

ACT 211

H.B. NO. 920

A Bill for an Act Relating to a Department of Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to consolidate all public safety functions and employees of state government into a department of public safety. This will ensure better organization and coordination of public safety functions, allow for standardized training, and establish a "career ladder" for public safety employees.

This Act establishes a department of public safety to be effective upon approval of this Act. Effective July 1, 1990, the functions and employees of the department of corrections, the office of the sheriff and security personnel in the judiciary, and the state law enforcement office (except for executive security functions and employees) and the narcotics enforcement division of the department of the attorney general are to be transferred to the new department. Effective July 1, 1991, the law enforcement and security functions and employees of the department of transportation shall be transferred to the new department. The director of public safety shall report to the legislature, no later than twenty days before the convening of the Regular Session of 1991, the director's recommendations regarding the transfer to the department of public safety of all other public safety functions and employees of the State.

This Act also provides that in the interim between the Act's approval and July 1, 1990, a management team shall be selected by the governor, with necessary staff hired by the governor, to develop the appropriate transitional plans, rework position descriptions, review personnel classifications, develop an organizational structure, prepare a proposed budget, and attend to other administrative details so that the new department of public safety can become initially operational on July 1, 1990.

SECTION 2. Chapter 26, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§26- 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 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 criminal injuries 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 the department of corrections relating to adult and juvenile corrections and the intake service centers; the functions and authority heretofore exercised by the judiciary relating to the sheriff's office and judiciary security personnel; and the functions and authority heretofore exercised by the department of the attorney general relating to state law enforcement officers and narcotics enforcement agents with the narcotics enforcement division shall be transferred to the department of public safety.

(e) Effective July 1, 1991, the functions and authority heretofore exercised by the director of transportation and the department of transportation related to law enforcement, including those pertaining to parking at its facilities and security, shall be transferred to the department of public safety."

SECTION 3. Section 26-4, Hawaii Revised Statutes, is amended to read as follows:

"§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 which are hereby established:

- (1) Department of personnel services (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 and economic development (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 corrections (Section 26-14.5)
- (19) Department of public safety (Section 26-)"

SECTION 4. Effective July 1, 1990, section 26-4, Hawaii Revised Statutes, as amended by section 3 of this Act, is amended to read as follows:

"§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 which are hereby established:

- (1) Department of personnel services (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 and economic development (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 [corrections (Section 26-14.5)
- (19) Department of] public safety (Section 26-)"

SECTION 5. Effective July 1, 1990, section 26-52, Hawaii Revised Statutes, is amended to read as follows:

"§26-52 Department heads and executive officers. The salaries of the following state officers shall be as follows:

- (1) Effective January 1, 1986, the salary of the superintendent of education shall be \$76,000 a year.
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents, but shall not exceed \$95,000 a year.
- (3) Effective January 1, 1986, the salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, commerce and consumer affairs, [corrections,] Hawaiian home lands, health, human services, labor and industrial relations, land and natural resources, personnel services, public safety, business and economic development, taxation, and transportation shall be \$68,400 a year.
- (4) Effective January 1, 1986, the salary of the adjutant general shall be \$68,400 a year. If the 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."

SECTION 6. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER PUBLIC SAFETY

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Department" means the department of public safety.

"Director" means the director of public safety.

§ -2 **Director of public safety; powers and duties.** The director of public safety shall administer the public safety programs of the department of public safety and shall be responsible for the formulation and implementation of state goals and objectives for correctional and law enforcement programs. In the administration of these programs, the director may:

- (1) Preserve the public peace, prevent crime, detect and arrest offenders against the law, protect the rights of persons and property, and enforce and prevent violation of all laws and administrative rules of the State as the director deems to be necessary or desirable or upon request, to assist other state officers or agencies that have primary administrative responsibility over specific subject matters or programs;
- (2) Train, equip, maintain, and supervise the force public safety officers, including law enforcement and correctional personnel, and other employees of the department;
- (3) Serve process both in civil and criminal proceedings;
- (4) Perform other duties as may be required by law;
- (5) Adopt, pursuant to chapter 91, rules that are necessary or desirable for the administration of public safety programs; and
- (6) Enter into contracts in behalf of the department and take all actions deemed necessary and appropriate for the proper and efficient administration of the department.

