind.

The functions and authority heretofore exercised by the department of education (except dental health treatment transferred to the department of health), library of Hawaii, Hawaii county library, Maui county library, and the transcribing services program of the bureau of sight conservation and work with the blind, as heretofore constituted are transferred to the public library system established by this chapter.

The management contract between the board of supervisors of the county of Kauai and the Kauai public library association shall be terminated at the earliest time after November 25, 1959, permissible under the terms of the contract and the provisions of this paragraph shall constitute notice of termination, and the functions and authority heretofore exercised by the Kauai county library as heretofore constituted and the Kauai public library association over the public libraries in the county of Kauai shall thereupon be transferred to the public library system established by this chapter.

The management contracts between the trustees of the library of Hawaii and the Friends of the Library of Hawaii, and between the library of Hawaii and the Hilo library and reading room association, shall be terminated at the earliest time after November 25, 1959, permissible under the terms of the contracts, and the provisions of this paragraph shall constitute notice of termination.

Upon the termination of the contracts, the State or the counties shall not enter into any library management contracts with any private association; provided that in providing library services the board of education may enter into contracts approved by the governor for the use of lands, buildings, equipment, and facilities owned by any private association.

Notwithstanding any law to the contrary, the board of education may establish, specify the membership number and quorum requirements for, appoint members to, and disestablish a commission in each county to be known as the library advisory commission, which shall in each case sit in an advisory capacity to the board of education on matters relating to public library services in their respective county. [L Sp 1959 2d, c 1, §18; am L 1965, c 175, §41(a); Supp, §14A-17; HRS §26-12; am L 1970, c 59, §1; am L 1981, c 150, §1; am L 1997, c 202, §1]

#### **Attorney General Opinions**

The three-year residence requirement of Constitution is not applicable to the superintendent of education. Att. Gen. Op. 66-27.

### Case Notes

Duty of supervision of students. 56 H. 337, 536 P.2d 1195.  
Budget expenditures of the department of education, discussed. 70 H. 253, 768 P.2d 1279.

" **§26-13 Department of health.** (a) The department of health shall be headed by a single executive to be known as the director of health.

There shall be, within the department of health, an advisory board to be known as the board of health, which shall advise the director of health on matters within the jurisdiction of the department of health. The board of health shall consist of eleven voting members appointed by the governor as provided in section 26-34 and shall include the director of [human services] as an ex officio nonvoting member. The appointed members shall include at least one resident of each of the major counties including the county of Kalawao. The appointed members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

The department shall administer programs designed to protect, preserve, care for, and improve the physical and mental health of the people of the State. Without limit to the generality of the foregoing, the programs shall include the administration and enforcement of matters and laws of public health of the State, including the state hospital, but excluding assistance and care for the indigent and the medically indigent.

(b) The functions and authority heretofore exercised by the board of health (excluding assistance and care for the indigent and the medically indigent) and the department of institutions with respect to the state hospital and the dental health treatment function of the department of public instruction as heretofore constituted are transferred to the department of health established by this chapter.

The governor shall define and differentiate dental health treatment from dental health instruction and shall provide for the gradual transfer of any personnel within the definition of dental health treatment to the department of health. This section shall not be construed to require the transfer from the department of education to the department of health of any dental hygienist having a teacher's certificate and employed by

the department of public instruction immediately prior to November 25, 1959. [L Sp 1959 2d, c 1, §19; Supp, §14A-18; HRS §26-13; am L 1974, c 252, §1; am L 1983, c 260, §1; am L 1995, c 189, §§1, 26; am L 1998, c 133, §5]

#### **Note**

Distribution of cigarette tax revenues study; findings and recommendations to legislature and governor by November 1, 2016. L 2016, c 88.

#### **Cross References**

Waimano ridge; approval and authorization for new or expanded uses, see §171-64.5.

" **§26-14 Department of human services.** (a) The department of human services shall be headed by a single executive to be known as the director of human services.

(b) The department shall administer programs designed to improve the social well-being and productivity of the people of the State. Without limit to the generality of the foregoing, the department shall concern itself with problems of human behavior, adjustment, and daily living through the administration of programs of family, child and adult welfare, economic assistance, health care assistance, rehabilitation toward self-care and support, public housing, and other related programs provided by law.

(c) The functions and authority heretofore exercised by the department of public welfare, the bureau of sight conservation and work with the blind (except for the transcription services program transferred to the department of education), the council on veterans' affairs, and any other agency of the state or county governments with respect to the assistance and care of the indigent and medically indigent as heretofore constituted are transferred to the department of human services established by this chapter.

(d) The Hawaii public housing authority and the Hawaii state commission on the status of women are placed within the department of human services for administrative purposes only. [L Sp 1959 2d, c 1, §20; am L 1961, c 128, §4; am L 1963, c 193, §4; am L 1965, c 175, §41(b); Supp, §14A-19; am L 1967, c 274, §2; HRS §26-14; am L 1969, c 42, §1; am L 1970, c 105, §5; am L 1975, c 79, §1; am L 1976, c 92, §§6, 8; am L 1980, c 10, §1; am L 1983, c 74, §1; gen ch 1985; am L 1987, c 338, §1(3) superseded by c 339, §2(2); am L 1993, c 197, §2; am L 1996, c

186, §1; am L 1997, c 350, §4; am L 2003, c 92, §2; am L 2005, c 147, §2; am L 2007, c 249, §41]

### **Cross References**

State rehabilitation council, see §348-8.

### **Attorney General Opinions**

Qualifications of director construed. Att. Gen. Op. 62-18.

" **§26-14.5 REPEALED.** L 1989, c 211, §11.

" **§26-14.6 Department of public safety.** (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all public or private correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the crime victim compensation commission are placed within the department of public safety for administrative purposes only.

(d) Effective July 1, 1990, the functions and authority heretofore exercised by:

- (1) The department of corrections relating to adult corrections and the intake service centers;
- (2) The judiciary relating to the sheriff's office and judiciary security personnel; and
- (3) The department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division,

shall be transferred to the department of public safety.

(e) Effective July 1, 1990, the functions and authority heretofore exercised by the department of health pursuant to chapters 329 and 329C, with the exception of sections 329-2, 329-3, and 329-4(3) to (8), shall be transferred to the department of public safety.

