

**ACT 300**

S.B. NO. 3009

A Bill for an Act Relating to Civil Service Exempt Employees.

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

SECTION 1. The purpose of this Act is to comply with Act 253, Session Laws of Hawaii 2000, which placed restrictions on the creation of civil service exempt positions and required the review of exempt positions annually to determine whether they should remain exempt or be converted to civil service status.

SECTION 2. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

**“§6E-3 Historic preservation program.** There is established within the department a division to administer a comprehensive historic preservation program, which shall include but not be limited to the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State's historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year, recommendations for changes in the state plan or future programs relating to historic preservation, and an accounting of all income, expenditures, and the fund balance of the Hawaii historic preservation special fund;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter [~~without regard to~~ which may be in accordance with chapter 76];
- (15) The charging of fees to at least partially defray the costs of administering sections 6E-3(13), 6E-8, and 6E-42 of this chapter;
- (16) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (17) Development and adoption, in consultation with the office of Hawaiian affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments.”

SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to

chapter 485 shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers~~[-, investigators,]~~ and attorneys~~[-, accountants, and other necessary personnel to implement this subsection]~~. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;

- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15); or
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 4. Section 28-10.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general may employ, without regard to chapter 76, and at pleasure dismiss, an administrator to oversee and carry out the resource coordination functions of the department set forth in subsection (a). In addition, the attorney general may employ, ~~[without regard to]~~ in accordance with chapter 76, ~~[and at pleasure dismiss]~~ other support staff necessary for the performance of the resource coordination functions.”

SECTION 5. Section 28-10.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general may employ, without regard to chapter 76, and at the attorney general’s pleasure dismiss, an administrator ~~[and]~~ to oversee and carry out the programs, projects, and activities on the subject of crime, as set forth in subsection (a). The attorney general may also employ other support staff, in accordance with chapter 76, necessary for the performance or coordination of the programs, projects, and activities on the subject of crime.”

SECTION 6. Section 28-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general may also appoint persons whose primary function ~~[will]~~ shall be to provide security coverage for the governor and other public officials of this State, to be known as security investigators, who shall have and may exercise all the powers and authority of the investigators appointed under subsection (a). When not providing security coverage for the governor or other public officials, the security investigators ~~[will]~~ shall conduct other investigations as directed by the attorney general. The positions of security investigators ~~[shall]~~ may be exempt from chapter 76.”

SECTION 7. Section 174C-5, Hawaii Revised Statutes, is amended to read as follows:

“**§174C-5 General powers and duties.** The general administration of the state water code shall rest with the commission on water resource management. In addition to its other powers and duties, the commission:

- (1) Shall carry out topographic surveys, research, and investigations into all aspects of water use and water quality;
- (2) Shall designate water management areas for regulation under this chapter where the commission, after the research and investigations mentioned in paragraph (1), shall consult with the appropriate county council and county water agency, and after public hearing and pub-

- lished notice, finds that the water resources of the areas are being threatened by existing or proposed withdrawals of water;
- (3) Shall establish an instream use protection program designed to protect, enhance, and reestablish, where practicable, beneficial instream uses of water in the State;
  - (4) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons;
  - (5) May enter, after obtaining the consent of the property owner, at all reasonable times upon any property other than dwelling places for the purposes of conducting investigations and studies or enforcing any of the provisions of this code, being liable, however, for actual damage done. If consent cannot be obtained, reasonable notice shall be given prior to entry;
  - (6) Shall cooperate with federal agencies, other state agencies, county or other local governmental organizations, and all other public and private agencies created for the purpose of utilizing and conserving the waters of the State, and assist these organizations and agencies in coordinating the use of their facilities and participate in the exchange of ideas, knowledge, and data with these organizations and agencies. For this purpose the commission shall maintain an advisory staff of experts;
  - (7) Shall prepare, publish, and issue ~~such~~ printed pamphlets and bulletins as the commission deems necessary for the dissemination of information to the public concerning its activities;
  - (8) May appoint and remove agents ~~and employees~~, including hearings officers~~, specialists,~~ and consultants, necessary to carry out the purposes of this chapter, who may be engaged by the commission without regard to the requirements of chapter 76 and section 78-1;
  - ~~(9)~~ May hire employees in accordance with chapter 76;
  - ~~[(9)]~~ (10) May acquire, lease, and dispose of such real and personal property as may be necessary in the performance of its functions, including the acquisition of real property for the purpose of conserving and protecting water and water related resources as provided in section 174C-14;
  - ~~[(10)]~~ (11) Shall identify, by continuing study, those areas of the State where salt water intrusion is a threat to fresh water resources and report its findings to the appropriate county mayor and council and the public;
  - ~~[(11)]~~ (12) Shall provide coordination, cooperation, or approval necessary to the effectuation of any plan or project of the federal government in connection with or concerning the waters of the State. The commission shall approve or disapprove any federal plans or projects on behalf of the State. No other agency or department of the State shall assume the duties delegated to the commission under this paragraph; except that the department of health shall continue to exercise the powers vested in it with respect to water quality, and except that the department of business, economic development, and tourism shall continue to carry out its duties and responsibilities under chapter 205A;
  - ~~[(12)]~~ (13) Shall plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources, based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water;
  - ~~[(13)]~~ (14) Shall catalog and maintain an inventory of all water uses and water resources; and