§ -3 **Deputy directors; appointment.** The director shall appoint, without regard to chapters 76 and 77, three deputy directors to serve at the director's pleasure. Unless otherwise assigned by the director, one deputy director shall oversee the correctional programs and facilities of the department, one deputy director shall oversee the law enforcement programs of the department, and one deputy director shall oversee administration of the department.

§ -4 **Appointment of employees with police powers and other employees.** (a) The director may appoint employees to be public safety officers who shall have all of the powers of police officers; provided that the director may establish and assign the employees to positions or categories of positions that may have differing titles, specific duties, and limitations upon the exercise of police powers. (b) The director may appoint other personnel necessary to carry out the functions of the department."

SECTION 7. The title of chapter 353, Hawaii Revised Statutes, is amended effective July 1, 1990, to read as follows:

"CHAPTER 353 [DEPARTMENT OF] CORRECTIONS"

SECTION 8. Effective July 1, 1990, sections 334-74, 351-11, 355-4, 355-5, 571-48, 571D-1, 706-604, 706-656, 706-667, 706-670.5, 706-672, and 832-23; and chapters 352 and 353, Hawaii Revised Statutes, are amended by replacing all references to the "department of corrections" with the "department of public safety" and by replacing all references to the "director of corrections" with the "director of public safety."

SECTION 9. Effective July 1, 1990, chapter 354, Hawaii Revised Statutes, is amended by replacing all references to the "department of social services and housing" with references to the "department of public safety" and by replacing all references to the "director of social services" with references to "director of public safety."

SECTION 10. Effective July 1, 1990, sections 21-8, 21-17, 26-7, 26-9, 26-24, 28-11, 47-10, 52-36, 76-16, 88-51, 105-54, 134-11, 134-51, 143-1, 143-7, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-

6, 325-9, 325-80, 326-35, 326-36, 326-37, 326-38, 346-4.5, 353-11, 360-5, 360-14, 383-71, 438-5, 445-37, 482E-4, 485-6, 487-10, 501-42, 501-171, 501-218, 521-78, 576D-11, 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, 651-1, 651-33, 651-37, 651-51, 653-6, 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, Hawaii Revised Statutes, are amended by replacing all references to "sheriff", "sheriffs", or "office of the sheriff", with references to the director of public safety or the department of public safety, as appropriate.

SECTION 11. Effective July 1, 1990, section 26-14.5, Hawaii Revised Statutes, is repealed.

SECTION 12. Effective July 1, 1990, section 28-11.5, Hawaii Revised Statutes, is repealed.

SECTION 13. Effective July 1, 1990, section 353-2, Hawaii Revised Statutes, is repealed.

SECTION 14. Effective July 1, 1990, section 353-3, Hawaii Revised Statutes, is repealed.

SECTION 15. Effective July 1, 1990, section 353-4, Hawaii Revised Statutes, is repealed.

SECTION 16. Effective July 1, 1990, sections 601-31, 601-32, 601-33, 601-34, 601-35, 601-36, 601-37, and 601-38, Hawaii Revised Statutes, are repealed.

SECTION 17. Effective July 1, 1990, section 601-51, Hawaii Revised Statutes, is repealed.

SECTION 18. **Plans and preparation for transfers.** The governor shall appoint a management team and may hire necessary staff, who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, to develop the appropriate transition plans, rework position descriptions, revise personnel classifications, develop an organizational structure, prepare a proposed budget, and attend to other administrative details so that the new department of public safety can be initially operational by July 1, 1990.

SECTION 19. The director of public safety shall report to the legislature, no later than twenty days before the convening of the Regular Session of 1991, the director's recommendations regarding the transfer to the department of public safety of all other public safety functions and employees of the State.

SECTION 20. **Transfer of personnel.** All officers and employees of the judiciary, department of the attorney general, department of corrections, and department of transportation whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to state personnel laws and this Act, including any person commissioned or otherwise authorized by the chief justice to engage in the service of process on a full-time salaried basis and whose commission shall continue until terminated for good cause.

