

ACT 56

H.B. NO. 3180

A Bill for an Act Relating to the Department of Personnel Services.

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

SECTION 1. 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 that are hereby established:

- (1) Department of [personnel services] human resources development (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, economic development, and tourism (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 public safety (Section 26-14.6)”

SECTION 2. Section 26-5, Hawaii Revised Statutes, is amended to read as follows:

“§26-5 Department of [personnel services.] human resources development. The department of [personnel services] human resources development shall be headed by a single executive to be known as the director of [personnel services.] human resources development.

The director shall have the authority to [prescribe] adopt rules [and regulations] as heretofore exercised by the civil service commission. Whenever consistent with economic and efficient administration, the director may delegate any of the duties imposed upon the director by chapter 76 or chapter 77 to the department heads, or any of them, in accordance with standards and procedures issued by the director. The director shall institute and maintain a system of inspection to determine that the personnel laws are applied and administered by the departments in a manner consistent with the purposes and provisions of the civil service law. Whenever an inspection indicates failure on the part of a department to comply with established policies, [regulations,] rules, and standards, the director shall take [such] any action [as] that may be appropriate, including suspension or revocation of any delegation of the director’s authority.

The department shall administer the state [personnel] human resources program, including [personnel] human resources development and training, and [such] central [personnel] human resources services such as recruitment, examination, position classification, and pay administration for all departments.

There shall be within the department of [personnel services] human resources development a commission to be known as the civil service commission which shall sit as an appellate body on matters within the jurisdiction of the department of [personnel services.] human resources development. The commission shall consist of seven members, one from each county and three at large. At least one member of the commission shall be selected from among persons employed in private industry in skilled or unskilled laboring positions as distinguished from executive or professional positions. The functions, duties, and powers of the commission with respect to appeals shall be as heretofore provided by law for the civil service commission and for the loyalty board existing immediately prior to November 25, 1959.

The functions and authority heretofore exercised by the department of civil service and loyalty board as heretofore constituted are transferred to the department of [personnel services] human resources development established by this chapter.

Nothing in this section shall be construed as in any manner affecting the civil service laws applicable to the several counties which shall remain the same as if this chapter had not been enacted.”

SECTION 3. 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) The salary of the superintendent of education shall be \$90,041 a year;
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents; provided that effective July 1, 1998, the salary of the president of the University of Hawaii shall be set by the legislature;
- (3) The salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney

general, budget and finance, business, economic development, and tourism, commerce and consumer affairs, Hawaiian home lands, health, human resources development, human services, labor and industrial relations, land and natural resources, [personnel services,] public safety, taxation, and transportation shall be \$85,302 a year; and

- (4) The salary of the adjutant general shall be \$85,302 a year[. If the]; provided that if this 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 4. Section 76-1, Hawaii Revised Statutes, is amended to read as follows:

"§76-1 Purpose of this chapter; statement of policy. It is the purpose of this chapter to establish in the State and each of the counties a system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees. It is also the purpose of this chapter to build a career service in government which will attract, select, and retain the best of our citizens on merit, free from coercive political influences, with incentives in the form of genuine opportunities for promotions in the service, which will eliminate unnecessary and inefficient employees, and which will provide technically competent and loyal personnel to render impartial service to the public at all times, and to render [such] that service according to the dictates of ethics and morality. In order to achieve these purposes it is the declared policy of the State that the personnel system hereby established be applied and administered in accordance with the following merit principles:

- (1) Equal opportunity for all regardless of race, sex, age, religion, color, ancestry, or politics. No person shall be discriminated against in any case because of any disability, in examination, appointment, reinstatement, reemployment, promotion, transfer, demotion, or removal, with respect to any position the duties of which, in the opinion of the director of [personnel services] human resources development may be efficiently performed by a person with such a disability; provided that the employment will not be hazardous to the appointee or endanger the health or safety of the appointee's co-workers or others[.];
- (2) Impartial selection of the ablest person for government service by means of competitive tests which are fair, objective, and practical[.];
- (3) Just opportunity for competent employees to be promoted within the service[.];
- (4) Reasonable job security for the competent employee, including the right of appeal from personnel actions[.];
- (5) Systematic classification of all positions through adequate job evaluation[.]; and
- (6) Proper balance in employer-employee relations between the people as the employer and employees as the individual citizens, to achieve a well trained, productive, and happy working force."