~~[(14)]~~ (15) Shall determine appurtenant water rights, including quantification of the amount of water entitled to by that right, which determination shall be valid for purposes of this chapter.”

SECTION 8. Section 202-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The workforce development council shall appoint and fix the compensation of an executive director, who shall be exempt from chapter 76, and may employ ~~[such]~~ any other personnel as it deems advisable within chapter 76.”

SECTION 9. Section 342G-12.5, Hawaii Revised Statutes, is amended to read as follows:

~~“§342G-12.5 Recycling coordinator. There is established a position of assistant to the coordinator of the office of solid waste management to be known as the recycling coordinator. The position [shall] may be appointed by the director [without regard to] in accordance with chapter 76. [Effective July 1, 2005, the recycling coordinator shall be paid a salary set by the appointing authority that shall not exceed fifty per cent of the salary of the director of human resources development. The recycling coordinator shall be included in any benefit program generally applicable to the officers and employees of the State.]”~~

SECTION 10. Section 346D-8, Hawaii Revised Statutes, is amended to read as follows:

~~“§346D-8 Personnel exempt. The department of human services may employ civil service [and non-civil service] personnel in accordance with chapter 76 to service the waiver programs. [The personnel employed for the waiver programs may be exempt from chapter 76, as deemed appropriate by the department of human services.]”~~

SECTION 11. Section 371K-3, Hawaii Revised Statutes, is amended to read as follows:

**“§371K-3 General functions, duties, and powers of the executive director.** The executive director shall:

- (1) Serve as the principal official in state government responsible for the coordination of programs for the needy, poor, and disadvantaged persons, refugees, and immigrants;
- (2) Oversee, supervise, and direct the performance by subordinates of activities in such areas as planning, evaluation, and coordination of programs for disadvantaged persons, refugees, and immigrants and development of a statewide service delivery network;
- (3) Assess the policies and practices of public and private agencies impacting on the disadvantaged and conduct advocacy efforts on behalf of the disadvantaged, refugees, and immigrants;
- (4) Devise and recommend legislative and administrative actions for the improvement of services for the disadvantaged, refugees, and immigrants;
- (5) Serve as a member of advisory boards and panels of state agencies in such areas as child development programs, elder programs, social services programs, health and medical assistance programs, refugee assistance programs, and immigrant services programs;

- (6) Administer funds allocated for the office of community services; and apply for, receive, and disburse grants and donations from all sources for programs and services to assist the disadvantaged, refugees, and immigrants;
- (7) Adopt, amend, and repeal rules pursuant to chapter 91 for purposes of this chapter;
- (8) Retain such staff as may be necessary for the purposes of this chapter, who ~~shall~~ may be exempt from chapter 76;
- (9) Contract for ~~such~~ services as may be necessary for the purposes of this chapter;
- (10) Orient members of the advisory council to the goals, functions, and programs of the office; and
- (11) Seek the input of council members on all matters pertaining to the functions of the office.”

SECTION 12. Section 373C-33, Hawaii Revised Statutes, is amended to read as follows:

“**§373C-33 Personnel.** The department of labor and industrial relations may establish positions and hire necessary personnel for the purposes of this part ~~[without regard to]~~ in accordance with chapter 76.”

SECTION 13. Section 383-128, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

“(k) The director may establish positions and hire necessary personnel to establish and administer the employment and training fund ~~[without regard to]~~ in accordance with chapter 76.”

SECTION 14. Section 412:2-109, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may appoint financial institution examiners, ~~[not subject to]~~ in accordance with chapter 76, who shall examine the affairs, transactions, accounts, records, documents, and assets of financial institutions. The commissioner also may appoint administrative support personnel, ~~[not subject to]~~ in accordance with chapter 76, who shall assist and support the examiners. The commissioner may pay the salaries of the financial institution examiners and administrative support personnel from the compliance resolution fund.”