No officer or employee of the State having tenure who is transferred by this Act shall suffer any loss of salary, seniority, prior service credit, vacation, sick

leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

In the event that an office or position held by an officer or employee having tenure is abolished and the officer, employee, or position is not transferred to the department of public safety by this Act, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position of the State for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

Any employee who, prior to this Act, was exempt from civil service and may be transferred as a consequence of this Act, shall continue to retain the employee's exempt status and shall not be appointed to a civil service position because of this Act. Employees who may be transferred by this Act and who are receiving entitlements, benefits, or privileges in accordance with chapter 77, but not chapter 76, Hawaii Revised Statutes, shall continue to receive only those entitlements, benefits, or privileges received under chapter 77, Hawaii Revised Statutes, after such transfer.

SECTION 21. Transfers of records, equipment, appropriations, authorizations and other property. All appropriations, records, equipment, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations and other property, both real and personal, heretofore made, used, acquired, or held by the department, office, board, commission, or agency in the exercise of the functions and programs transferred by this Act shall be transferred to the department of public safety when the functions or programs are so transferred.

SECTION 22. Prosecutions and civil actions. No offense committed and no penalty or forfeiture incurred under the law shall be affected by this Act; provided that whenever any punishment, penalty, or forfeiture is mitigated by any provision of this Act, such provision may be extended and applied to any judgment pronounced after the passage of this Act. No suit or prosecution pending at the time this Act takes effect shall be affected by this Act. The right of any administrative officer whose function is transferred by this Act to the department of public safety, to institute proceedings for prosecution for an offense or an action to recover a penalty or forfeiture shall be vested in the director of public safety or the director's designee.

SECTION 23. Appeals. The right of appeal from administrative actions or determinations as provided by law shall not be impaired by this Act.

Except as otherwise provided by this Act, wherever a right of appeal from administrative actions or determinations is provided by law to or from any officer, board, department, bureau, commission, administrative agency, or instrumentality of the State which, or any of the programs of which, is transferred by this Act to the department of public safety, the right of appeal shall lie to or from the department of public safety when the transfer is made. The right of appeal shall exist to the same extent and in accordance with the applicable procedures that are in effect immediately prior to the effective date of this Act.

If the provisions of the preceding paragraph relating to appeals cannot be effected by reason of abolishment, splitting, or shifting of functions or otherwise, the right of appeal shall lie to the circuit court of the State pursuant to the Hawaii Rules of Civil Procedure.

SECTION 24. Federal aid, bond obligations; not impaired. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor is authorized and empowered to modify the strict provisions of this Act, but shall promptly report any such modifications with his reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 25. Revision of existing statutes. The revisor of statutes may incorporate into the Hawaii Revised Statutes, any of the provisions contained in this Act. The revisor of statutes shall substitute the appropriate department of public safety reference in all existing statutes where a department, board, commission, agency, program, or organizational segment is transferred to the department of public safety if such existing statutory language has not been amended by this Act.

SECTION 26. Amendment of conflicting laws. All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith. All Acts passed during this Regular Session of 1989, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such Acts specifically provide that the Act relating to a "department of public safety" is being amended. Amendments made to sections of the Hawaii Revised Statutes that are amended by this Act as of a future effective date shall include amendments made after the approval of this Act and before the effective date of the amendments made by this Act, to the extent that the intervening amendments may be harmonized with the amendments made by this Act.

SECTION 27. In accordance with section 9 of article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$400,000 or 0.017 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to achieve the purposes of this Act.

SECTION 28. There is hereby appropriated out of the general revenues of the State of Hawaii the sum of \$400,000, or so much thereof as may be necessary, for fiscal year 1989-1990, to carry out the purposes of section 18 of this Act. The sum appropriated shall be expended by the office of the governor.

SECTION 29. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 30. This Act shall take effect upon its approval, except that specific provisions of this Act shall take effect as otherwise specified in this Act.

(Approved June 7, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.