

**"CHAPTER 89C
PUBLIC OFFICERS AND EMPLOYEES EXCLUDED FROM
COLLECTIVE BARGAINING**

Section

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Conversion of exempt positions to civil service positions. L 2006, c 300, §§18 to 20.

Cross References

Annual report on the number of exempt positions converted to civil service positions, see §26-5(g).

" **§89C-1 Purpose.** The legislature finds that the appropriate authorities do not have sufficient flexibility to adjust the wages, hours, benefits, and other terms and conditions of employment for their respective excluded public officers and employees. The organizational status and employment conditions of these individuals in the excluded group are diverse and include: cabinet members, board and commission members, managerial employees, and non-managerial employees; appointees, civil service employees, and employees exempt from civil service; permanent and temporary employees; and full-time, part-time, seasonal, casual, and intermittent employees. Sufficient flexibility must be provided so that timely and relevant adjustments can be made. To this end, the legislature grants appropriate authorities the necessary flexibility to make adjustments as provided in this chapter; provided that nothing in this chapter shall be construed to interfere with or diminish authority already provided to them. [L 1978, c 197, pt of §2; am L 1982, c 159, pt of §1(1); am L 1984, c 254, §5; am L 2000, c 253, §106]

" **§89C-1.5 Definitions.** As used in this chapter:

"Adjustment" means a change in wages, hours, benefits, or other term and condition of employment.

"Appropriate authority" means the governor, the respective mayors, the chief justice of the supreme court, the board of education, the board of regents, the state public charter school commission, the Hawaii health systems corporation board, the auditor, the ombudsman, and the director of the legislative reference bureau. These individuals or boards may make adjustments for their respective excluded employees.

"Excluded employee" or "employee" means any individual who is employed by an appropriate authority and is not included in an appropriate bargaining unit under section 89-6 and, therefore, is not entitled to collective bargaining coverage under chapter 89. [L 2000, c 253, §105; am L 2014, c 99, §2]

" **§89C-2 Adjustments authorized; limitations, restrictions.**

Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

- (1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action, or prescribed by a salary commission, shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body or salary commission;
- (2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority, shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;
- (3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;
- (4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;
- (5) For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and
- (6) No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law. [L 1978, c 197, pt of §2; am L 1982, c 152, §2 and c 159, pt of §1(1); am L 1984, c 254, §6; am L 1987, c 30, §1; am L 2000, c 253, §107; am L 2002, c 131, §1]

Attorney General Opinions

Expresses legislative intent to control public employee benefits, such as insurance benefits. Att. Gen. Op. 85-1.

Under this section and section 89C-3, pay may be adjusted only for excluded police officers in managerial, white-collar compensation plan. Att. Gen. Op. 85-5.

" **§89C-3 Adjustments for excluded civil service employees.**

(a) Each jurisdiction shall provide adjustments for its respective excluded civil service employees based on recommendations from its respective personnel director.

(b) In formulating recommendations to the appropriate authority, the respective director shall:

- (1) Establish procedures that allow excluded civil service employees and employee organizations representing them to provide input on adjustments that are relevant and important to them for the director's approval;
- (2) Ensure that adjustments for excluded civil service employees result in compensation and benefit packages that are at least equal to the compensation and benefit packages provided under collective bargaining agreements for counterparts and subordinates within the employer's jurisdiction; and
- (3) Ensure that proposed adjustments are consistent with chapter 76 and equivalent or not less than adjustments provided within the employer's jurisdiction. [L 1978, c 197, pt of §2; am L 1994, c 56, §16; am L 2000, c 253, §108; am L Sp 2005, c 2, §1]

Attorney General Opinions

Under this section and section 89C-2, pay may be adjusted only for excluded police officers in managerial, white-collar compensation plan; uniformity requirement applies to uniformity of pay adjustments within same class. Att. Gen. Op. 85-5.

" **§89C-4 Adjustments for excluded employees exempt from civil service.** Each appropriate authority shall determine the adjustments that are relevant for their respective excluded employees who are exempt from civil service in consideration of the compensation and benefit packages provided for other employees in comparable agencies. For executive/managerial positions in the University of Hawaii system filled by excluded employees, proposed compensation or change in compensation shall be disclosed in open meeting for purposes of public comment. [L 1978, c 197, pt of §2; am L 1982, c 159, §1(2); gen ch 1985; am L 1994, c 56, §17; am L 2000, c 253, §109; am L Sp 2008, c 6, §2]

" **§89C-5 Implementation; approval and appropriations.** (a) Adjustments that do not require appropriations by the respective legislative bodies may be implemented without legislative action.

(b) All other adjustments requiring appropriations shall be submitted to the respective legislative body for appropriations, at such time and in such manner as the legislative body may require. The legislative body shall appropriate funds of the amount requested or funds of a different amount after discussing the reasons with the appropriate authority.

(c) No adjustment shall be made and no funds shall be used for purposes of this chapter unless the legislative body has appropriated the funds necessary to implement the adjustment. [L 1978, c 197, pt of §2; am L 1982, c 159, §1(3); am L 2000, c 253, §110]

Attorney General Opinions

Suggests that pay adjustments for excluded workers not inappropriate where they correspond to pay increases obtained by collective bargaining unit employees. Att. Gen. Op. 85-5.

" **§89C-6 Chapter takes precedence, when.** Adjustments made in accordance with this chapter shall take precedence over all contrary local ordinances, executive orders, legislation, or rules adopted by the State or a county, or any department, agency, board, or commission thereof, including the personnel departments or the merit appeals boards. [L 1978, c 197, pt of §2; am L 1994, c 56, §18; am L 2000, c 253, §111]

" **§89C-7 Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 1978, c 197, pt of §2]