

JAN 27 2021

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

1 SECTION 1. The legislature, by Act 220, Session Laws of
2 Hawaii 2018, enacted chapter 139, Hawaii Revised Statutes, to
3 create a law enforcement standards board for the certification
4 of law enforcement officers, including county police officers,
5 state public safety officers, and employees with police powers
6 at the department of transportation, department of land and
7 natural resources, department of the attorney general, and
8 department of taxation.

9 The board is responsible for establishing minimum standards
10 for employment as a law enforcement officer and certifying
11 persons qualified as law enforcement officers. It is also
12 responsible for establishing minimum criminal justice curriculum
13 requirements for basic, specialized, and in-service courses and
14 programs for the training of law enforcement officers. It must
15 consult and cooperate with the counties, state agencies, other
16 governmental agencies, universities and colleges, and other
17 institutions, concerning the development of law enforcement
18 officer training schools and programs. The board is also

1 responsible for regulating and enforcing the certification
2 requirements of law enforcement officers.

3 These are important and substantial duties that require
4 evaluation to ensure that existing legal obligations are not
5 compromised. Before imposing new standards impacting the
6 employment of law enforcement officers, the board must consider
7 collective bargaining and other employment requirements. At a
8 minimum, the board must evaluate how probationary periods;
9 training requirements, including the types of training, the
10 number of hours of training, and the availability of training
11 facilities; and the issuance, suspension, and revocation of
12 certification will impact obligations already established by
13 law.

14 Such evaluation should include consideration of the study
15 conducted by the legislative reference bureau pursuant to Act
16 124, Session Laws of Hawaii 2018, and any additional study
17 necessary to determine the impact of uniform standards,
18 certification, and training for all law enforcement.

19 The board has determined that it will need significantly more
20 time and funds to accomplish its mission.

21 The purpose of this Act is to:

22 (1) Clarify membership requirements for the law
23 enforcement standards board to facilitate

S.B. NO. 1046

- 1 participation and representation;
- 2 (2) Enable the board to research the impact of uniform
- 3 standards, certification, and training on existing
- 4 legal requirements;
- 5 (3) Establish new deadlines for the completion of the
- 6 board's significant responsibilities; and
- 7 (4) Appropriate funds to enable the board to accomplish
- 8 its mission.

9 SECTION 2. Section 76-16, Hawaii Revised Statutes, is

10 amended by amending subsection (b) to read as follows:

11 "(b) The civil service to which this chapter applies shall

12 comprise all positions in the State now existing or hereafter

13 established and embrace all personal services performed for the

14 State, except the following:

- 15 (1) Commissioned and enlisted personnel of the Hawaii
- 16 National Guard as such, and positions in the Hawaii
- 17 National Guard that are required by state or federal
- 18 laws or regulations or orders of the National Guard to
- 19 be filled from those commissioned or enlisted
- 20 personnel;
- 21 (2) Positions filled by persons employed by contract
- 22 where the director of human resources development has
- 23 certified that the service is special or unique or is

S.B. NO. 1046

- 1 essential to the public interest and that, because of
2 circumstances surrounding its fulfillment, personnel
3 to perform the service cannot be obtained through
4 normal civil service recruitment procedures. Any such
5 contract may be for any period not exceeding one year;
- 6 (3) Positions that must be filled without delay to
7 comply with a court order or decree if the director
8 determines that recruitment through normal recruitment
9 civil service procedures would result in delay or
10 noncompliance, such as the Felix-Cayetano consent
11 decree;
- 12 (4) Positions filled by the legislature or by either
13 house or any committee thereof;
- 14 (5) Employees in the office of the governor and
15 office of the lieutenant governor, and household
16 employees at Washington Place;
- 17 (6) Positions filled by popular vote;
- 18 (7) Department heads, officers, and members of any
19 board, commission, or other state agency whose
20 appointments are made by the governor or are required
21 by law to be confirmed by the senate;
- 22 (8) Judges, referees, receivers, masters, jurors,

