

JAN 23 2014

A BILL FOR AN ACT

RELATING TO CIVIL SERVICE EXEMPTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The major litigation unit of the department of
2 the attorney general assists the attorney general in the proper
3 and responsive handling and disposition of litigation cases that
4 are significant and substantial in cost and exposure, and may
5 involve sensitive and confidential matters. The staff members
6 supporting the deputy attorneys general in the major litigation
7 unit are entrusted with sensitive and confidential information,
8 and are also expected to provide services under unconventional
9 work conditions, such as performing work assignments outside of
10 the class of work or irregular work schedules that mirror
11 private law practices. To ensure that individuals are appointed
12 who understand and accept the nature of the job duties and
13 responsibilities and the unconventional work conditions, and to
14 ensure the full support and accountability of these employees,
15 the appointment and dismissal of major litigation assistants
16 must be at the discretion of the attorney general. Similar to
17 the exempt staff who serve the attorney general's top level
18 managers, it is in the best interest of the State to exempt the

1 staff of the major litigation unit from the civil service and
2 coincide with the term of appointment with the term of the
3 attorney general.

4 SECTION 2. Section 28-8, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The attorney general shall appoint, and at the
7 attorney general's pleasure remove, a first deputy attorney
8 general and other deputies and law clerks as the exigencies of
9 the public service may require, and shall be responsible for all
10 of the acts of the first deputy attorney general, other
11 deputies, and law clerks. They shall act under the direction of
12 the attorney general and shall perform duties as the attorney
13 general may require regardless of the source of funding for
14 their compensation and notwithstanding any law to the contrary,
15 except that the attorney general shall not require the
16 performance of duties that would violate the terms of an
17 applicable funding source or that would be in contravention of a
18 federal requirement, restriction, or condition. The first
19 deputy attorney general and other deputies, subject to the
20 attorney general's directions, may perform or exercise any and
21 all duties or powers by law required of or conferred upon the
22 attorney general. The attorney general may also appoint,

1 without regard to chapter 76, one secretary and two legal
2 assistants, for major litigation matters."

3 SECTION 3. Section 76-16, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The civil service to which this chapter applies shall
6 comprise all positions in the State now existing or hereafter
7 established and embrace all personal services performed for the
8 State, except the following:

- 9 (1) Commissioned and enlisted personnel of the Hawaii
10 [~~National Guard~~] national guard as such, and positions
11 in the Hawaii [~~National Guard~~] national guard that are
12 required by state or federal laws or regulations or
13 orders of the [~~National Guard~~] national guard to be
14 filled from those commissioned or enlisted personnel;
- 15 (2) Positions filled by persons employed by contract where
16 the director of human resources development has
17 certified that the service is special or unique or is
18 essential to the public interest and that, because of
19 circumstances surrounding its fulfillment, personnel
20 to perform the service cannot be obtained through
21 normal civil service recruitment procedures. Any such
22 contract may be for any period not exceeding one year;

- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one

1 secretary or clerk for each justice of the supreme
2 court, each judge of the intermediate appellate court,
3 and each judge of the circuit court; one secretary for
4 the judicial council; one deputy administrative
5 director of the courts; three law clerks for the chief
6 justice of the supreme court, two law clerks for each
7 associate justice of the supreme court and each judge
8 of the intermediate appellate court, one law clerk for
9 each judge of the circuit court, two additional law
10 clerks for the civil administrative judge of the
11 circuit court of the first circuit, two additional law
12 clerks for the criminal administrative judge of the
13 circuit court of the first circuit, one additional law
14 clerk for the senior judge of the family court of the
15 first circuit, two additional law clerks for the civil
16 motions judge of the circuit court of the first
17 circuit, two additional law clerks for the criminal
18 motions judge of the circuit court of the first
19 circuit, and two law clerks for the administrative
20 judge of the district court of the first circuit; and
21 one private secretary for the administrative director
22 of the courts, the deputy administrative director of
23 the courts, each department head, each deputy or first