(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and

the privileges and immunities conferred thereby, exercised by a "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy", under sections 21-8, 47-18, 105-4, 134-51, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 353-11, 356D-54, 356D-94, 383-71, 438-5, 445-37, 482E-4, 485A-202, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety.

(g) Effective January 1, 1993, the functions and authority heretofore exercised by the attorney general and the department of the attorney general relating to the executive security officers shall be transferred to the department of public safety.

(h) Effective July 1, 1999, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, except for the security functions being performed by employees of the public library system as well as the contractual security services for the libraries, shall be transferred to the department of education.

(i) Effective January 1, 1993, the functions and authority heretofore exercised by the director of health and the department of health relating to uniformed security employees and security contracts at various state hospitals throughout the State shall be transferred to the department of public safety. Effective July 1, 2005, the functions, authority, and employee positions of the department of public safety relating to uniformed security employees and security contracts at health facilities that are under the operation, management, and control of the Hawaii health systems corporation shall be transferred to the Hawaii health systems corporation.

(j) Effective January 1, 1993, the functions and authority heretofore exercised by the director of human services and the department of human services relating to contractual security guard services shall be transferred to the department of public safety.

(k) Effective July 1, 1994, the functions and authority heretofore exercised by the adjutant general relating to security for national guard and state emergency management facilities in the Diamond Head complex, for after work hours, shall be transferred to the department of public safety.

(1) Effective July 1, 2002, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, including all security functions being performed by employees of the public library system, as well as the contractual security services for the libraries, shall be transferred to the department of education and the public library system as appropriate. [L 1989, c 211, §2; am L 1990, c 281, §2; am L 1991, c 114, §1; am L 1992, c 146, §3; am L 1993, c 6, §4; am L 1994, c 154, §2; am L 1995, c 58, §1; am L 1996, c 128, §2; am L 1998, c 11, §1, c 227, §3, and c 240, §6; am L 1999, c 134, §1; am L 2002, c 44, §2; am L 2004, c 44, §§26, 33; am L 2005, c 61, §2; am L 2006, c 229, §3; am L 2007, c 249, §§3, 4; am L 2014, c 111, §28]

" **§26-15 Department of land and natural resources.** (a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources, except for matters relating to the state water code where the commission on water resource management shall have exclusive jurisdiction and final authority.

The board shall consist of seven members, one from each land district and three at large. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. At least one member of the board shall have a background in conservation and natural resources, as provided in section 171-4. At least one member, other than the member with a background in conservation and natural resources, shall have demonstrated expertise in native Hawaiian traditional and customary practices, as provided in section 171-4, to ensure assistance to the board to better administer the public lands and resources with respect to native Hawaiian issues and concerns, the public land trust obligations, and the recognition of native Hawaiian cultural values that are intrinsically tied to the 'aina.

The governor shall appoint the chairperson of the board from among the members thereof.

The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairperson of the board shall serve in a full-time capacity. The chairperson, in that capacity, shall perform those duties, and exercise those powers and authority, or so much thereof, as may be delegated by the board.

(b) The department shall manage and administer the public lands of the State and minerals thereon and all water and

coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life, wildlife resources, state parks, including historic sites, and all activities thereon and therein including, but not limited to, boating, ocean recreation, and coastal areas programs.

(c) The functions and authority heretofore exercised by the commissioner and board of public lands (including the hydrography division and the bureau of conveyances), the Hawaii water authority, the commission on ground water resources, the Hawaii land development authority, the soil conservation committee, and the commission on historical sites and the function of managing the state parks and the function of promoting the conservation, development and utilization of forests, including the regulatory powers over the forest reserve, aquatic life and wildlife resources of the State heretofore exercised by the board of commissioners of agriculture and forestry as heretofore constituted are transferred to the department of land and natural resources established by this chapter. [L Sp 1959 2d, c 1, §21; am L 1961, c 132, §1(b) to (e); am L 1963, c 10, §1; am L 1965, c 223, §8(b); Supp, §14A-20; am L 1967, c 145, §1; HRS §26-15; am L 1983, c 15, §1; am L 1987, c 45, §3; am L 1991, c 272, §3; am L 1999, c 6, §1; am L 2002, c 16, §3; am L 2005, c 9, §1; am L 2014, c 104, §1]

#### Note

The 2014 amendment applies to the board of land and natural resources upon its next vacancy. L 2014, c 104, §4.

Two-year water security advisory group pilot program to enable public-private partnerships that increase water security; annual report to governor and 2017-2018 legislature (repealed June 30, 2018). L 2016, c 172.

Water rights lease applications; annual reports to 2017-2020 legislature. L 2016, c 126, §2.

" **§26-16 Department of agriculture.** (a) The department of agriculture shall be headed by an executive board to be known as the board of agriculture. The board shall consist of ten members:

- (1) One who shall be a resident of the county of Hawaii;
- (2) One who shall be a resident of the county of Maui;
- (3) One who shall be a resident of the county of Kauai;
- (4) Four at large; and

- (5) The chairperson of the board of land and natural resources; the director of business, economic development, and tourism; and the dean of the University of Hawaii college of tropical agriculture and human resources, or their designated representatives, who shall serve as ex officio[,] voting members.

The majority of the members of the board shall be from the agricultural community or the agricultural support sector. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint a chairperson of the board from the members.

(b) The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairperson of the board shall serve in a full-time capacity. The chairperson shall, in that capacity:

- (1) Perform such duties and exercise such powers and authority, or so much thereof, as may be delegated to the chairperson by the board; and
- (2) Identify problems related to agriculture and the appropriate state agencies and departments needed to solve the problem. With the approval of the governor, the designated agencies shall provide any necessary assistance to the chairperson until the problem is resolved.

(c) The department shall:

- (1) Promote the conservation, development, and utilization of agricultural resources in the State;
- (2) Assist the farmers of the State and any others engaged in agriculture by research projects, dissemination of information, crop and livestock reporting service, market news service, and any other means of improving the well-being of those engaged in agriculture and increasing the productivity of the lands;
- (3) Administer the programs of the State relating to animal husbandry, entomology, farm credit, development and promotion of agricultural products and markets, and the establishment and enforcement of the rules on the grading and labeling of agricultural products; and
- (4) Administer the aquaculture program under section 141-2.5.

