

## ACT 48

H.B. NO. 3254

A Bill for an Act Relating to Oaths of Office.

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

SECTION 1. Article XVI, section 4, of the Hawaii constitution, mandating that public officers take and subscribe to an oath of office, was amended in 1992 to reserve that requirement to the specific offices of the governor, lieutenant governor, members of the legislature, members of the board of education, members of the national guard, state and county employees possessing police powers, district court judges, and office holders whose appointment requires the advice and consent of the state senate.

After ratification of the constitutional amendment, the legislature further clarified its position to restrict the loyalty oath requirement by repealing part II of chapter 85, Hawaii Revised Statutes, that set forth the statutory requirements and administrative procedures related to the loyalty oath as a general requirement for public employment.

The purpose of this Act is to amend various provisions of the Hawaii Revised Statutes that predated the constitutional amendment and that still contain a loyalty oath requirement for appointment or employment of public officers and employees who are not part of the constitutionally required class of employees.

SECTION 2. Section 28-8, Hawaii Revised Statutes, is amended to read as follows:

**“§28-8 First deputy attorney general; other deputies.** (a) The attorney general shall appoint, and at the attorney general’s pleasure remove, a first deputy

attorney general and other deputies and law clerks as the exigencies of the public service may require, and shall be responsible for all of the acts of the first deputy attorney general, other deputies, and law clerks. They shall act under the direction of the attorney general and shall perform duties as the attorney general may require regardless of the source of funding for their compensation and notwithstanding any law to the contrary, except that the attorney general shall not require the performance of duties that would violate the terms of an applicable funding source or that would be in contravention of a federal requirement, restriction, or condition. The first deputy attorney general and other deputies, subject to the attorney general's directions, may perform or exercise any and all duties or powers by law required of or conferred upon the attorney general.

(b) The attorney general may appoint and, by contract, retain the services of special deputies to perform such duties and exercise such powers as the attorney general may specify in their several appointments. The special deputies shall serve at the pleasure of the attorney general. At the option of the attorney general, special deputies may be compensated on a fixed-price basis, an hourly rate basis, with or without a fixed cap, or, if a special deputy has been appointed to represent the State in an action by the State pursuant to section 661-10, through a contingent fee arrangement to be specified in the contract and payable out of all sums the special deputy recovers for the State by judgment, order, or settlement.

~~[(e) The first deputy attorney general and all of the other deputies shall take the oath required of other public officers.]~~

SECTION 3. Section 128-16, Hawaii Revised Statutes, is amended to read as follows:

**“§128-16 Status of personnel other than regular officers and employees.** All persons, including volunteers whose services have been accepted by authorized persons, ~~[shall,]~~ while engaged in the performance of duty pursuant to this chapter, including duty performed during periods of training, shall be deemed state employees or employees of a political subdivision, as the case may be, and shall have the powers, duties, rights, and privileges of such in the performance of their duties, except as, pursuant to this chapter, may be prescribed by or under the authority of the governor or the political subdivision; ~~provided that volunteers serving without compensation shall be subject to chapter 35, part II only if and to the extent that the governor shall so provide.]~~”

SECTION 4. Section 128-21, Hawaii Revised Statutes, is amended to read as follows:

**“§128-21 Civil defense personnel’s oath.** ~~[In order to]~~ To comply with the Federal Civil Defense Act of 1950 each person appointed to serve in an organization for civil defense who is so required by the Federal Civil Defense Act of 1950, ~~[shall,]~~ before entering upon the person’s duties, shall take ~~[an]~~ such oath ~~[in writing before a person authorized to administer oaths, substantially as follows:~~

~~“I,....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.~~

~~And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of the (name of civil defense organization), I will~~

~~not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.”~~

~~Provided that to the extent permitted by the Federal Civil Defense Act of 1950 the governor by rule may provide for additional time for the taking of the oath, where compliance with the requirement before the person so required enters upon the person’s duties is or may be impracticable; for like reasons the governor similarly may provide as to the oath required by part II of chapter 85.~~

~~The governor by rule may relieve persons, or classes of persons, subject to the requirements imposed by this section, from compliance with part II of chapter 85.] as may be required by federal law.”~~

SECTION 5. Section 281-11, Hawaii Revised Statutes, is amended to read as follows:

**“§281-11 County liquor commissions and liquor control adjudication boards; qualifications; compensation.** (a) A liquor commission or liquor control adjudication board, consisting of not less than five members, no more than the minimum required for a quorum of whom shall belong to the same political party at the time of appointment, may be created for each of the counties. The elected executive head of each county may nominate, and by and with the advice and consent of the legislative body of the county, shall appoint the members of the commissions and boards. The elected executive head of each county, by and with the advice and consent of the legislative body of the county, may remove from office any of the members. The commission or board shall designate one of its members as chairperson. Each member shall be a citizen of the United States and shall have resided in the county for which appointed for at least three years immediately preceding the date of the member’s appointment.

