

JAN 23 2020

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT STANDARDS BOARD.

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

1 SECTION 1. The legislature, by Act 220, Session Laws of
2 Hawaii 2018, enacted chapter 139, Hawaii Revised Statutes, to
3 create a law enforcement standards board for the certification
4 of law enforcement officers, including county police officers,
5 state public safety officers, and employees with police powers
6 at the departments of transportation, of land and natural
7 resources, of the attorney general, and of taxation.

8 The board is responsible for establishing minimum standards
9 for employment as a law enforcement officer and certifying
10 persons qualified as law enforcement officers. It is also
11 responsible for establishing minimum criminal justice curriculum
12 requirements for basic, specialized, and in-service courses and
13 programs for the training of law enforcement officers. It must
14 consult and cooperate with the counties, state agencies, other
15 governmental agencies, universities and colleges, and other
16 institutions, concerning the development of law enforcement
17 officer training schools and programs. The board is also

1 responsible for regulating and enforcing the certification
2 requirements of law enforcement officers.

3 These are important and substantial duties that require
4 evaluation to ensure that existing legal obligations are not
5 compromised. Before imposing new standards impacting the
6 employment of law enforcement officers, the board must consider
7 collective bargaining and other employment requirements. At a
8 minimum, the board must evaluate how probationary periods,
9 training requirements (i.e., the types of training, the number
10 of hours of training, and the availability of training
11 facilities), and the issuance, suspension, and revocation of
12 certification will impact obligations already established by
13 law.

14 Such evaluation should include consideration of the study
15 conducted by the legislative reference bureau pursuant to Act
16 124, Session Laws of Hawaii 2018, and any additional study
17 necessary to determine the impact of uniform standards,
18 certification, and training for all law enforcement.
19 The board has determined that it will need significantly more
20 time and funds to accomplish its mission.

21 The purposes of this Act are to clarify board membership
22 requirements to facilitate participation and representation, to
23 enable the board to research the impact of uniform standards,

1 certification, and training on existing legal requirements, to
2 establish new deadlines for the completion of the board's
3 significant responsibilities, and to provide appropriate funds
4 and resources to enable the board to accomplish its mission.

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

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

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

17 (2) Positions filled by persons employed by contract
18 where the director of human resources development has
19 certified that the service is special or unique or is
20 essential to the public interest and that, because of
21 circumstances surrounding its fulfillment, personnel
22 to perform the service cannot be obtained through

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- 1 normal civil service recruitment procedures. Any such
2 contract may be for any period not exceeding one year;
- 3 (3) Positions that must be filled without delay to
4 comply with a court order or decree if the director
5 determines that recruitment through normal recruitment
6 civil service procedures would result in delay or
7 noncompliance, such as the Felix-Cayetano consent
8 decree;
- 9 (4) Positions filled by the legislature or by either
10 house or any committee thereof;
- 11 (5) Employees in the office of the governor and
12 office of the lieutenant governor, and household
13 employees at Washington Place;
- 14 (6) Positions filled by popular vote;
- 15 (7) Department heads, officers, and members of any
16 board, commission, or other state agency whose
17 appointments are made by the governor or are required
18 by law to be confirmed by the senate;
- 19 (8) Judges, referees, receivers, masters, jurors,
20 notaries public, land court examiners, court
21 commissioners, and attorneys appointed by a state
22 court for a special temporary service;
- 23 (9) One bailiff for the chief justice of the supreme

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

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1 of the courts, the deputy administrative director of
2 the courts, each department head, each deputy or first
3 assistant, and each additional deputy, or assistant
4 deputy, or assistant defined in paragraph (16);

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

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

18 (B) Effective July 1, 2003, teaching assistants,
19 educational assistants, bilingual/bicultural
20 school-home assistants, school psychologists,
21 psychological examiners, speech pathologists,
22 athletic health care trainers, alternative school
23 work study assistants, alternative school

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1 educational/supportive services specialists,
2 alternative school project coordinators, and
3 communications aides in the department of
4 education;

5 (C) The special assistant to the state librarian
6 and one secretary for the special assistant to
7 the state librarian; and