(d) The functions and authority heretofore exercised by the board of commissioners of agriculture and forestry (except the management of state parks and the conservation, development, and utilization of forest resources, including regulatory powers



over the forest reserve provided in Act 234, section 2, Session Laws of Hawaii 1957, and of fish and game resources transferred to the department of land and natural resources), by the farm loan board as heretofore constituted, and by the University of Hawaii with respect to the crop and livestock reporting service and market news service, are transferred to the department of agriculture established by this chapter. [L Sp 1959 2d, c 1, §22; am L 1961, c 132, §1(f); am L 1963, c 206, §1; am L 1965, c 214, §1 and c 223, §8(c); Supp, §14A-21; am L 1967, c 145, §2; HRS §26-16; am L 1969, c 4, §1; am L 1973, c 15, §1; am L 1982, c 147, §1; am L 1983, c 12, §1 and c 141, §1; am L 1991, c 135, §1; am L 1995, c 69, §1; am L 1996, c 166, §2; am L 1998, c 176, §4; am L 2012, c 123, §2]

" **§26-17 Department of Hawaiian home lands.** The department of Hawaiian home lands shall be headed by an executive board to be known as the Hawaiian homes commission.

The commission shall be composed of nine members. The appointment, tenure, and removal of the members and the filling of vacancies on the commission shall be in accordance with section 26-34 and section 202(a) of the Hawaiian Homes Commission Act of 1920, as amended. The governor shall appoint the chairperson of the commission from among the members thereof.

The commission may delegate to the chairperson such duties, powers, and authority, or so much thereof as may be lawful or proper, for the performance of the functions vested in the commission.

The chairperson of the board shall serve in a full-time capacity and shall perform such duties, and exercise such powers and authority, or so much thereof as may be delegated to the chairperson by the board.

The department shall administer the Hawaiian Homes Commission Act of 1920 as set forth in the Constitution of the State and by law.

The functions and authority heretofore exercised by the Hawaiian homes commission as heretofore constituted are transferred to the department of Hawaiian home lands established by this chapter. [L Sp 1959 2d, c 1, §24; am L 1963, c 207, §6; am L 1965, c 223, §8(d); Supp, §14A-23; HRS §26-17; am L 1982, c 147, §2 superseded by c 273, §2; gen ch 1985; am L 1989, c 265, §3; gen ch 1993]

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

" **§26-18 Department of business, economic development, and tourism.** (a) The department of business, economic development, and tourism shall be headed by a single executive to be known as the director of business, economic development, and tourism.

The department shall undertake statewide business and economic development activities, undertake energy development and management, provide economic research and analysis, plan for the use of Hawaii's ocean resources, and encourage the development and promotion of industry and international commerce through programs established by law.

(b) The following are placed in the department of business, economic development, and tourism for administrative purposes as defined by section 26-35: Hawaii community development authority, Hawaii housing finance and development corporation, high technology development corporation, land use commission, natural energy laboratory of Hawaii authority, and any other boards and commissions as shall be provided by law.

(c) The department of business, economic development, and tourism shall be empowered to establish, modify, or abolish statistical boundaries for cities, towns, or villages in the State and shall publish, as expeditiously as possible, an up-to-date list of cities, towns, and villages after changes to statistical boundaries have been made. [L Sp 1959 2d, c 1, §25; am L 1961, c 132, §1(h), (i); am L 1963, c 2, §1 and c 25, §2; Supp, §14A-24; HRS §26-18; am L 1981, c 98, §2; am L 1983, c 239, §2; am L 1987, c 336, §3(2) and c 337, §2; am L 1988, c 79, §1; am L 1989, c 26, §2; am L 1990, c 293, §8; am L 1991, c 3, §1; am L 1997, c 350, §5; am L 2003, c 92, §3; am L 2007, c 249, §42; am L 2015, c 35, §2]

" **§26-19 Department of transportation.** The department of transportation shall be headed by a single executive to be known as the director of transportation. The department shall establish, maintain, and operate transportation facilities of the State, including highways, airports, harbors, and such other transportation facilities and activities as may be authorized by law.

The department shall plan, develop, promote, and coordinate various transportation systems management programs that shall include, but not be limited to, alternate work and school hours programs, bicycling programs, and ridesharing programs.

The department shall develop and promote ridesharing programs which shall include but not be limited to, carpool and vanpool programs, and may assist organizations interested in promoting similar programs, arrange for contracts with private organizations to manage and operate these programs, and assist in the formulation of ridesharing arrangements. Ridesharing programs include informal arrangements in which two or more persons ride together in a motor vehicle.

The functions and authority heretofore exercised by the department of public works with respect to highways are transferred to the department of transportation established by this chapter.

On July 1, 1961, the Hawaii aeronautics commission, the board of harbor commissioners and the highway commission shall be abolished and their remaining functions, duties, and powers shall be transferred to the department of transportation. [L Sp 1959 2d, c 1, §26; Supp, §14A-25; HRS §26-19; am L 1980, c 220, §§1, 2; am L 1981, c 140, §1; am L 1983, c 43, §1; am L 1984, c 233, §1; am L 1989, c 31, §2; am L 1993, c 224, §§2, 6; am L 1995, c 25, §1; am L 1997, c 309, §4; am L 2013, c 285, §1]

#### **Note**

City and county of Honolulu to take ownership of specified road or parcel upon acceptance of funds. L 2016, c 194, §4.

Interisland and intra-island ferry system feasibility study; report to 2018 legislature. L 2016, c 196.

Public land trust information system. L 2011, c 54; L 2013, c 110.

Roads commission; private roads disputes; reports to 2018-2019 legislature (ceases to exist on June 30, 2018). L 2016, c 194, §2.

" **§26-20 Department of labor and industrial relations.** The department of labor and industrial relations shall be headed by a single executive to be known as the director of labor and industrial relations.

The department shall administer programs designed to increase the economic security, physical and economic well-being, and productivity of workers, and to achieve good labor-management relations, including the administration of workers' compensation, employment security, apprenticeship training, wage and hour, and industrial relations laws. The department shall also have the function of developing, preparing, and disseminating information on employment, unemployment, and general labor market conditions.