(b) Upon the expiration of the term of each commissioner or board member, the commissioner’s or board member’s successor shall be appointed for a term to expire five years from the date of the expiration of the preceding term.

The tenure in office of every commissioner or board member shall be for the terms provided and until their successors are duly appointed and qualified.

Any vacancy shall be filled by appointment for the remainder of the unexpired term. No person shall be a member of any commission or board who is or becomes engaged, or is directly or indirectly interested in any business for the manufacture or sale of liquor or who advocates or is or becomes a member of, or is identified or connected with, any organization or association which advocates prohibition, or who is an elected officer of the state or county government or who presents oneself as a candidate for election to any public office during the term of the person’s appointment hereunder. This provision shall be enforced by the elected executive head of the county by the removal of the disqualified member whenever such disqualifications shall appear.

(c) The amount of compensation and reasonable expenses for travel and other costs necessarily incident to the discharge of the members’ duties shall be established by each county.

~~[(d) Each member of the commission or board, before entering upon the duties of the member’s office, shall take and subscribe to an oath that the member will faithfully perform such duties according to law, which written oath shall be filed with the elected executive head of each county.]”~~

SECTION 6. Section 382-4, Hawaii Revised Statutes, is amended to read as follows:

**“§382-4 Employees under government operation.** In operating the plant and facilities of each company the governor, so far as possible and to the extent employees are needed, shall employ the personnel employed by the company upon the seizure and taking of possession thereof or immediately prior to the disruption of service by the company, including employees on strike or locked out, if the disruption is due to a strike or lockout. Persons so employed by the governor or otherwise employed by the governor shall not by reason of such employment be or become entitled to civil service, retirement, vacation, or other benefits provided by law for other employees of the State, nor shall they be required to possess the qualifications of other government employees, and no person shall be ineligible for employment by reason of the fact that the person is not a citizen of the United States or a resident of the State; provided that if it is necessary to employ persons who were not theretofore employed by the company, [~~sueh~~] those persons shall possess the residence qualifications prescribed by section 78-1[; provided further that all citizens employed or engaged by the governor under the provisions of this chapter shall subscribe to the oath or affirmation prescribed by sections 85-31 to 85-48 and all noncitizens shall subscribe to the following oath or affirmation:

~~“I.....do solemnly swear and declare, on oath, that I do not hold membership in, pay assessments, dues, or make contributions to any organization or any political party which advocates the overthrow of the constitutional form of government of the United States of America or any change in the government of the United States of America, except as provided by its Constitution; that I take this obligation freely, without any mental reservation or purpose of evasion; So help me God.”~~

~~Upon a showing as to the sincerity of anyone claiming that one is unwilling to take the above prescribed oath only because of religious beliefs one is unwilling to be sworn, one may be permitted, in lieu of the oath, to make one’s solemn affirmation which shall be in the same form as the oath except that the words “sincerely and truly affirm” shall be substituted for the word “swear” and the phrases “on oath” and “So help me God” shall be omitted].~~

The salaries and wage rates of the persons employed by the State shall be the same as those which existed in the industry immediately prior to the disruption of service occasioning the emergency. There shall be no deductions from such salaries and wages except as authorized by law in the case of other state employees. The hours of employment shall be the same as existed in the industry immediately prior to the disruption of service and insofar as possible the other conditions of employment shall be the same as then existed, and neither the governor nor the designated agency shall have authority to enter into negotiations with any such company or with any labor organization for a collective bargaining contract with respect to wages, hours, and other terms and conditions of employment in the industry. All services performed in the employ of the State in government operations under this chapter shall constitute employment for the purposes of chapters 383 and 386 and to the extent of the services the State shall be deemed an employer within the meaning of such chapters and shall make the contributions required of a new employer as prescribed by chapter 383.”

SECTION 7. Section 431:2-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) There shall be a chief deputy commissioner, who shall be subject to chapter 76. The chief deputy commissioner shall have the power to perform any act or duty assigned by the commissioner[, and shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the].~~ The certificate

of the chief deputy commissioner's appointment [and] shall be filed in the office of the lieutenant governor."

SECTION 8. Section 485-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner of securities shall employ from time to time such other officers, attorneys, clerks, and employees[;] as are necessary for the administration of this chapter. They shall perform such duties as the commissioner assigns to them and their compensation, and the compensation of the deputies herein provided for, shall be fixed by the commissioner with the approval of the governor, subject to chapter 76. ~~[The commissioner and deputies and each of the employees shall take and subscribe and file the oath of office prescribed by law.]~~

The commissioner, deputies, or any person appointed or employed by the commissioner under this subsection shall be paid, in addition to their salary or compensation when required to travel on official duties, the transportation cost, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of the duties required by this chapter or performed by the direction of the commissioner."

SECTION 9. Section 502-2, Hawaii Revised Statutes, is repealed.

SECTION 10. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved April 27, 2006.)

**Note**

1. Edited pursuant to HRS §23G-16.5.