

JAN 24 2018

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE HEARING OFFICERS.

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

1 SECTION 1. The department of human services has the
2 largest operating budget of any state department, approximately
3 \$3,304,000,000, including seventy-nine per cent of all the
4 executive branch's federal funds. The department provides
5 benefits and services to one in four Hawaii residents or nearly
6 360,000 individuals.

7 The department serves vulnerable and needy adults and
8 children statewide and is responsible for diverse and complex
9 programs driven by their own unique and ubiquitous state and
10 federal laws, rules, and regulations. With little overlap
11 between the wide array of services offered by the department and
12 each program's laws and regulations, the breadth of knowledge
13 necessary for effective management of all the programs is
14 extensive and difficult to develop.

15 The department's programs and services include: protection
16 of vulnerable children and adults; vocational rehabilitation and
17 financial assistance to the disabled; the Supplemental Nutrition
18 Assistance Program; financial assistance; job training and

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1 placement; housing and services for the homeless; Medicaid
2 services for the State's medically needy population; and
3 prevention, treatment, and housing for the State's youthful
4 offenders.

5 In addition to helping Hawaii's vulnerable individuals, the
6 department manages significant federal and state funds, and
7 processes vast amounts of information and is currently engaged
8 in investing in an enterprise integrated eligibility system to
9 better serve recipients of public benefits and the State's
10 vulnerable populations.

11 As required by federal and state laws, regulations, and
12 administrative rules, the department provides applicants and
13 recipients of public benefits with administrative review
14 processes to request relief from an adverse decision made by the
15 department. The department also provides an administrative
16 review process for providers of medical goods or services who
17 disagree with a department's decision.

18 The department's administrative appeals office receives
19 nearly 1,900 requests annually for administrative relief from
20 applicants or recipients of public benefits or services.
21 Additionally, the administrative appeals office receives
22 approximately thirty requests per year for administrative review

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1 from providers of medical goods or services. Administrative
2 appeal hearings are held statewide.

3 To render timely, impartial, and informed quasi-judicial
4 administrative appeals hearing decisions, the department must
5 maintain a cadre of experienced, trained, and knowledgeable
6 administrative appeals hearing officers to review federal and
7 state laws, regulations, rules, documents, receive testimony,
8 conduct hearings, determine findings of facts and conclusions of
9 law, and render final administrative appeal hearing decisions.

10 Timely, accurate, and prompt administrative appeals hearing
11 decisions in contested cases positively serve eligible
12 applicants and recipients to gain access to those benefits and
13 services, as well as support efficiency of government by
14 terminating benefits to an ineligible recipient and allow the
15 department to begin recovery of improperly provided benefits.

16 The purpose of this Act is to exempt from civil service,
17 positions to be known as administrative appeals hearing officer
18 of the department of human services to conduct administrative
19 appeals hearings and other required and associated duties.

20 SECTION 2. Section 76-16, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

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

5 (1) Commissioned and enlisted personnel of the Hawaii
6 National Guard as such, and positions in the Hawaii
7 National Guard that are required by state or federal
8 laws or regulations or orders of the National Guard to
9 be filled from those commissioned or enlisted
10 personnel;

11 (2) Positions filled by persons employed by contract where
12 the director of human resources development has
13 certified that the service is special or unique or is
14 essential to the public interest and that, because of
15 circumstances surrounding its fulfillment, personnel
16 to perform the service cannot be obtained through
17 normal civil service recruitment procedures. Any such
18 contract may be for any period not exceeding one year;

19 (3) Positions that must be filled without delay to comply
20 with a court order or decree if the director
21 determines that recruitment through normal recruitment
22 civil service procedures would result in delay or

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- 1 noncompliance, such as the Felix-Cayetano consent
2 decree;
- 3 (4) Positions filled by the legislature or by either house
4 or any committee thereof;
- 5 (5) Employees in the office of the governor and office of
6 the lieutenant governor, and household employees at
7 Washington Place;
- 8 (6) Positions filled by popular vote;
- 9 (7) Department heads, officers, and members of any board,
10 commission, or other state agency whose appointments
11 are made by the governor or are required by law to be
12 confirmed by the senate;
- 13 (8) Judges, referees, receivers, masters, jurors, notaries
14 public, land court examiners, court commissioners, and
15 attorneys appointed by a state court for a special
16 temporary service;
- 17 (9) One bailiff for the chief justice of the supreme court
18 who shall have the powers and duties of a court
19 officer and bailiff under section 606-14; one
20 secretary or clerk for each justice of the supreme
21 court, each judge of the intermediate appellate court,
22 and each judge of the circuit court; one secretary for

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

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1 (10) First deputy and deputy attorneys general, the
2 administrative services manager of the department of
3 the attorney general, one secretary for the
4 administrative services manager, an administrator and
5 any support staff for the criminal and juvenile
6 justice resources coordination functions, and law
7 clerks;

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

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1 communications aides in the department of

2 education;

3 (C) The special assistant to the state librarian and

4 one secretary for the special assistant to the

5 state librarian; and

6 (D) Members of the faculty of the University of

7 Hawaii, including research workers, extension

8 agents, personnel engaged in instructional work,

9 and administrative, professional, and technical

10 personnel of the university;

11 (12) Employees engaged in special, research, or

12 demonstration projects approved by the governor;

13 (13) (A) Positions filled by inmates, patients of state

14 institutions, persons with severe physical or

15 mental disabilities participating in the work

16 experience training programs;