The labor and industrial relations appeals board provided for in chapters 371 and 386 is placed within the department of labor and industrial relations for administrative purposes. The respective functions, duties, and powers, subject to the administrative control of the director of labor and industrial relations, and the composition of the board shall be as heretofore provided by law.

There shall be within the department of labor and industrial relations a board to be known as the Hawaii labor relations board as provided for in section 89-5, which shall exercise powers and duties in accordance with chapters 89, 377, and 396. The director shall have general administrative supervision over the board, but shall not have the power to supervise or control the board in the exercise of its powers or duties.

The functions of mediation heretofore exercised by the commission of labor and industrial relations existing immediately prior to November 25, 1959, as provided in section 371-10, shall be exercised by the governor or the governor's designated agent.

The director may establish within the department of labor and industrial relations a committee to be known as the state apprenticeship council which shall sit in an advisory capacity to the director of labor and industrial relations on matters within the jurisdiction of the department of labor and industrial relations relating to apprenticeship programs. The membership and organization of the council shall be determined by the director. [L Sp 1959 2d, c 1, §27; am L 1963, c 27, §1; Supp, §14A-26; HRS §26-20; am L 1975, c 41, §1; am L 1985, c 251, §1; gen ch 1985, 1993; am L 1998, c 205, §1; am L 2002, c 104, §1; am L 2012, c 14, §1]

" **§26-21 Department of defense.** (a) The department of defense shall be headed by a single executive to be known as the adjutant general. The adjutant general shall also be the director of the Hawaii emergency management agency as established in section 127A-3 and the director of homeland security.

The department shall be responsible for the defense of the State and its people from mass violence, originating from either human or natural causes.

The devolution of command of the military forces in the absence of the adjutant general shall be within the military establishment. The devolution of command of the Hawaii emergency management agency in the absence of the adjutant general, as director of the agency, shall be within the agency.

(b) The office of veterans' services and the advisory board on veterans' services as constituted by chapter 363 are placed within the department of defense for administrative purposes. [L Sp 1959 2d, c 1, §28; Supp, §14A-27; HRS §26-21; am L 1969, c 122, §1; am L 1981, c 82, §2 and c 135, §4; am L 1988, c 115, §2; am L 2013, c 175, §3; am L 2014, c 111, §4]

### **Cross References**

Cybersecurity, economic, education, and infrastructure security coordinator, see §128B-1.

" **§26-22 Transfer of functions.** Whenever the functions of a previously existing department, office, or other agency are transferred to any department established by this chapter, the newly established department shall succeed to all of the rights and powers exercised, and all of the duties and obligations incurred by the previously existing department, office, or agency in the exercise of the functions transferred, whether the powers, duties, and obligations are mentioned in or granted by any law, contract, or other document. All references in any such law, contract, or document to the previously existing department, office, or agency in connection with the functions transferred shall apply to the newly established department as if the latter were specifically named in the law, contract, or document in place of the previously existing department, office, or agency. [L Sp 1959 2d, c 1, §31; Supp, §14A-30; HRS §26-22]

" **§26-23 Assignment of functions.** Any executive or administrative function of the state government that may not have been allocated to a principal department by this chapter shall be assigned by the governor to that department which the governor deems can most appropriately and effectively perform the function. [L Sp 1959 2d, c 1, §37; Supp, §14A-33; HRS §26-23; gen ch 1985]

" **§26-24 Agencies and offices abolished.** The following agencies and offices and their respective boards and commissions as heretofore constituted are abolished: board of commissioners of agriculture and forestry, bureau of the budget, commission on children and youth, economic planning and coordination authority, board of commissioners of public archives, territorial planning office, Hawaii development council, department of public works, territorial highway department,

treasury department, office of the tax commissioner, tax appeal court, boards of (tax) review, comptroller, high sheriff, territorial loyalty board, board of health, department of institutions, advisory boards on institutions, territorial hospital and Waimano home appeal commission, bureau of sight conservation and work with the blind, department of public welfare, public welfare board, council on veterans' affairs, library of Hawaii, Hawaii county library managing board, Maui county libraries managing board, board of public lands, commissioner of public lands, territorial surveyor, bureau of conveyances, hydrographer, board of appraisers, territorial commission on historical sites, Hawaii water authority, Hawaii soil conservation committee, farm loan board of Hawaii, airport zoning board, commission of labor and industrial relations, department of labor and industrial relations, Hawaii employment relations board, apprenticeship council, military department, civil defense agency, civil defense advisory council, board of prison inspectors, dental health advisory committee, territorial advisory committee for hospitals and medical care, fishery advisory committees, voting machine board, disposal committee, board of disposal, commission on ground water resources, Hawaii land development authority, department of attorney general, commission to promote uniform legislation, department of civil service, civil service commission, department of public instruction, board of commissioners of public instruction, university of Hawaii, board of regents of the university of Hawaii, and Hawaiian homes commission.

The following agencies and offices and their respective boards and commissions shall expire at such time provided in this Act: Kauai county libraries managing board, Hawaii aeronautics commission, board of harbor commissioners, and fair commission of Hawaii. [L Sp 1959 2d, c 1, §38; Supp, §14A-34; HRS §26-24; am L 1989, c 211, §10; am L 1990, c 281, §11]

#### **Note**

This "Act" refers to L Sp 1959 2d, c 1.

The amendment made by L 2014, c 111, §28 is not included in this section.

