

ACT 16

H.B. NO. 2378

A Bill for an Act Relating to the Sovereign Immunity of Boards and Commissions.

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

SECTION 1. Section 26-35, Hawaii Revised Statutes, is amended to read as follows:

“§26-35 Administrative supervision of boards and commissions. (a) Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter:

- (1) The head of the department shall represent the board or commission in communications with the governor and with the legislature.
- (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department.

- (3) All rules and regulations adopted by the board or commission shall be subject to the approval of the governor.
- (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws.
- (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department.
- (6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission.
- (7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department.
- (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.

(b) Every board or commission established or placed within a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department shall be considered an arm of the State and shall enjoy the same sovereign immunity available to the State."

SECTION 2. Section 201B-5, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~201B-5] Exemption of Hawaii tourism authority from administrative supervision of boards and commissions. Notwithstanding any law to the contrary, the authority shall be exempt from section 26-35 with the exception of section [~~26-35(2);~~] 26-35(a)(2), (3), (7) and (8)."

SECTION 3. Section 201G-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The corporation shall employ, exempt from chapter 76 and section [~~26-35(4);~~] 26-35(a)(4), an executive director and an executive assistant. Effective July 1, 1998, the salary of the executive director shall be set by the governor within the range from \$72,886 to \$77,966 a year. Effective July 1, 1998, the salary of the executive assistant shall be set by the governor within the range from \$65,597 to \$70,169 a year. The corporation may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation may also employ officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, not subject to chapter 76, when in the determination of the corporation, the services to be performed are unique and essential to the execution of the functions of the corporation. The corporation may call upon the attorney general for legal services as it may require. The corporation may delegate to one or more of its agents or employees the powers and duties as it deems proper."

SECTION 4. Section 206M-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board shall be exempt from section [~~26-35(4)~~] 26-35(a)(4) and (5)."

SECTION 5. Section 323F-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the Hawaii health systems corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be placed within the department of health for the administrative purposes specified in section ~~26-35(6)~~ 26-35(a)(6) only.”

SECTION 6. Section 323F-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation board may appoint, exempt from chapter 76 and section ~~26-35(4)~~ 26-35(a)(4), a chief executive officer of the corporation whose salary shall be set by the corporation board. The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76 and 89, to work directly for the chief executive officer and the corporate board.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 23, 2004.)