1 notaries public, land court examiners, court
2 commissioners, and attorneys appointed by a state
3 court for a special temporary service;

4 (9) One bailiff for the chief justice of the supreme
5 court who shall have the powers and duties of a court
6 officer and bailiff under section 606-14; one
7 secretary or clerk for each justice of the supreme
8 court, each judge of the intermediate appellate court,
9 and each judge of the circuit court; one secretary for
10 the judicial council; one deputy administrative
11 director of the courts; three law clerks for the chief
12 justice of the supreme court, two law clerks for each
13 associate justice of the supreme court and each judge
14 of the intermediate appellate court, one law clerk for
15 each judge of the circuit court, two additional law
16 clerks for the civil administrative judge of the
17 circuit court of the first circuit, two additional law
18 clerks for the criminal administrative judge of the
19 circuit court of the first circuit, one additional law
20 clerk for the senior judge of the family court of the
21 first circuit, two additional law clerks for the civil
22 motions judge of the circuit court of the first
23 circuit, two additional law clerks for the criminal

S.B. NO. 1046

1 motions judge of the circuit court of the first
2 circuit, and two law clerks for the administrative
3 judge of the district court of the first circuit; and
4 one private secretary for the administrative director
5 of the courts, the deputy administrative director of
6 the courts, each department head, each deputy or first
7 assistant, and each additional deputy, or assistant
8 deputy, or assistant defined in paragraph (16);

9 (10) First deputy and deputy attorneys general, the
10 administrative services manager of the department of
11 the attorney general, one secretary for the
12 administrative services manager, an administrator and
13 any support staff for the criminal and juvenile
14 justice resources coordination functions, and law
15 clerks;

16 (11) (A) Teachers, principals, vice-principals,
17 complex area superintendents, deputy and
18 assistant superintendents, other certificated
19 personnel, not more than twenty noncertificated
20 administrative, professional, and technical
21 personnel not engaged in instructional work;

22 (B) Effective July 1, 2003, teaching assistants,

1 educational assistants, bilingual/bicultural
2 school-home assistants, school psychologists,
3 psychological examiners, speech pathologists,
4 athletic health care trainers, alternative school
5 work study assistants, alternative school
6 educational/supportive services specialists,
7 alternative school project coordinators, and
8 communications aides in the department of
9 education;

10 (C) The special assistant to the state librarian
11 and one secretary for the special assistant to
12 the state librarian; and

13 (D) Members of the faculty of the University of
14 Hawaii, including research workers, extension
15 agents, personnel engaged in instructional work,
16 and administrative, professional, and technical
17 personnel of the university;

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

20 (13) (A) Positions filled by inmates, patients of
21 state institutions, persons with severe physical
22 or mental disabilities participating in the work
23 experience training programs;

S.B. NO. 1046

- 1 (B) Positions filled with students in accordance
2 with guidelines for established state employment
3 programs; and
- 4 (C) Positions that provide work experience
5 training or temporary public service employment
6 that are filled by persons entering the workforce
7 or persons transitioning into other careers under
8 programs such as the federal Workforce Investment
9 Act of 1998, as amended, or the Senior Community
10 Service Employment Program of the Employment and
11 Training Administration of the United States
12 Department of Labor, or under other similar state
13 programs;
- 14 (14) A custodian or guide at Iolani Palace, the Royal
15 Mausoleum, and Hulihee Palace;
- 16 (15) Positions filled by persons employed on a fee,
17 contract, or piecework basis, who may lawfully perform
18 their duties concurrently with their private business
19 or profession or other private employment and whose
20 duties require only a portion of their time, if it is
21 impracticable to ascertain or anticipate the portion
22 of time to be devoted to the service of the State;
- 23 (16) Positions of first deputies or first assistants of

1 each department head appointed under or in the manner
2 provided in section 6, article V, of the Hawaii State
3 Constitution; three additional deputies or assistants
4 either in charge of the highways, harbors, and
5 airports divisions or other functions within the
6 department of transportation as may be assigned by the
7 director of transportation, with the approval of the
8 governor; four additional deputies in the department
9 of health, each in charge of one of the following:
10 behavioral health, environmental health, hospitals,
11 and health resources administration, including other
12 functions within the department as may be assigned by
13 the director of health, with the approval of the
14 governor; an administrative assistant to the state
15 librarian; and an administrative assistant to the
16 superintendent of education;