" **[§26-25] Services to the judiciary and legislature.** Any executive department may provide services to the judiciary and the legislature, but nothing in this part and this chapter shall be construed as granting any authority to the governor or any department to exercise control over the organization, programs,

functions, operations, and expenditures of the judiciary and the legislature. [L 1974, c 159, §2]

## "PART II. OTHER GENERAL PROVISIONS

**§26-31 Selection and terms of single executives as heads of departments.** Except as otherwise provided by the Constitution of the State or by this chapter, each principal department shall be headed by a single executive, who shall be nominated and, by and with the advice and consent of the senate, appointed by the governor, for a term to expire at the end of the term for which the governor was elected. A vacancy occurring during a term shall be filled for the unexpired balance of the term, subject to the provisions of Article V, section 6 of the Constitution of the State. The governor may remove a single executive from office at any time, except that the removal of the attorney general shall be subject to the advice and consent of the senate. [L Sp 1959 2d, c 1, §4; Supp, §14A-2; HRS §26-31; am L 1969, c 24, §1]

" **§26-32 Acting heads of departments; appointment of; responsibility for acts of.** Any officer for the performance of whose duties in his absence or illness no other provision is made by law, may, with the approval of the governor, designate some other officer in his department, bureau, or office to act in his temporary absence or illness. The designation shall be in writing and shall be filed in the office of the lieutenant governor. The respective heads of departments shall be responsible and liable on their official bonds for all acts done or performed by the persons designated to act in their absence as herein prescribed; except that responsibility for property during absence may be transferred upon the written consent of the governor.

The persons so designated shall, during the temporary absence or illness of the head of the office, have all the powers of the head of the office and shall be known as the acting head, but shall not be entitled to any additional compensation while so acting. [L 1909, c 21, §§1 and 2; RL 1925, §169; am imp L 1933, c 148, §4; RL 1935, §130; RL 1945, §479; RL 1955, §7-22; am L Sp 1959 2d, c 1, §§9, 38; HRS §26-32]

" **§26-33 Performance of duties of vacant office.** In the event of a vacancy in any office for which the governor has the power of appointment or nomination, the governor may designate

some other officer or employee of the State to perform the duties of the vacant office until the office is filled. The authority derived from this section shall not continue for a longer period than sixty days after the vacancy occurs.

An officer or employee designated to perform the duties of a vacant office shall, so long as the authority continues, receive the compensation attached to the vacant office, or the compensation attached to the officer's or employee's regular office or employment, whichever is the higher. [L 1953, c 278, §11; RL 1955, §7-23; HRS §26-33; gen ch 1985]

" **§26-34 Selection and terms of members of boards and commissions.** (a) The members of each board and commission established by law shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. Unless otherwise provided by this chapter or by law hereafter enacted, the terms of the members shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year for each board and commission. Unless otherwise provided by law, each term shall commence on July 1 and expire on June 30, except that the terms of the chairpersons of the board of agriculture, the board of land and natural resources, and the Hawaiian homes commission shall commence on January 1 and expire on December 31. No person shall be appointed consecutively to more than two terms as a member of the same board or commission; provided that membership on any board or commission shall not exceed eight consecutive years.

(b) Any member of a board or commission whose term has expired and who is not disqualified for membership under subsection (a) may continue in office as a holdover member until a successor is nominated and appointed; provided that a holdover member shall not hold office beyond the end of the second regular legislative session following the expiration of the member's term of office.

(c) A vacancy occurring in the membership of any board or commission during a term shall be filled for the unexpired term thereof, subject to Article V, section 6 of the Constitution of the State.

(d) The governor may remove or suspend for cause any member of any board or commission after due notice and public hearing.

(e) Except as otherwise provided by this chapter, this section shall apply to every board and commission established by part I, or existing or established after November 25, 1959. All



new appointments to any board or commission shall thereafter be made in accordance with this section.

(f) This section shall not apply to ex officio members of boards and commissions or to the board of trustees of the employees retirement system. [L Sp 1959 2d, c 1, §5; Supp, §14A-3; HRS §26-34; am L 1971, c 143, §3; am L 1984, c 54, §1 and c 72, §1; am L 1985, c 153, §1]

### **Attorney General Opinions**

The board of election inspectors are within the purview of this section and any vacancy occurring must be filled as prescribed by the state constitution. Att. Gen. Op. 67-16.

Members whose terms are subject to this section hold over upon expiration of their terms of office as de facto officers; but members authorized to hold over until successors are appointed and qualified, as in §304-3, hold over as de jure officers. Att. Gen. Op. 73-7.

While the title or status of de facto officers may not be collaterally attacked, the de facto status is no defense in a quo warranto proceeding. Att. Gen. Op. 73-7.

A board member who has served a partial term followed by a complete term may continue to serve until he has served eight consecutive years. Att. Gen. Op. 74-4.

There is no statutory provision which sets forth the length of time the governor has to make a nomination. Att. Gen. Op. 80-4.

In the absence of other statutory wording to the contrary, the holdover provision from subsection (b) would apply to board and commission statutes that refer to this section; the provision is constitutional. Att. Gen. Op. 16-3.

The word "appointed" in subsection (b) does not purport to prevent the governor from exercising the governor's authority to make interim appointments; there is no conflict between subsection (b) and article V, §6 of the state constitution. Therefore, subsection (b) is constitutional. Att. Gen. Op. 16-3.

### **Case Notes**

Issue of legality of board members holding office after expiration of eight years held moot and was not decided. 59 H. 244, 580 P.2d 405.

A member of the land use commission did not qualify as a de facto officer, where, among other things, the senate rejected the member's nomination for a second term, which effectively served as public notice that the member was ineligible to serve as a holdover member. 132 H. 184, 320 P.3d 849 (2013).

The intermediate court of appeals erred in determining that a member of the land use commission continued to serve as a valid holdover after the senate's rejection of the member's nomination for a second term; the member's actions with respect to a petition to reclassify land were invalid. 132 H. 184, 320 P.3d 849 (2013).

" **§26-35 Administrative supervision of boards and commissions.** (a) Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter:

- (1) The head of the department shall represent the board or commission in communications with the governor and with the legislature; unless the legislature or a legislative committee requests to communicate directly with the board or commission;
- (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department;
- (3) All rules adopted by the board or commission shall be subject to the approval of the governor;
- (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws;
- (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department;
- (6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission;
- (7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department; and
- (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.

(b) Every board or commission established or placed within a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department shall be considered an arm of the State and shall enjoy the same sovereign immunity available to the State. [L Sp 1959 2d, c 1, §6; am L 1965, c 96, §140; Supp, §14A-4; HRS §26-35; am L 2004, c 16, §1; am L 2008, c 60, §2]

### **Cross References**

Rulemaking procedure, see chapter 91.