SECTION 15. Section 440G-12, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The director may appoint, without regard to chapter 76, an administrator~~[, engineers, financial analysts, and other technical staff as may be necessary]~~ and ~~[may appoint]~~ one or more attorneys for purposes of enforcing this chapter. The director shall define their powers and duties and fix their compensation. The director may also appoint professional, clerical, stenographic, and other staff as may be necessary for the proper administration and enforcement of this chapter subject to chapter 76.”

SECTION 16. Section 802-12, Hawaii Revised Statutes, is amended to read as follows:

“§802-12 Organization of office; assistance. Subject to the approval of the defender council, the state public defender may employ assistant state public defenders and ~~[such]~~ other employees, including investigators, as may be necessary to discharge the function of the office. ~~[The assistant]~~ Assistant state<sup>1</sup> public defenders shall be qualified to practice before the supreme court of this State. ~~[They]~~ Assistant state public defenders shall be appointed without regard to chapter 76~~;~~ and shall serve at the pleasure of the state public defender. All other employees may be appointed in accordance with chapter 76. An assistant state public defender may be employed on a part-time basis, and when so employed, the assistant public defender may engage in the general practice of law, other than in the practice of criminal law.”

SECTION 17. Act 88, Session Laws of Hawaii 2001, is amended by amending section 4 to read as follows:

“SECTION 4. Effective July 1, 2003, all positions and employees of the Hawaii public employees health fund who are subject to ~~[chapters]~~ chapter 76, Hawaii Revised Statutes, shall be transferred to the Hawaii employer-union health benefits trust fund. All officers and employees 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 the state personnel laws and this Act.

All civil service positions and incumbents of the Hawaii public employees health fund transferred by this Act shall remain in the civil service and subject to ~~[chapters]~~ chapter 76 ~~[and 77]~~, Hawaii Revised Statutes; provided that in the event the civil service administrator position becomes vacant prior to July 1, 2003, its successor shall be appointed pursuant to section 87-28, Hawaii Revised Statutes, as amended in section 2 of this Act. ~~[When such positions are vacated on or after July 1, 2003, the positions shall be exempt from civil service and prospective appointments shall be made pursuant to section 1 of this Act.]~~

No officer or employee of the State having tenure 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 the applicable civil service and compensation laws.

In the event that an office or position held by an officer or employee having tenure is abolished, 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 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.”

SECTION 18. (a) Due to the complexities of converting filled positions in multiple departments from exempt to civil service positions, the department of human resources development and Hawaii government employees association shall work collaboratively to establish a logical, workable, and fair process for converting positions in various departments, which are currently exempt from chapter 76, Hawaii Revised Statutes, to civil service positions.

(b) To establish a logical, workable, and fair process for converting positions in various departments from exempt to civil service positions, the department of human resources development and the Hawaii government employees association shall consider but not be limited to the following factors:



- (1) Whether the criteria and statutory authority used to exempt positions under section 76-16(b)(17), Hawaii Revised Statutes, from civil service are no longer needed;
- (2) Whether the position has a confidential relationship between an elected official, department head, or policy making level staff;
- (3) Whether the position directs programs defined by statute or by departmental, board, or commission policy or possesses significant authority to bind the agency to a course of action; and
- (4) Whether the position involves substantial responsibility for formulating basic departmental or executive policy or involves directing and controlling program operations of a department or division of a department.

SECTION 19. An employee who occupies an exempt position for at least one year at the time it is replaced by a civil service position through the process established by this Act shall have a one-time election to remain exempt from civil service. Once that position is vacated by the employee, the position shall be converted to civil service.

SECTION 20. (a) An employee who occupies an exempt position for at least one year at the time it is replaced by a civil service position through the process established by this Act shall be appointed to the civil service position that replaces the employee's exempt position; provided that the employee meets the minimum qualification requirements and any other applicable public employment requirements.

(b) If the employee is appointed to the civil service position, the employee's compensation shall be determined according to the applicable collective bargaining agreement or supplemental agreement covering exempt employees without loss of seniority, prior service credit, accrued vacation, accrued sick leave, or other employee benefits.

SECTION 21. The department of human resources development shall submit, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2007, a report of the number of exempt positions that were converted to civil service positions during the previous twelve months. The report shall include but not be limited to:

- (1) When the position was established;
- (2) The purpose of the position;
- (3) Rationale for the conversion; and
- (4) How many exempt positions remain in each state department after the conversions.

SECTION 22. There is appropriated out of the general revenues of the State of Hawaii the sum of \$110,064, or so much thereof as may be necessary for fiscal year 2006-2007, for two personnel management specialist V positions for the department of human resources development.

SECTION 23. The sum appropriated shall be expended by the department of human resources development for the purposes of this Act.

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

## **ACT 300**

**SECTION 25.** This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

### **Note**

1. "State" should be underscored.