8 (D) Members of the faculty of the University of
9 Hawaii, including research workers, extension
10 agents, personnel engaged in instructional work,
11 and administrative, professional, and technical
12 personnel of the university;

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

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

19 (B) Positions filled with students in accordance
20 with guidelines for established state employment
21 programs; and

22 (C) Positions that provide work experience

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1 training or temporary public service employment
2 that are filled by persons entering the workforce
3 or persons transitioning into other careers under
4 programs such as the federal Workforce Investment
5 Act of 1998, as amended, or the Senior Community
6 Service Employment Program of the Employment and
7 Training Administration of the United States
8 Department of Labor, or under other similar state
9 programs;

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

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

19 (16) Positions of first deputies or first assistants of
20 each department head appointed under or in the manner
21 provided in section 6, article V, of the Hawaii State
22 Constitution; three additional deputies or assistants
23 either in charge of the highways, harbors, and

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

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

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

19 (B) All of the positions defined by paragraph (9)
20 shall be included in the position classification
21 plan;

22 (18) Positions in the state foster grandparent program and

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- 1 positions for temporary employment of senior citizens
2 in occupations in which there is a severe personnel
3 shortage or in special projects;
- 4 (19) Household employees at the official residence of the
5 president of the University of Hawaii;
- 6 (20) Employees in the department of education engaged in
7 the supervision of students during meal periods in the
8 distribution, collection, and counting of meal
9 tickets, and in the cleaning of classrooms after
10 school hours on a less than half-time basis;
- 11 (21) Employees hired under the tenant hire program of the
12 Hawaii public housing authority; provided that not
13 more than twenty-six per cent of the authority's
14 workforce in any housing project maintained or
15 operated by the authority shall be hired under the
16 tenant hire program;
- 17 (22) Positions of the federally funded expanded food and
18 nutrition program of the University of Hawaii that
19 require the hiring of nutrition program assistants who
20 live in the areas they serve;
- 21 (23) Positions filled by persons with severe disabilities

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- 1 who are certified by the state vocational
2 rehabilitation office that they are able to perform
3 safely the duties of the positions;
- 4 (24) The sheriff;
- 5 (25) A gender and other fairness coordinator hired by the
6 judiciary;
- 7 (26) Positions in the Hawaii National Guard youth and adult
8 education programs;
- 9 (27) In the state energy office in the department of
10 business, economic development, and tourism, all
11 energy program managers, energy program specialists,
12 energy program assistants, and energy analysts;
- 13 (28) Administrative appeals hearing officers in the
14 department of human services;
- 15 (29) In the Med-QUEST division of the department of human
16 services, the division administrator, finance officer,
17 health care services branch administrator, medical
18 director, and clinical standards administrator;
- 19 (30) In the director's office of the department of human
20 services, the enterprise officer, information security
21 and privacy compliance officer, security and privacy
22 compliance engineer, and security and privacy
23 compliance analyst; [~~and~~]

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1 [+] (31) [+] The alzheimer's disease and related dementia
2 services coordinator in the executive office on
3 aging[-]; and

4 (32) The administrator for the law enforcement standards
5 board.

6 The director shall determine the applicability of this
7 section to specific positions.

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

10 SECTION 3. Section 139-2, Hawaii Revised Statutes, is
11 amended by amending subsections (a) and (b) to read as follows:

12 "(a) There is established the law enforcement standards
13 board within the department of the attorney general for
14 administrative purposes only. The purpose of the board shall be
15 to provide programs and standards for training and certification
16 of law enforcement officers. The law enforcement standards
17 board shall consist of the following voting members: nine ex
18 officio individuals[~~7-two~~] or their designees, five law
19 enforcement officers, and four members of the public.