" **§26-35.5 Members of boards and commissions; immunity from or indemnification for civil liability; defense of members.** (a) For purposes of this section, "member" means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the board of education, the governing board of any charter school established under chapter 302D, council, authority, committee, or commission, established by law or elected to the board of trustees of the employees' retirement system under section 88-24, or the corporation board of the Hawaii health systems corporation under section 323F-3 and its regional system boards under section 323F-3.5; provided that "member" shall not include any person elected to serve on a board or commission in accordance with chapter 11.

(b) Notwithstanding any law to the contrary, no member shall be liable in any civil action founded upon a statute or the case law of this State, for damage, injury, or loss caused by or resulting from the member's performing or failing to perform any duty which is required or authorized to be performed by a person holding the position to which the member was appointed, unless the member acted with a malicious or improper purpose, except when the plaintiff in a civil action is the State.

(c) Except as provided in subsections (d) and (f), the State shall indemnify a member from liability by paying any judgment in, or settlement or compromise of, any civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction, including fees and costs incurred, unless the loss, injury, or damage for which the judgment or settlement amount is required to be paid:

- (1) Is fully covered by a policy of insurance for civil liability purchased by the State;
- (2) Is caused by or is the result of the member's performing an act authorized or required to be

performed by a person holding the position to which the member was appointed so as to effect a malicious or improper purpose;

- (3) Is caused by or is the result of the member's failure to perform an act required or authorized to be performed by a person holding the position to which the member was appointed so as to effect a malicious or improper purpose.

(d) The State shall not indemnify a member who would otherwise be entitled to indemnification under subsection (c), if the member fails to cooperate fully in the defense of the civil action which is made available to the member under subsection (e). The State shall not indemnify a member for any portion of a judgment that represents punitive or exemplary damages. The State shall not indemnify a member for any portion of a settlement which is deemed unreasonable by the legislature.

(e) The attorney general, or in the case of the board of regents of the University of Hawaii, its university general counsel, or in the case of the board of directors of the Hawaii health systems corporation under section 323F-3 or its regional system boards under [section] 323F-3.5, the attorneys retained by the board of directors of the Hawaii health systems corporation or its regional system boards under section 323F-9, shall represent and defend a member in any civil action for which immunity is conferred under subsection (b), or when the attorney general, or, if the action involves a member of the board of regents, the university general counsel, or, if the action involves a member of the board of directors of the Hawaii health systems corporation or its regional system boards, the attorneys retained by the board of directors of the Hawaii health systems corporation or its regional system boards, determines that indemnification is available to the member under subsection (c), and the member against whom the action is brought has submitted a written request for representation and has provided the attorney general, the university general counsel in the case of an action involving a member of the board of regents, or the attorneys retained by the board of directors of the Hawaii health systems corporation or its regional system boards in the case of an action involving a member of the board of directors of the Hawaii health systems corporation or its regional system boards with all process or complaint served upon the member within a reasonable period of time, but not more than five days after being served with the process or complaint. The attorney general, the university general counsel, or an attorney retained by the board of directors of the Hawaii health systems corporation or its regional system boards may terminate the representation and defense of the member at any time if, after

representation and defense is accepted, the attorney general, the university general counsel, or an attorney retained by the board of directors of the Hawaii health systems corporation or one of its regional system boards determines that indemnification would not be available to the member under subsection (c).

(f) A member may retain counsel of the member's own choice at the member's own expense. If the member chooses to retain counsel at the member's own expense, the State shall not indemnify the member even though the member would have been entitled to indemnification under subsection (c). The attorney general, or the university general counsel in the case of a member of the board of regents, may enter an appearance in any action in which the member is represented by counsel of the member's own choice, even though no request for the appearance has been made by the member.

(g) Nothing in this section precludes a member from compromising or settling any claim against the member at the member's own expense. If such a settlement or compromise is effected, however, the member shall be deemed to have waived any claims which the member might have made under this section unless the provisions of subsection (i) apply.

(h) If the attorney general, or the university general counsel in the case of a member of the board of regents, denies representation to the member under subsection (e) and the member proceeds to judgment in the action for which representation was denied, the member may commence an action against the State or the University of Hawaii in the case of a member of the board of regents, in the circuit court to recover reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees. The State or the University of Hawaii in the case of a member of the board of regents, shall pay the judgment or reimburse the member if the member has satisfied the judgment in an action for which representation was denied; provided the member was found not liable in that action or the member establishes by a preponderance of the evidence that the member is entitled to indemnification under subsection (c). A finding of negligence against the member in the civil action for which representation was denied shall not be binding upon the circuit court in any action brought under this subsection. The member shall commence any action under this subsection no later than two years after entry of judgment in the action for which the member was denied representation if no appeal is filed, or two years after the conclusion of the final appeal from that judgment if an appeal is filed.

(i) If the attorney general, or the university general counsel in the case of a member of the board of regents, denies representation to the member under subsection (e) and the member negotiates a compromise or settlement without an entry of judgment in the action for which representation was denied, the member may seek to introduce a bill in the legislature to secure an appropriation to reimburse the member for the amount of the settlement or that portion which constitutes a reasonable settlement, and for reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees.

(j) Any moneys which the State is required to pay to a member under this section shall be paid from an appropriation made by the legislature at the next session after the requirement to pay inures to the member. The appropriation shall be sufficient to include any postjudgment interest which the member was required to pay if the member has personally satisfied the judgment, or at the rate specified in section 478-3 for the period from the entry of judgment for which indemnification is available until the appropriation is enacted if the judgment was not satisfied. Any bill necessary to effect a payment required by subsections (h) and (i) shall be submitted by the member to a legislator; all other bills necessary to effect payments required by this section shall be initiated by the attorney general.

(k) This section shall not be construed as eliminating, waiving, reducing, or limiting any defense, immunity, or jurisdictional bar conferred upon or available to a member or the State by any other statute or by case law. [L 1984, c 152, §1; am L 1985, c 218, §1; am L 1987, c 283, §2; am L 2000, c 187, §2; am L 2001, c 54, §2 and c 243, §3; am L 2002, c 2, §3; am L 2006, c 298, §6; am L 2007, c 290, §4; am L 2011, c 5, §8; am L 2012, c 130, §4]

### **Attorney General Opinions**

Trustee of travel agency recovery fund is a "member". Att. Gen. Op. 85-14.