SECTION 5. Section 76-4, Hawaii Revised Statutes, is amended to read as follows:

“§76-4 Agreements of state and county departments and judiciary.

The state department of [personnel services,] human resources development, the judiciary, and the several departments of civil service of the counties may enter into agreements for the joint administration of [such] matters [as] that may be practicable and consistent with this chapter and chapter 77, including the conducting of examinations and other procedures for the establishment and use of eligible lists, reciprocity in the use of eligible lists, and the conducting of salary studies. All eligible lists established or used under the agreements shall be as fully effective as those established or used separately.”

SECTION 6. Section 76-5, Hawaii Revised Statutes, is amended to read as follows:

“§76-5 Service to judiciary and counties by State. Subject to the rules of the state department of [personnel services,] human resources development, the director of [state personnel services] human resources development may enter into agreements with the judiciary and any county to furnish services and facilities of the state department to the judiciary and any county in the administration of civil service including position classification in the judiciary and any county. The agreements may provide for the reimbursement to the State of the reasonable value of the services and facilities furnished, as determined by the director. The judiciary and all counties are authorized to enter into the agreements.”

SECTION 7. Section 76-12, Hawaii Revised Statutes, is amended to read as follows:

“§76-12 General powers and duties of director. The director of [personnel services] human resources development shall:

- (1) Represent the public interest in the improvement of [personnel] human resources administration in the civil service;
- (2) Assist in fostering the interest of institutions of learning and civic, professional,¹ and employee organizations in the improvement of [personnel] human resources standards in civil service;
- (3) Advise the governor on policies and problems concerning [personnel] human resources administration; and
- (4) Make investigations concerning the administration of [personnel] human resources policies in the civil service, including any matter respecting the enforcement or effect of this chapter or the rules [and regulations prescribed] adopted thereunder, or the action or failure to act of any officer or employee with respect thereto.”

SECTION 8. Section 76-13, Hawaii Revised Statutes, is amended to read as follows:

“§76-13 Specific duties and powers of director. The director of [personnel services] human resources development shall direct and supervise all the administrative and technical activities of the director’s department. In addition to other duties imposed upon the director by this chapter and chapter 77, the director shall:

- (1) Attend all meetings of the commission;
- (2) Establish and maintain a roster of all persons in the civil service in which shall be set forth, as to each, the class of position held, the

- salary or pay, any change in class, title, pay, or status, and any other necessary data;
- (3) Appoint [such] assistants and employees [as may be] necessary to assist the director in the proper performance of the director's duties and for which appropriations shall have been made;
 - (4) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee efficiency;
 - (5) Cooperate fully with appointing authorities in the administration of this chapter and chapter 77 in order to promote public service and establish conditions of service [which] that will attract and retain employees of character and capacity, and to increase efficiency and economy in governmental departments by the improvement of methods of [personnel] human resources administration with full recognition of the requirements and needs of management;
 - (6) Encourage and exercise leadership in the development of effective [personnel] human resources administration within the several departments in civil service and make available the facilities of the director's department to this end;
 - (7) Investigate from time to time the operation and effect of this chapter and chapter 77 and of the rules adopted thereunder;
 - (8) Develop and maintain a position classification plan; and
 - (A) Create and adjust classes of positions and adopt class specifications including title, description of typical duties and responsibilities, statement of training and experience, and other requirements to be met by applicants, covering all positions;
 - (B) Allocate each position and each newly created position to the appropriate class;
 - (C) Reallocate positions to recognize material changes in duties and responsibilities or to correct a previous action[. Reallocations]; provided that reallocations shall be made effective retroactively to the beginning of the pay period immediately following the date the application for reallocation was filed with the director or [such] any other date [as] provided by the rules [and regulations]; and provided further that an employee who is otherwise properly compensated shall not be required to make reimbursement of overpayment in salary when [such] the overpayment is due to salary increments or repricing actions nullified by the retroactive feature of a classification action; and provided further that the proper salary adjustment shall be made as of the first pay period following the action taken by the director; and
 - (D) Determine the status of employees holding positions affected by classification actions;
 - (9) Pay any claims against the State as required under chapter 386; and
 - (10) Perform any other lawful acts deemed by the director to be necessary or desirable to carry out the purposes and provisions of this part."