20 (1) The nine ex officio members of the board shall consist
21 of the:

22 (A) Attorney general[+] or the attorney general's
23 designee;

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- 1 (B) Director of public safety[+] or the director's
- 2 designee;
- 3 (C) Director of transportation or the director's
- 4 designee;
- 5 (D) Chairperson of the board of land and natural
- 6 resources or chairperson's designee;
- 7 (E) Director of taxation or the director's designee;
- 8 and
- 9 (F) Chiefs of police of the four counties[+] or the
- 10 designee of each of the chiefs of police;
- 11 (2) The [~~two~~] five law enforcement officers shall be from
- 12 each of the four counties and one from the State,
- 13 shall each have at least ten years of experience as a
- 14 law enforcement officer [~~and~~], shall be appointed by
- 15 the governor[+] and, notwithstanding section 26-34,
- 16 shall not be subject to senatorial confirmation; and
- 17 (3) The four members of the public shall consist of one
- 18 member of the public from each of the four counties
- 19 and shall be appointed by the governor[+] and,
- 20 notwithstanding section 26-34, shall not be subject to
- 21 senatorial confirmation. At least two of the four
- 22 members of the public holding a position on the board
- 23 at any given time shall:

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1 (A) Possess a master's or doctorate degree related to
2 criminal justice;

3 (B) Possess a law degree and have experience:

4 (i) Practicing in Hawaii as a deputy attorney
5 general, a deputy prosecutor, a deputy
6 public defender, or a private criminal
7 defense attorney; or

8 (ii) Litigating constitutional law issues in
9 Hawaii;

10 (C) Be a recognized expert in the field of criminal
11 justice, policing, or security; or

12 (D) Have work experience in a law enforcement
13 capacity[; ~~provided that experience in a county~~
14 ~~police department shall not itself be sufficient~~
15 ~~to qualify under this paragraph].~~

16 (b) The law enforcement officers and the members of the
17 public on the board shall serve for a term of [~~three~~] four
18 years, provided that the initial terms shall be staggered, as
19 determined by the governor."

20 SECTION 4. Section 139-3, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "[~~f~~]§139-3[~~f~~] **Powers and duties of the board.** The board
23 shall:

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- 1 (1) Adopt rules in accordance with chapter 91 to implement
2 this chapter;
- 3 (2) Establish minimum standards for employment as a law
4 enforcement officer and to certify persons to be
5 qualified as law enforcement officers;
- 6 (3) Establish criteria and standards in which a person who
7 has been denied certification, whose certification has
8 been revoked by the board, or whose certification has
9 lapsed may reapply for certification;
- 10 (4) Establish minimum criminal justice curriculum
11 requirements for basic, specialized, and in-service
12 courses and programs for schools operated by or for
13 the State or a county for the specific purpose of
14 training law enforcement officers;
- 15 (5) Consult and cooperate with the counties, agencies of
16 the State, other governmental agencies, universities,
17 colleges, and other institutions concerning the
18 development of law enforcement officer training
19 schools and programs of criminal justice instruction;
- 20 (6) Employ [~~subject to chapter 76,~~] an administrator,
21 without regard to chapter 76, and other persons
22 necessary to carry out its duties under this chapter;

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- 1 (7) Investigate when there is reason to believe that a law
2 enforcement officer does not meet the minimum
3 standards for employment, and in so doing, may:
4 (A) Subpoena persons, books, records, or documents;
5 (B) Require answers in writing under oath to
6 questions asked by the board; and
7 (C) Take or cause to be taken depositions as needed
8 in investigations, hearings, and other
9 proceedings,
10 related to the investigation;
- 11 (8) Establish and require participation in continuing
12 education programs for law enforcement officers;
- 13 (9) Have the authority to charge and collect fees for
14 applications for certification as a law enforcement
15 officer; [~~and~~]
- 16 (10) Establish procedures and criteria for the revocation
17 of certification issued by the board[~~+~~];
- 18 (11) Consider studies relevant to the board's objectives,
19 including but not limited to the study that examines
20 consolidating the law enforcement activities and
21 responsibilities of various state divisions and
22 agencies under a single, centralized state enforcement

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1 division or agency, conducted pursuant to Act 124,
2 Session Laws of Hawaii 2018; and
3 (12) Conduct its own study to evaluate how to efficiently
4 and effectively satisfy its duties in accordance with
5 the law."