### **Case Notes**

The Hawaii employer-union health benefits trust fund board is an arm of the State entitled to assert the defense of sovereign immunity. 115 H. 126, 165 P.3d 1027.

The Hawaii employer-union health benefits trust fund trustees are "members" of a "state board" for purposes of this section, and thus, are entitled to immunity from civil suit, unless they

acted with malicious intent or an improper purpose; where plaintiffs did not provide any evidence that any of the trustees' actions were motivated by ill will or an intention to commit, or a reckless disregard of committing, a wrongful act against the employee-beneficiaries, plaintiffs failed to carry their burden of demonstrating "specific facts that present a genuine issue worthy of trial". 115 H. 126, 165 P.3d 1027.

" **§26-36 Acting members of boards.** The governor may appoint an acting member of any state board or commission to serve during the temporary absence from the State or the illness of any regular member thereof. The acting member shall, during the acting member's term of service, have the same powers and duties as the regular member. [L 1931, c 48, §1; RL 1935, §132; RL 1945, §481; RL 1955, §7-24; HRS §26-36; gen ch 1985]

" **§26-37 Substitutes for officials called into active service.** The head of any department or bureau of the State may employ such temporary assistants, subordinates, or employees as may be necessary in case any such head or any assistants, subordinates, or employees are called into active service as members of the armed forces of the United States or of the national guard.

Any appointment or employment so made shall be only after consultation by the head of the department or bureau with the governor and only with the approval of the governor. [L 1917, c 151, §§1, 3; RL 1925, §170; RL 1935, §131; RL 1945, §480; RL 1955, §7-25; HRS §26-37]

" **§26-38 Powers and duties of heads of departments.** Except as otherwise provided by this chapter, every power and duty conferred by law and required to be performed by any officer, board, department, bureau, commission, administrative agency, or instrumentality of the State existing immediately prior to November 25, 1959, shall hereafter be exercised and performed by the head of the respective department established by this chapter, whether the head of the department be a single executive, board, or commission.

Except as otherwise provided by this chapter, the head of a department may assign any function vested in his department to any subordinate officer or employee as he deems desirable. With the approval of the governor, the head of a department may establish or abolish within his department any division or other administrative unit to achieve economy and efficiency and in

accord with sound administrative principles and practices and procedures.

The head of each department may prescribe regulations for the administration of his department, for the conduct of its employees, for the performance of its business, and for the custody, use and preservation of records, equipment, and other property pertaining thereto; provided that the regulations shall not be inconsistent with the requirements of chapters 76, 91, and 92, or rules promulgated by the governor, or other laws of the State. [L Sp 1959 2d, c 1, §7; am L 1965, c 96, §9; Supp, pt of §14A-5; HRS §26-38; am L 2002, c 148, §2]

" **§26-39 Department staffs.** Except as otherwise provided by this chapter and with the approval of the governor, the head of a department may establish or abolish any subordinate office or position, transfer officers and employees between positions, appoint and remove any subordinate, and change the duties, titles, and compensation of offices and positions as is deemed necessary by the head of the department for the efficient functioning of the department, subject to the limitations of available appropriations and of the provisions of chapter 76.

All officers and employees within a department shall be under the supervision, direction and control of the head of the department, except as otherwise provided by this chapter. [L Sp 1959 2d, c 1, §8; Supp, §14A-6; HRS §26-39; am L 2000, c 253, §150]

#### **Attorney General Opinions**

Positions of chief of harbors division and chief of aeronautics division created under this section are covered by chapters 76 and 77. Att. Gen. Op. 62-27.

" **§26-40 REPEALED.** L 1988, c 129, §1.

" **§26-41 Temporary boards and commissions.** The governor may establish such temporary boards and commissions as the governor may deem necessary to gather information or furnish advice for the executive branch. The governor may prescribe their organization, functions and authority. A temporary board or commission shall not remain in existence for a term extending beyond the last day of the second regular session of the legislature after the date of its establishment or beyond the period required to receive federal grants-in-aid, whichever



occurs later, unless extended by concurrent resolution of the legislature.

All members of temporary boards and commissions shall serve without pay, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities. The reimbursement for expenses shall be made from the governor's contingent fund. [L Sp 1959 2d, c 1, §30; Supp, §14A-29; HRS §26-41; gen ch 1985]

### "PART III. SALARIES, CERTAIN STATE OFFICERS

**§26-51 Governor; lieutenant governor.** Effective at noon on December 4, 2006, the salaries of the governor and the lieutenant governor shall be as last recommended by the executive salary commission. Effective July 1, 2007, and every six years thereafter, the salaries of the governor and lieutenant governor shall be as last recommended by the commission on salaries pursuant to section 26-56, unless rejected by the legislature. [L 1959, c 273, §3; am L 1962, c 28, §23; am L 1965, c 223, pt of §5; Supp, §4A-1; HRS §26-51; am L 1969, c 127, §1; am L 1975, c 58, §5; am L 1982, c 129, §1(1); am L 1986, c 128, §1(1); am L 1989, c 329, §1(1); am L 2003, c 122, §2; am L 2006, c 299, §2]

" **§26-52 Department heads and executive officers.** *[Repeal and reenactment on June 30, 2024. L 2014, c 90, §4.]* The salaries of the following state officers shall be as follows:

- (1) The salary of the superintendent of education shall be set by the board of education at a rate no greater than \$250,000 a year. The superintendent shall be subject to an annual performance evaluation that is in alignment with other employee evaluations within the department of education and are based on outcomes determined by the board of education; provided that nothing shall prohibit the board of education from conditioning a portion of the salary on performance;
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents;
- (3) Effective July 1, 2004, the salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, business, economic development, and tourism, commerce and consumer affairs, Hawaiian home lands, health, human resources development, human services, labor and industrial

relations, land and natural resources, public safety, taxation, and transportation shall be as last recommended by the executive salary commission.