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

19 (A) Any exemption created after July 1, 2014, shall
20 expire three years after its enactment unless
21 affirmatively extended by an act of the
22 legislature; and

23 (B) All of the positions defined by paragraph (9)

1 shall be included in the position classification
2 plan;

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

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

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

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

20 (22) Positions of the federally funded expanded food and
21 nutrition program of the University of Hawaii that
22 require the hiring of nutrition program assistants who
23 live in the areas they serve;

S.B. NO. 1046

- 1 (23) Positions filled by persons with severe disabilities
2 who are certified by the state vocational
3 rehabilitation office that they are able to perform
4 safely the duties of the positions;
- 5 (24) The sheriff;
- 6 (25) A gender and other fairness coordinator hired by the
7 judiciary;
- 8 (26) Positions in the Hawaii National Guard youth and adult
9 education programs;
- 10 (27) In the state energy office in the department of
11 business, economic development, and tourism, all
12 energy program managers, energy program specialists,
13 energy program assistants, and energy analysts;
- 14 (28) Administrative appeals hearing officers in the
15 department of human services;
- 16 (29) In the Med-QUEST division of the department of human
17 services, the division administrator, finance officer,
18 health care services branch administrator, medical
19 director, and clinical standards administrator;
- 20 (30) In the director's office of the department of human
21 services, the enterprise officer, information security
22 and privacy compliance officer, security and privacy

1 compliance engineer, and security and privacy
2 compliance analyst; [~~and~~]
3 [~~+~~] (31) [~~+~~] The Alzheimer's disease and related dementia
4 services coordinator in the executive office on
5 aging[~~-~~]; and

6 (32) The administrator for the law enforcement standards
7 board.

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

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

12 SECTION 3. Section 139-2, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) There is established the law enforcement standards
15 board within the department of the attorney general for
16 administrative purposes only. The purpose of the board shall be
17 to provide programs and standards for training and certification
18 of law enforcement officers. The law enforcement standards
19 board shall consist of the following voting members: nine ex
20 officio individuals[~~, two~~] or their designees, five law
21 enforcement officers, and four members of the public.

22 (1) The nine ex officio members of the board shall consist
23 of the:

S.B. NO. 1046

- 1 (A) Attorney general[+] or the attorney general's
2 designee;
- 3 (B) Director of public safety[+] or the director's
4 designee;
- 5 (C) Director of transportation or the director's
6 designee;
- 7 (D) Chairperson of the board of land and natural
8 resources or the chairperson's designee;
- 9 (E) Director of taxation or the director's designee;
10 and
- 11 (F) Chiefs of police of the four counties[+] or the
12 designees of each of the chiefs of police;

13 (2) The [~~two~~] five law enforcement officers shall [~~each~~]
14 be persons other than the chiefs of police or
15 designees described in paragraph (1)(F) and shall
16 consist of:

- 17 (A) One county law enforcement officer from each of
18 the four counties; and
- 19 (B) One state law enforcement officer.

20 Each law enforcement officer described in this
21 paragraph shall have at least ten years of experience
22 as a law enforcement officer [~~and~~], shall be appointed
23 by the governor[+] , and, notwithstanding section 26-

1 34, shall serve without the advice and consent of the
2 senate; and

3 (3) The [~~four members of the~~] public members shall consist
4 of one member [~~of the public~~] from each of the four
5 counties [~~and~~] , each of whom shall be appointed by
6 the governor[~~-~~] , and, notwithstanding section 26-34,
7 shall serve without the advice and consent of the
8 senate. At least two of the four members of the
9 public holding a position on the board at any given
10 time shall:

11 (A) Possess a master's or doctorate degree related to
12 criminal justice;

13 (B) Possess a law degree and have experience:

14 (i) Practicing in Hawaii as a deputy attorney
15 general, a deputy prosecutor, a deputy
16 public defender, or a private criminal
17 defense attorney; or

18 (ii) Litigating constitutional law issues in
19 Hawaii;

20 (C) Be a recognized expert in the field of criminal
21 justice, policing, or security; or

22 (D) Have work experience in a law enforcement
23 capacity[~~; provided that experience in a county~~

1 ~~police department shall not itself be sufficient~~
2 ~~to qualify under this paragraph].~~

3 (b) The law enforcement officers and the members of the
4 public on the board shall serve for a term of [~~three~~] four
5 years, provided that the initial terms shall be staggered, as
6 determined by the governor."

7 SECTION 4. Section 139-3, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§139-3 Powers and duties of the board.** The board shall:

- 10 (1) Adopt rules in accordance with chapter 91 to implement
11 this chapter;
- 12 (2) Establish minimum standards for employment as a law
13 enforcement officer and to certify persons to be
14 qualified as law enforcement officers;
- 15 (3) Establish criteria and standards in which a person who
16 has been denied certification, whose certification has
17 been revoked by the board, or whose certification has
18 lapsed may reapply for certification;
- 19 (4) Establish minimum criminal justice curriculum
20 requirements for basic, specialized, and in-service
21 courses and programs for schools operated by or for
22 the State or a county for the specific purpose of
23 training law enforcement officers;

S.B. NO. 1046

- 1 (5) Consult and cooperate with the counties, agencies of
2 the State, other governmental agencies, universities,
3 colleges, and other institutions concerning the
4 development of law enforcement officer training
5 schools and programs of criminal justice instruction;
- 6 (6) Employ [~~subject to chapter 76,~~] an administrator,
7 without regard to chapter 76, and other persons
8 necessary to carry out its duties under this chapter;
- 9 (7) Investigate when there is reason to believe that a law
10 enforcement officer does not meet the minimum
11 standards for employment, and in so doing, may:
- 12 (A) Subpoena persons, books, records, or documents;
13 (B) Require answers in writing under oath to
14 questions asked by the board; and
15 (C) Take or cause to be taken depositions as needed
16 in investigations, hearings, and other
17 proceedings,
18 related to the investigation;
- 19 (8) Establish and require participation in continuing
20 education programs for law enforcement officers;
- 21 (9) Have the authority to charge and collect fees for
22 applications for certification as a law enforcement
23 officer;

- 1 (10) Establish procedures and criteria for the revocation
2 of certification issued by the board;
- 3 (11) Have the authority to revoke certifications; [~~and~~]
- 4 (12) Review and recommend statewide policies and procedures
5 relating to law enforcement, including the use of
6 force[-];
- 7 (13) Consider studies relevant to the board's objectives,
8 including but not limited to the study that examines
9 consolidating the law enforcement activities and
10 responsibilities of various state divisions and
11 agencies under a single, centralized state enforcement
12 division or agency, conducted pursuant to Act 124,
13 Session Laws of Hawaii 2018; and
- 14 (14) Conduct its own study to evaluate how to efficiently
15 and effectively satisfy its duties in accordance with
16 the law."

17 SECTION 5. Section 139-6, Hawaii Revised Statutes, is
18 amended by amending subsections (a) and (b) to read as follows:

19 "(a) No person may be appointed as a law enforcement
20 officer after June 30, 2023, unless the person:

- 21 (1) Has satisfactorily completed a basic program of law
22 enforcement training approved by the board; and
- 23 (2) Possesses other qualifications as prescribed by the

1 board for the employment of law enforcement officers,
2 including minimum age, education, physical and mental
3 standards, citizenship, good conduct, moral character,
4 and experience.

5 (b) [The] Beginning on July 1, 2023, the board shall issue
6 a certification to an applicant who meets the requirements of
7 subsection (a) or who has satisfactorily completed a program or
8 course of instruction in another jurisdiction that the board
9 deems to be equivalent in content and quality to the
10 requirements of subsection (a)."