SECTION 9. Section 77-1, Hawaii Revised Statutes, is amended by amending the definition of "director" to read:

""Director" means the director of [personnel services] human resources

development in the case of the State, the administrative director of the courts in the case of the judiciary, the director of civil service in the case of the city and county of Honolulu, or the respective personnel directors in the case of the counties of Hawaii, Maui, and Kauai.”

SECTION 10. Section 77-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Salary ranges SC-1, SC-2, and SC-3 shall be utilized in the following manner:

- (1) Salary ranges SC-1, SC-2, and SC-3 may be utilized by the State, the judiciary, and counties for physician and psychiatrist positions;
- (2) No position shall be classified and paid in salary ranges SC-1, SC-2, and SC-3 unless specifically recommended by the director of [personnel services] human resources development and approved by the governor, recommended by the administrative director of the courts and approved by the chief justice, or recommended by the personnel director of a county and approved by the respective council and mayor;
- (3) There shall be at any given period not more than sixteen positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the State, not more than two positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the judiciary, and not more than eight positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by any county. Psychiatrist and physician positions shall be excluded from the above-mentioned totals; and
- (4) The director of [personnel services,] human resources development, the administrative director of the courts, and the personnel directors of each county shall report annually to the legislature as to the manner in which the positions assigned to salary ranges SC-1, SC-2, and SC-3 are being used.”

SECTION 11. Section 79-12, Hawaii Revised Statutes, is amended to read as follows:

“§79-12 Rules [and regulations]. The head of a department shall be required to provide all officers and employees under [his] the department head’s supervision with an annual statement showing their accumulated annual leave and sick leave. The director of [personnel services] human resources development of the State and the respective directors of personnel services for each of the political subdivisions of the State shall [promulgate] adopt rules [and regulations] relating to leaves of absences provided by this chapter, subject to the approval of the governor, in the case of the State, and the respective mayors and legislative bodies, in the case of the counties.”

SECTION 12. Section 80-4, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(1) The department of [personnel services] human resources development of the State and the departments of civil service in the political subdivisions of the State shall each be responsible for the proper administration of the provisions of this section in the respective jurisdictions. Rules [and regulations] for the

proper administration and regulation of hours of work and overtime compensation of officers and employees of the State and its municipal subdivisions shall be [promulgated] adopted by the respective personnel directors of the State and its municipal subdivisions, subject to the approval of the governor for the state rules, the mayor of the city and county of Honolulu for the rules of the city and county, and the chief executive officer for the rules of each of the counties of Hawaii, Kauai, and Maui. The rules [and regulations] shall [be such as to] obtain, so far as possible, uniformity and practicability in the application of this section."

SECTION 13. Section 81-2, Hawaii Revised Statutes, is amended to read as follows:

"§81-2 Advisory committee on training established. There is established an advisory committee on training to be made up of the director of [personnel services,] human resources development, the director of finance, the director of the personnel system of the judiciary, the directors of the personnel departments of the several counties, the dean of continuing education, and three members from among the exclusive representatives of collective bargaining units 1, 2, 3, 4, 9, 10, and 13. The committee shall meet at any time upon the call of the chairperson but at least once yearly to recommend program plans and strategies for an overall state training plan, assist in coordinating course offerings, and make recommendations for updating the state training manual as necessary; provided that the authority of the committee shall be advisory as opposed to policy-making. The director of [personnel services] human resources development shall chair the committee."