1 assistant, and each additional deputy, or assistant
2 deputy, or assistant defined in paragraph (16);

3 (10) First deputy and deputy attorneys general, the
4 administrative services manager of the department of
5 the attorney general, one secretary for the
6 administrative services manager, one secretary and two
7 legal assistants for the major litigation unit, an
8 administrator and any support staff for the criminal
9 and juvenile justice resources coordination functions,
10 and law clerks;

11 (11) (A) Teachers, principals, vice-principals, complex
12 area superintendents, deputy and assistant
13 superintendents, other certificated personnel,
14 not more than twenty noncertificated
15 administrative, professional, and technical
16 personnel not engaged in instructional work;
17 (B) Effective July 1, 2003, teaching assistants,
18 educational assistants, bilingual/bicultural
19 school-home assistants, school psychologists,
20 psychological examiners, speech pathologists,
21 athletic health care trainers, alternative school
22 work study assistants, alternative school
23 educational/supportive services specialists,

1 alternative school project coordinators, and
2 communications aides in the department of
3 education;

4 (C) The special assistant to the state librarian and
5 one secretary for the special assistant to the
6 state librarian; and

7 (D) Members of the faculty of the University of
8 Hawaii, including research workers, extension
9 agents, personnel engaged in instructional work,
10 and administrative, professional, and technical
11 personnel of the university;

12 (12) Employees engaged in special, research, or
13 demonstration projects approved by the governor;

14 (13) (A) Positions filled by inmates, patients of state
15 institutions, persons with severe physical or
16 mental disabilities participating in the work
17 experience training programs;

18 (B) Positions filled with students in accordance with
19 guidelines for established state employment
20 programs; and

21 (C) Positions that provide work experience training
22 or temporary public service employment that are
23 filled by persons entering the workforce or

1 persons transitioning into other careers under
2 programs such as the federal Workforce Investment
3 Act of 1998, as amended, or the Senior Community
4 Service Employment Program of the Employment and
5 Training Administration of the United States
6 Department of Labor, or under other similar state
7 programs;

8 (14) A custodian or guide at Iolani Palace, the Royal
9 Mausoleum, and Hulihee Palace;

10 (15) Positions filled by persons employed on a fee,
11 contract, or piecework basis, who may lawfully perform
12 their duties concurrently with their private business
13 or profession or other private employment and whose
14 duties require only a portion of their time, if it is
15 impracticable to ascertain or anticipate the portion
16 of time to be devoted to the service of the State;

17 (16) Positions of first deputies or first assistants of
18 each department head appointed under or in the manner
19 provided in section 6, article V, of the state
20 constitution; three additional deputies or assistants
21 either in charge of the highways, harbors, and
22 airports divisions or other functions within the
23 department of transportation as may be assigned by the

1 director of transportation, with the approval of the
2 governor; four additional deputies in the department
3 of health, each in charge of one of the following:
4 behavioral health, environmental health, hospitals,
5 and health resources administration, including other
6 functions within the department as may be assigned by
7 the director of health, with the approval of the
8 governor; an administrative assistant to the state
9 librarian; and an administrative assistant to the
10 superintendent of education;

11 (17) Positions specifically exempted from this part by any
12 other law; provided that all of the positions defined
13 by paragraph (9) shall be included in the position
14 classification plan;

15 (18) Positions in the state foster grandparent program and
16 positions for temporary employment of senior citizens
17 in occupations in which there is a severe personnel
18 shortage or in special projects;

19 (19) Household employees at the official residence of the
20 president of the University of Hawaii;

21 (20) Employees in the department of education engaged in
22 the supervision of students during meal periods in the
23 distribution, collection, and counting of meal