Effective July 1, 2007, and every six years thereafter, the salaries shall be as last recommended by the commission on salaries pursuant to section 26-56, unless rejected by the legislature; and

- (4) The salary of the adjutant general shall be \$85,302 a year. Effective July 1, 2007, and every six years thereafter, the salary of the adjutant general shall be as last recommended by the commission on salaries pursuant to section 26-56, unless rejected by the legislature, except that if the state salary is in conflict with the pay and allowance fixed by the tables of the regular Army or Air Force of the United States, the latter shall prevail. [L 1965, c 223, pt of §5; Supp, §4A-2; HRS §26-52; am L 1969, c 127, §2; am L 1970, c 105, §5; am L 1975, c 58, §6; am L 1982, c 129, §1(2) and c 204, §8; am L 1984, c 282, §1; am L 1986, c 128, §1(2); am L 1987, c 336, §3(3), c 338, §1(4), and c 339, §2(3); am L 1989, c 211, §5 and c 329, §1(2); am L 1990, c 293, §8; am L 1991, c 310, §2; am L 1992, c 203, §1; am L 1994, c 56, §3; am L 1996, c 219, §1; am L 1998, c 115, §4; am L 2000, c 183, §1; am L 2003, c 122, §3; am L 2006, c 299, §3; am L 2014, c 90, §2]

#### **Note**

Contracts entered into prior to June 30, 2024, shall remain in effect for the duration of the contract. L 2014, c 90, §4.

#### **Attorney General Opinions**

Salary of superintendent of education should not be payable after removal from office. Att. Gen. Op. 75-20.

"Salary" does not mean "compensation"; fringe benefits are not "salary"; salary of university president is exception to norm, but unclear whether fringe benefits can be paid from private donations. Att. Gen. Op. 85-1.

#### **" §26-53 Deputies or assistants to department heads.**

Effective July 1, 2004, the salaries of deputies or assistants to the head of any department of the State, other than the department of education, shall be within the range or ranges for the specific positions as last recommended by the executive

salary commission. Effective July 1, 2007, and every six years thereafter, the salaries shall be as last recommended by the commission on salaries and specified by the appointing official, if appropriate, pursuant to section 26-56, unless rejected by the legislature. [L 1965, c 223, pt of §5; Supp, §4A-3; HRS §26-53; am L 1975, c 58, §7; am L 1982, c 129, §1(3); am L 1986, c 128, §1(3); am L 1989, c 329, §1(3); am L 2003, c 122, §4 and c 187, §2; am L 2006, c 299, §4]

### **Cross References**

Nonapplicability to:

Administrative services manager of department of attorney general, see §28-7.5.

Special assistant to attorney general, see §28-8.5.

Special assistant to state librarian, see §312-2.2.

Salary of various department of education deputies and assistants, see §302A-621.

" **§26-54 Administrative director of the State.** Effective July 1, 2004, the salary of the administrative director of the State shall be as last recommended by the executive salary commission. Effective July 1, 2007, and every six years thereafter, the salary of the administrative director of the State shall be as last recommended by the commission on salaries pursuant to section 26-56, unless rejected by the legislature. [L 1965, c 223, pt of §5; Supp, §4A-4; HRS §26-54; am L 1969, c 127, §3; am L 1975, c 58, §8; am L 1982, c 129, §1(4); am L 1986, c 128, §1(4); am L 1989, c 329, §1(4); am L 2003, c 122, §5; am L 2006, c 299, §5]

" **§26-55 REPEALED.** L 2006, c 299, §11.

" **[\$26-56] Commission on salaries.** (a) Pursuant to article XVI, section 3.5, of the Constitution of the State of Hawaii, there is established a commission on salaries within the department of human resources development, for administrative purposes only.

The commission shall consist of seven members of whom:

- (1) Two members shall be appointed by the governor;
- (2) Two members shall be appointed by the president of the senate;
- (3) Two members shall be appointed by the speaker of the house of representatives; and

(4) One member shall be appointed by the chief justice of the supreme court.

Vacancies in these positions shall be filled in the same manner. The members of the commission shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(b) The commission shall review and recommend an appropriate salary for the governor, lieutenant governor, members of the legislature, justices and judges of all state courts, administrative director of the State or an equivalent position, and department heads or executive officers and the deputies or assistants to the department heads of the departments of:

- (1) Accounting and general services;
- (2) Agriculture;
- (3) The attorney general;
- (4) Budget and finance;
- (5) Business, economic development, and tourism;
- (6) Commerce and consumer affairs;
- (7) Defense;
- (8) Hawaiian home lands;
- (9) Health;
- (10) Human resources development;
- (11) Human services;
- (12) Labor and industrial relations;
- (13) Land and natural resources;
- (14) Public safety;
- (15) Taxation; and
- (16) Transportation.

The commission shall not review the salary of any position in the department of education or the University of Hawaii.

The commission may recommend different salaries for department heads and executive officers and different salary ranges for deputies or assistants to department heads; provided that the commission shall recommend the same salary range for deputies or assistants to department heads within the same department; provided further that the appointing official shall specify the salary for a particular position within the applicable range.

The commission shall not recommend salaries lower than salary amounts recommended by prior commissions replaced by this section.

(c) The commission may seek assistance from the department of human resources development and any other agency in conducting its review, and all agencies shall fully cooperate with the commission and provide any necessary information to the commission upon request.

(d) The commission shall convene in the month of November 2006, and every six years thereafter. Not later than the fortieth legislative day of the regular session of 2007, and every six years thereafter, the commission shall submit a report of its findings and its salary recommendations to the legislature, through the governor. The commission may include incremental increases that take effect prior to the convening of the next salary commission.

The recommended salaries submitted by the commission shall become effective July 1 of the next fiscal year unless the legislature disapproves the recommended salaries submitted by the commission through the adoption of a concurrent resolution, which shall be approved by a simple majority of each house of the legislature, prior to adjournment sine die of the legislative session in which the recommended salaries are submitted; provided that any change in salary which becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted.

The governor shall include the salary amounts recommended by the commission and approved by the legislature for employees of the executive branch in the executive budget. If the salary amounts recommended by the commission are disapproved by the legislature, the commission shall reconvene in the November next following the legislative disapproval to review the legislature's reasons for disapproving its salary recommendation. The commission may submit a report of its findings and submit a new salary recommendation to the legislature at the next regular session. The commission's reconvening following a legislative disapproval shall not toll the six-year cycle. [L 2006, c 299, §1]