SECTION 14. Section 87-1, Hawaii Revised Statutes, is amended by amending the definition of "employee" to read:

- "(5) "Employee" means an employee or officer of the state or county government or the legislature,
- (A) Including:
- (i) An elective officer or a person who has served as a member of the legislature for at least ten years;
 - (ii) A per diem employee;
 - (iii) An officer or employee under an authorized leave of absence;
 - (iv) An employee of the Hawaii national guard although paid from federal funds;
 - (v) A retired member of the [employees] employees' retirement system, the county pension system, or the police, firefighters, or bandsmen pension system of the State or county;
 - (vi) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and
 - (vii) A person employed by contract for a period not exceeding one year, where the director of [either] human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the

service cannot be obtained through normal civil service recruitment procedures,

(B) But excluding:

- (i) A designated beneficiary of a retired member of the [employees] employees' retirement system, the county pension system, or the police, firefighters, or bandsmen pension system of the State or county;
- (ii) Except as allowed under (5)(A)(vii), a person employed temporarily on a fee or contract basis; and
- (iii) A person employed for less than three months and whose employment is less than one-half of a full-time equivalent position."

SECTION 15. Section 89-19, Hawaii Revised Statutes, is amended to read as follows:

"**[[§89-19]] Chapter takes precedence, when.** This chapter shall take precedence over all conflicting statutes concerning this subject matter and shall preempt all contrary local ordinances, executive orders, legislation, or rules[, or regulations] adopted by the State, a county, or any department or agency thereof, including the departments of human resources development or of personnel services or the civil service commission."

SECTION 16. Section 89C-3, Hawaii Revised Statutes, is amended to read as follows:

"§89C-3 Adjustments for officers and employees covered by chapter 77. The state director of human resources development and the directors of personnel services of the [State and] counties who shall serve as representatives of their respective chief executives, and the administrative director of the courts who shall serve as the representative of the chief justice, shall decide by majority vote on the adjustments to be made under this chapter for officers and employees covered under chapter 77. [Such] Any adjustments and their effective dates shall be uniform among the jurisdictions."

SECTION 17. Section 89C-4, Hawaii Revised Statutes, is amended to read as follows:

"§89C-4 Adjustments for other officers and employees. (a) The respective representatives of the State, counties, and the judiciary shall submit to their respective chief executives and to the chief justice, recommendations on the adjustments to be made under this chapter for other officers and employees within their respective personnel systems. The conference of personnel directors shall confer prior to the submittal of any recommended adjustment by each director to the director's chief executive or by the administrative director of the courts to the chief justice. [Such] Any adjustments and their effective dates shall be uniform, if practicable, among the jurisdictions.

(b) The superintendent of education and the president of the University of Hawaii shall submit to the board of education and the board of regents, respectively, recommendations on the adjustments to be made under this chapter for officers and employees within their respective personnel systems. The superintendent and the president shall confer with the state director of [personnel services]

human resources development prior to the submittal of any recommended adjustment. Any adjustments adopted by the board of education or the board of regents which presently require the approval of the governor shall remain subject to the approval of the governor.

(c) The auditor, the director of the legislative reference bureau, and the ombudsman shall decide by majority vote on the adjustments to be made under this chapter for officers and employees within their respective offices, including employees of the state ethics commission which is administratively within the office of the auditor. The auditor, the director of the legislative reference bureau, and the ombudsman shall confer with the state director of [personnel services] human resources development prior to voting on any adjustment. [Such] Any adjustments and their effective dates shall be uniform for employees under sections 23-8, 23G-2, 84-35, and 96-3."