- 1 tickets, and in the cleaning of classrooms after
- 2 school hours on a less than half-time basis;
- 3 (21) Employees hired under the tenant hire program of the
- 4 Hawaii public housing authority; provided that except
- 5 during the time period specified in paragraph (27),
- 6 not more than twenty-six per cent of the authority's
- 7 workforce in any housing project maintained or
- 8 operated by the authority shall be hired under the
- 9 tenant hire program;
- 10 (22) Positions of the federally funded expanded food and
- 11 nutrition program of the University of Hawaii that
- 12 require the hiring of nutrition program assistants who
- 13 live in the areas they serve;
- 14 (23) Positions filled by persons with severe disabilities
- 15 who are certified by the state vocational
- 16 rehabilitation office that they are able to perform
- 17 safely the duties of the positions;
- 18 (24) The sheriff;
- 19 (25) A gender and other fairness coordinator hired by the
- 20 judiciary;
- 21 (26) Positions in the Hawaii [~~National Guard~~] national
- 22 guard youth and adult education programs; and

(27) From July 1, 2012, to June 30, 2015, persons hired or contracted to perform repair, maintenance, or capital improvement projects work on vacant housing units under the jurisdiction of the Hawaii public housing authority.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:



BY REQUEST

Report Title:

Civil Service; Exemptions; State Employment

Description:

Creates exemption from civil service for staff positions in the Major Litigation Unit of the Department of the Attorney General.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Department of the Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CIVIL SERVICE EXEMPTION.

PURPOSE: To improve efficiency and effectiveness in the handling and disposition of major litigation cases.

MEANS: Amend sections 28-8(a) and 76-16(b), Hawaii Revised Statutes.

JUSTIFICATION: The Department of the Attorney General is responsible for the provision of advice, counseling, and representation of the State in legal matters. The Major Litigation Unit was established to assist the Attorney General in the proper and responsive handling and disposition of litigation cases that are significant and substantial in cost and exposure to the State these litigation matters require close attention, direct supervision, and special handling by the Attorney General. They frequently involve policy issues and are complex, confidential, sensitive, or of an emergency nature.

The Supervising Deputy Attorney General of the Major Litigation Unit serves as the primary advisor to the Attorney General and First Deputy Attorney General and is responsible for reviewing all cases to identify potential major liabilities, formulating and implementing litigation strategies, directing complex negotiations, providing staff training, and advising and consulting with the Attorney General. The Major Litigation Unit's Supervising Deputy Attorney General is one of the Attorney General's key top management officials who is privy to the discussions of and participates in decision making related to highly sensitive and confidential matters.

Staff supporting the Major Litigation Unit will be entrusted with sensitive and confidential information in order to carry out the work. Such major litigation assistants are also expected to provide services under unconventional work conditions, such as performing work assignments outside of the class of work or working with irregular schedules that mirror private law practices or that of departmental administration staff appointed by the Governor. The Major Litigation Unit was created specifically to respond to the changing litigation environment that is growing increasingly more complex and includes keeping up with the growing workload, reviewing all new cases to determine whether the Major Litigation Unit should be involved, meeting court deadlines, strategizing for and completing complex discovery, and preparing for trials. To appoint individuals that can understand and responsibly accept the nature of the job duties and responsibilities and to ensure their full support, loyalty, and accountability to the Supervising Deputy Attorney General, the appointment and dismissal of major litigation assistants must be at discretion of the Attorney General.

The specific statutory exemption will provide the Department with the flexibility to establish position descriptions with qualification requirements to reflect the specialized skills required and offer compensation packages different from civil service to attract highly qualified individuals for these major litigation assistants. In order to ensure proper and expeditious handling and disposition of major litigation cases and avoid adverse impact to public policies and negative perception of the state administration, at-will employment and flexibility in recruitment to facilitate filling these positions quickly are required. Therefore,

similar to the exempt staff that serve the Attorney General's top level managers, it is in the best interest of the State to exempt the staff of the Major Litigation Unit from civil service and coincide the term of appointment with the term of the Attorney General.

Impact on the public: The public benefits by the efficient and effective execution of decisions and actions made by the Attorney General.

Impact on the department and other agencies: This bill promotes a more effective and efficient workforce.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	ATG 100
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.