6 SECTION 5. Act 220, Session Laws of Hawaii 2018, is
7 amended by amending section 6 to read as follows:

8 "SECTION 6. This Act shall take effect on July 1, 2018;
9 provided that [~~the law enforcement standards board established~~
10 ~~under this Act shall finalize its standards and certification~~
11 ~~process by July 1, 2019.~~] sections -6 and -7 of the new
12 chapter in section 2 of this Act shall take effect on July 1,
13 2023."

14 SECTION 6. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$483,000 or so much
16 thereof as may be necessary for fiscal year 2020-2021 for
17 deposit into the law enforcement standards board special fund.

18 SECTION 7. There is appropriated out of the law
19 enforcement standards board special fund the sum of \$483,000 or
20 so much thereof as may be necessary for the fiscal year
21 2020-2021 for:

22 (1) One permanent administrator position (1.0 FTE) exempt
23 from chapter 76, Hawaii Revised Statutes, and one

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1 permanent clerical position (1.0 FTE) subject to
2 chapter 76, Hawaii Revised Statutes; and
3 (2) Administration, travel, and operating costs of the law
4 enforcement standards board.

5 The sum appropriated shall be expended by the law
6 enforcement standards board.

7 SECTION 8. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun, before the effective date of this Act.

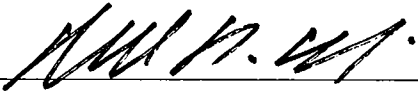
10 SECTION 9. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect upon its approval.

13

14

INTRODUCED BY:



15

BY REQUEST

16

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1 **Report Title:**

2 Law Enforcement Standards Board

3

4 **Description:**

5 Clarifies membership and certain powers and duties of the Law
6 Enforcement Standards Board, establishes new deadlines for the
7 completion of board responsibilities, and provides appropriate
8 funds and resources to enable the board to accomplish its
9 mission.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO LAW ENFORCEMENT.

PURPOSE: To clarify board membership requirements, to enable the board to research the impact of standards, certification and training requirements on existing legal requirements, to establish new deadlines for the completion of the board's responsibilities, to provide the necessary funds and resources for the board's mission, and to exempt the board administrator position from chapter 76.

MEANS: Amend sections 76-16(b), 139-2, and 139-3, Hawaii Revised Statutes, and section 6 of Act 220, Session Laws of Hawaii 2018 ("Act 220").

JUSTIFICATION: The board is responsible for establishing minimum standards for employment as a law enforcement officer and certifying persons qualified as law enforcement officers. It is also responsible for establishing minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for the training of law enforcement officers. It must consult and cooperate with the counties, state agencies, other governmental agencies, universities and colleges, and other institutions, concerning the development of law enforcement officer training schools and programs. The board is also responsible for regulating and enforcing the certification requirements of law enforcement officers.

Increasing the size of the board and allowing ex-officio members to use designees will expand the perspective of the board

while increasing its operational flexibility.

Collective bargaining and employment laws and rules dictate various aspects of a law enforcement officer's career from start to finish. Explicitly authorizing the board to study and evaluate these laws, rules, and agreements will allow the board to establish standards, certifications and training requirements in a purposeful and intentional manner.

A proper study and evaluation takes time and resources; therefore, certain aspects of the new chapter established by Act 220 should take effect on July 1, 2023, and an increased amount should be appropriated to fund dedicated staff.

The board administrator position is being made exempt from civil service because the new board requires flexibility to meet its broad duties and responsibilities and tight deadlines. The board's role, and that of the administrator, are unique and not within the traditional civil service classification system. The board needs the discretion to hire or terminate without the burden of complying with civil service requirements.

Impact on the public: The public will benefit from careful consideration of the existing laws, rules and agreements by a better-resourced, larger, and more operationally flexible board. This should result in better standards, certification, and training requirements and thereby increase public confidence in law enforcement and improve public safety generally.

Impact on the department and other agencies: Approval of this bill will have a direct positive effect on the board's ability to execute its responsibilities.

Additionally, county police officers, state public safety officers, and employees with police powers at the departments of Transportation, of Land and Natural Resources, of the Attorney General, and Taxation will all benefit from better standards, certification, and training requirements.

GENERAL FUND: \$375,000.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Departments of Transportation, of Land and Natural Resources, and of Taxation.

EFFECTIVE DATE: Upon approval.