SECTION 18. Section 89C-6, Hawaii Revised Statutes, is amended to read as follows:

"§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 [or regulations] adopted by the State or a county, or any department, agency, board, or commission thereof, including the departments of human resources development or of personnel services or the civil service commissions."

SECTION 19. Act 157, Session Laws of Hawaii 1993, is amended by amending section 79- of section 2 to read as follows:

"§79- Leave sharing program. (a) The chief executive of the State or a county may establish a program to allow employees to donate accumulated vacation leave credits to another employee within the same jurisdiction who has a serious personal illness or injury. The program shall allow employees who are not entitled to vacation leave to donate accumulated sick leave credits.

(b) The director of human resources development or of personnel services of a jurisdiction desiring to establish a leave sharing program shall adopt rules pursuant to chapter 91 governing donors, recipients, and an approval process that ensures fair treatment and freedom from coercion of employees and imposes no undue hardship on the employer's operations. At a minimum, the rules shall require that an eligible recipient must have:

- (1) No less than six months of service within the respective jurisdiction;
- (2) Exhausted or is about to exhaust all vacation leave, sick leave, and compensatory time credits;
- (3) A personal illness or injury certified by a competent medical examiner as being serious and the cause of the recipient's inability to work; provided that, the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted; and
- (4) No disciplinary record of sick leave abuse within the past two years."

SECTION 20. Act 329, Session Laws of Hawaii 1991, is amended by amending section 1 to read as follows:

“SECTION 1. There is established a commission to be known as the Martin Luther King, Jr., commission, which shall consist of thirteen members to be appointed by the governor in the manner provided by section 26-34. Nine members shall be appointed from among the following categories, provided that at least one member shall be appointed from each category:

- (1) Ethnic groups;
- (2) Religious groups;
- (3) Labor;
- (4) Business;
- (5) Education;
- (6) Government; and
- (7) Community service.

In addition, the governor shall appoint one member from each of the four counties.

The term of all appointments shall be four years. The governor shall appoint the chairperson of the commission from among the members.

The members of the commission shall serve without compensation but shall be entitled to reimbursement for expenses, including travel expenses, necessary for the performance of their duties.

The commission shall coordinate all commission sponsored arrangements for the annual celebration generally observed throughout Hawaii on the third Monday of January to commemorate Martin Luther King, Jr. The commission may assist in coordinating events not sponsored by the commission.

The commission is placed within the department of [personnel services] human resources development for administrative purposes.”

SECTION 21. Sections 23-8, 23-12, 23G-2, 26-2, 76-3, 76-10, 76-11, 76-11.5, 76-14, 76-15, 76-16, 76-17, 76-18, 76-19, 76-20, 76-21, 76-22, 76-23, 76-24, 76-25, 76-28, 76-30, 76-35, 76-36, 76-37, 76-39, 76-41, 76-42, 76-43, 76-48, 76-49, 76-52, 76-53, 76-54, 76-56, 76-78, 78-1, 78-51, 79-31, 80-21, 81-1, 81-21, 82-5, 82-6, 83-2, 83-3, 83-4, 85-33, 85-38, 85-47, 88E-3, 88E-4, 88E-5, 90-3, 92F-19(a)(10), 96-3, 296-15.6, 304-13, 314-15, 314-16, 314-17, 348E-2, 348E-6, and 367-2, Hawaii Revised Statutes, are amended by replacing every reference to the “director of personnel services” or like term with “director of human resources development” or like term and by replacing every reference to the “department of personnel services” or like term with “department of human resources development” or like term.

SECTION 22. 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 1994, 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 human resources development” 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 23. Statutory material to be repealed is bracketed. New statutory material is underscored.

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SECTION 24. This Act shall take effect on July 1, 1994.

(Approved May 6, 1994.)

Notes

1. Comma should be underscored.
2. Lead language missing.