

JAN 21 2022

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# A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYEES.

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

1       SECTION 1. The legislature finds that certain public  
2 employers, including the University of Hawaii, have policies  
3 that prohibit their employees from holding elective public  
4 offices, noting concerns such as issues of incompatibility,  
5 conflicts of commitment, and conflicts of interest.

6       The legislature also finds that although public employees  
7 are not subject to constitutional and statutory restrictions  
8 that prohibit public officers and holders of public offices from  
9 simultaneously holding another public office, they are subject  
10 to the common law doctrine of incompatible offices that  
11 prohibits public officers and employees from accepting a  
12 position with another public office when the second office is  
13 incompatible with the first. Two public offices are deemed  
14 incompatible if one office is subordinate to the other; the  
15 functions of the two offices are inherently inconsistent and  
16 repugnant to each other; or if a conflict of interest, lack of



1 impartiality, or appearance thereof will arise by one employee  
2 holding positions at both offices.

3       The legislature further finds that the determination of  
4 whether one public office is incompatible with another depends  
5 on the rights, duties, or obligations connected with or flowing  
6 from the two offices. As no two offices are the same, the  
7 determination of incompatibility between two public offices  
8 should be made on a case-by-case basis; not pursuant to a policy  
9 devoid of any analysis, uniformly applied to all situations.

10       Accordingly, the purpose of this Act is to prohibit public  
11 employers, including the University of Hawaii, from barring  
12 their employees from holding an elective public office unless  
13 the employer conducts a case-by-case review of the rights,  
14 duties, and obligations connected with or flowing from the  
15 employer and the elective public office and reasonably  
16 determines that the two offices are incompatible.

17       SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended  
18 by adding a new section to be appropriately designated and to  
19 read as follows:

20       "§78-     Public employees; elective public office;  
21 determination of incompatible offices.   (a) An employer shall



1 not bar an employee from holding an elective public office  
2 unless the employer conducts a case-by-case review of the  
3 rights, duties, and obligations connected with or flowing from  
4 the employer and the elective public office, and reasonably  
5 determines that:

6       (1) The employer or the elective public office is  
7       subordinate to the other;

8       (2) The functions of the employer and the elective public  
9       office are inherently inconsistent and repugnant to  
10       each other;

11       (3) The employee's holding of positions with the employer  
12       and the elective public office creates a conflict of  
13       interest, a lack of impartiality, or an appearance  
14       thereof; or

15       (4) The employee's rights, duties, or obligations with the  
16       elective public office will interfere with the  
17       employee's rights, duties, or obligations with the  
18       employer.

19       (b) As used in this section, unless the context clearly  
20 requires otherwise, "elective public office" means a public  
21 office held by:



1        (1) An individual elected to a public office in accordance  
2        with an election duly held in the State or counties  
3        under chapter 11, except as a delegate to a  
4        constitutional convention; or  
5        (2) An individual appointed to fill a vacancy of an  
6        elective public office;  
7        provided that the individual receives compensation, pay, or  
8        salary for holding the public office."

9        SECTION 3. New statutory material is underscored.

10       SECTION 4. This Act shall take effect upon its approval.

11  
INTRODUCED BY:

*Jane Acasio*



# S.B. NO. 2405

**Report Title:**

Public Employees; Elective Public Office; Determination of Incompatible Offices

**Description:**

Prohibits public employers from barring their employees from holding an elective public office unless the employer conducts a case-by-case review of the rights, duties, and obligations connected with or flowing from the employer and the elective public office, and reasonably determines that the two offices are incompatible.

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