

## ACT 166

H.B. NO. 1590

A Bill for an Act Relating to Civil Service.

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

SECTION 1. Section 76-47, Hawaii Revised Statutes, is amended to read as follows:

**“§76-47 Appeals from suspensions, dismissals and demotions.** Any regular employee who is suspended, dismissed, or demoted may appeal to the civil service commission within twenty days after notice has been sent the employee of the suspension, dismissal, or demotion provided that the twenty-day period shall be extended to twenty days from the final notice on the employee’s grievance should the employee exercise the grievance channel. Upon the appeal, both the appealing employee and the appointing authority shall have the right to be heard publicly, present evidence and be represented by counsel, who shall have the right to examine and cross-examine witnesses. At the hearing technical rules of evidence shall not apply and the evidence shall be taken stenographically or recorded by machine. For the purpose of hearing the appeals fairly and expeditiously, the commission may at any time appoint a competent and qualified disinterested person to act as its hearing officer. The hearing officer shall hear the matter in the same manner as if it were before the commission and upon the conclusion of the hearing, shall report the hearing officer’s findings of fact and the hearing officer’s conclusions and recommendations based thereon to the commission and to the employee. The commission shall render the final decision in accordance with section 91-11.

If the commission finds that the action appealed from was taken by the appointing authority for any political, religious or racial reason, the employee shall be reinstated to the employee’s position without loss of pay for the period of the employee’s suspension or separation therefrom. In all other cases, if the commission finds that the reasons for the action are not substantiated in any material respect, the commission shall order that the employee be reinstated in the employee’s position, without loss of pay, but if the commission finds that the reasons are substantiated or are only partially substantiated, the commission shall sustain the action of the appointing authority, provided that the commission may modify the action of the appointing authority if it finds the circumstances of the case so require and may thereupon order such disposition of the case as it may deem just.

When an employee is dismissed and not reinstated after the appeal, the commission, in its discretion, may direct that the employee’s name be placed on an appropriate reemployment list for employment in any similar position other than one from which the employee has been removed.

The findings and decisions of the commission shall be final on all appeals, unless an appeal is taken as provided in chapter 91.

[When] Notwithstanding any other law to the contrary, when an appeal hearing is before a county civil service commission, including the civil service commission of the city and county of Honolulu, the attorney general shall be counsel for the commission and the county attorney or corporation counsel shall be counsel for the appointing authority. If, however, an appeal hearing is before the state commission, the attorney general shall be counsel for the appointing

authority and the county attorney or corporation counsel of the county, including the city and county of Honolulu, in which the appeal hearing is being conducted shall be counsel for the commission.

Notwithstanding any other law to the contrary, when the decision and order of the county civil service commission, including the civil service commission of the city and county of Honolulu, is appealed as provided in chapter 91, the attorney general shall be counsel for the commission and the county attorney or corporation counsel shall be counsel for the appointing authority. When the decision and order of the state civil service commission is appealed as provided in chapter 91, the attorney general shall be counsel for the appointing authority and the county attorney or corporation counsel of the county, including the city and county of Honolulu, in which the chapter 91 appeal is being conducted, shall be counsel for the state civil service commission."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 21, 1994.)