17 (B) Positions filled with students in accordance with

18 guidelines for established state employment

19 programs; and

20 (C) Positions that provide work experience training

21 or temporary public service employment that are

22 filled by persons entering the workforce or

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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 Hawaii 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

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

12 (17) Positions specifically exempted from this part by any
13 other law; provided that:

14 (A) Any exemption created after July 1, 2014, shall
15 expire three years after its enactment unless
16 affirmatively extended by an act of the
17 legislature; and

18 (B) All of the positions defined by paragraph (9)
19 shall be included in the position classification
20 plan;

21 (18) Positions in the state foster grandparent program and
22 positions for temporary employment of senior citizens

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1 in occupations in which there is a severe personnel
2 shortage or in special projects;

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

5 (20) Employees in the department of education engaged in
6 the supervision of students during meal periods in the
7 distribution, collection, and counting of meal
8 tickets, and in the cleaning of classrooms after
9 school hours on a less than half-time basis;

10 (21) Employees hired under the tenant hire program of the
11 Hawaii public housing authority; provided that not
12 more than twenty-six per cent of the authority's
13 workforce in any housing project maintained or
14 operated by the authority shall be hired under the
15 tenant hire program;

16 (22) Positions of the federally funded expanded food and
17 nutrition program of the University of Hawaii that
18 require the hiring of nutrition program assistants who
19 live in the areas they serve;

20 (23) Positions filled by persons with severe disabilities
21 who are certified by the state vocational

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1 rehabilitation office that they are able to perform

2 safely the duties of the positions;

3 (24) The sheriff;

4 (25) A gender and other fairness coordinator hired by the

5 judiciary;

6 (26) Positions in the Hawaii National Guard youth and adult

7 education programs; [~~and~~]

8 (27) In the state energy office in the department of

9 business, economic development, and tourism, all

10 energy program managers, energy program specialists,

11 energy program assistants, and energy analysts[~~-~~]; and

12 (28) Positions known as administrative appeals hearing

13 officer in the department of human services.

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

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

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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1 SECTION 4. This Act, upon its approval, shall take effect
2 on July 1, 2018.

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INTRODUCED BY: *Allen W.*

5

BY REQUEST

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Report Title:

Department of Human Services; Administrative Appeals;
Administrative Appeals Hearing Officers; Civil Service Exemption

Description:

Exempts from civil service positions known as Administrative
Appeals Hearing Officer in the Department of Human Services.

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: Human Services

TITLE: A BILL FOR AN ACT RELATING TO ADMINISTRATIVE APPEALS HEARING OFFICERS.

PURPOSE: To exempt from civil service administrative appeals hearing officer positions of the Department of Human Services.

MEANS: Amend section 76-16(b), Hawaii Revised Statutes.

JUSTIFICATION: The Department of Human Services proposes to exempt administrative appeals hearing officer positions to conduct quasi-judicial due process administrative appeals hearings to adjudicate contested cases statewide.

The Department of Human Services has the largest operating budget of any state department, approximately \$3.3 billion, including seventy-nine percent of all federal funds in the executive branch. The Department provides benefits and services to one in four Hawaii residents, or approximately 360,000 individuals. The Department administers public benefits programs and services governed by federal and state laws, regulations, and administrative rules. Annually, the Department's Administrative Appeals Office (AAO) receives nearly 1,900 requests from applicants or recipients for administrative relief from an adverse program decision. Additionally, the Department receives approximately thirty requests per year for administrative relief from providers of medical goods or services.

The highly specialized demands of the Administrative hearing officer position necessitates the positions to be exempt from the civil service provisions of chapter 76, HRS, as the positions require requisite legal education, legal experience, demeanor

to conduct hearings and receive testimony, analytic and writing abilities to properly interpret state and federal law, administrative regulations and rules, and to timely issue written decisions.

Administrative hearing officers are expected to conduct administrative hearings in a timely, fair, and impartial way that ensures due process. To perform their duties, officers are expected to interpret and apply all pertinent federal and state statutes, rules, regulations, policies, and procedures regarding the Department's public assistance and support services programs, make and prepare case determinations that include findings of fact, conclusions of law, and orders, and issue written final decisions within specified periods.

Further, administrative hearing officers are expected to perform other administrative responsibilities including responding to inquiries from claimants, attorneys, other government agencies, and the general public; review administrative rules adoption, participate in meetings and conferences, and perform other activities to ensure the continued and uninterrupted operation of the AAO.

Amongst other things, administrative hearing officers are required to be an attorney in good standing, admitted to the practice of law in the State of Hawaii, with a valid driver's license, class 3, and at least five years of litigation or legal experience as a judge, hearings officer, or attorney.

In 2017, Governor David Y. Ige granted the Department's request to establish and fill five exempt Administrative Appeals Hearing Officer positions as part of a temporary pilot project. Prior to this, the Department contracted private licensed attorneys to act as administrative appeals hearing officers. After consultation with the Department of the Attorney General, the Department decided it would be more

efficient to have in-house officers to maintain program integrity, timeliness, compliance with program regulations, and other statutory mandates.

Impact on the public: More effective and efficient administration of the Department of Human Services' Administrative Appeals Office, programs for clients and effective use of tax payer dollars.

Impact on the department and other agencies: The Department will develop and have a known cadre of well-trained administrative hearing officers that will be able to fairly and impartially address the variety of contested hearings on all major islands in a timely manner. There will be no impact on other agencies.

GENERAL FUND:	None. Positions are currently seventy-five percent A funded.
OTHER FUNDS:	None. Positions are currently twenty-five percent N funded.
PPBS PROGRAM DESIGNATION:	HMS 904.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2018.