11 SECTION 6. Section 139-7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~f~~]**\$139-7**[~~}]~~ **Employment of law enforcement officers.** (a)
14 No person shall be appointed or employed as a law enforcement
15 officer by any county police department, the department of
16 public safety, the department of transportation, the department
17 of land and natural resources, the department of taxation, or
18 the department of the attorney general, after June 30, 2023,
19 unless the person possesses a valid certification issued by the
20 board pursuant to section 139-6(b).

21 (b) This section shall not apply to a person [~~employed~~]:

22 (1) Employed on a probationary basis, except that

S.B. NO. 1046

1 employment on a probationary basis may not exceed the
2 period authorized for probationary employment as
3 determined by the board[-]; or

4 (2) Who entered into employment with the applicable county
5 police department or state department before July 1,
6 2023, and termination of employment would violate any
7 valid collective bargaining agreement."

8 SECTION 7. Act 220, Session Laws of Hawaii 2018, as
9 amended by section 5 of Act 47, Session Laws of Hawaii 2020, is
10 amended by amending section 6 to read as follows:

11 "SECTION 6. This Act shall take effect on July 1, 2018[+
12 ~~provided that the law enforcement standards board established~~
13 ~~under this Act shall finalize its standards and certification~~
14 ~~process by December 31, 2021]."~~

15 SECTION 8. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$292,500 or so much
17 thereof as may be necessary for fiscal year 2021-2022 for
18 deposit into the law enforcement standards board special fund.

19 SECTION 9. There is appropriated out of the law
20 enforcement standards board special fund the sum of \$292,500 or
21 so much thereof as may be necessary for the fiscal year
22 2021-2022 for:

S.B. NO. 1046

1 (1) One permanent full-time equivalent (1.0 FTE)
2 administrator position exempt from chapter 76, Hawaii
3 Revised Statutes, and one permanent full-time
4 equivalent (1.0 FTE) clerical position subject to
5 chapter 76, Hawaii Revised Statutes; and

6 (2) Copying and supply costs of the law
7 enforcement standards board.

8 The sum appropriated shall be expended by the department of
9 the attorney general, on behalf of the law enforcement standards
10 board.

11 SECTION 10. This Act does not affect rights and duties
12 that matured, penalties that were incurred, and proceedings that
13 were begun, before the effective date of this Act.

14 SECTION 11. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 12. This Act shall take effect upon its approval.

17
18 INTRODUCED BY: 

19 BY REQUEST

20

S.B. NO. 1046

1 Report Title:

2 Law Enforcement Standards Board

3

4 Description:

5 Clarifies membership and certain powers and duties of the Law
6 Enforcement Standards Board, establishes new deadlines for the
7 completion of board responsibilities, and provides appropriate
8 funds and resources to enable the board to accomplish its
9 mission.

10

11

12

13

14

15

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: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO LAW ENFORCEMENT.

PURPOSE: To clarify membership requirements for the law enforcement standards board, to enable the board to research the impact of standards, certification, and training requirements on existing legal requirements, to establish new deadlines for the completion of the board's responsibilities, to provide the necessary funds and resources for the board's mission, and to exempt the board administrator position from chapter 76.

MEANS: Amend sections 76-16(b), 139-2, 139-3, 139-6, and 139-7, Hawaii Revised Statutes (HRS), and section 6 of Act 220, Session Laws of Hawaii 2018 ("Act 220").

JUSTIFICATION: The law enforcement standards board, established by section 139-2, HRS, has not received the funding, staff, and resources it needs to accomplish its mission. It also needs an extension of its deadlines. The board is responsible for establishing minimum standards for employment as a law enforcement officer and certifying persons qualified as law enforcement officers. It is also responsible for establishing minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for the training of law enforcement officers. It must consult and cooperate with the counties, state agencies, other governmental agencies, universities and colleges, and other institutions, concerning the development of law enforcement officer training schools and programs. The board is also responsible for regulating and enforcing the certification requirements of law enforcement officers.

Increasing the size of the board and allowing ex-officio members to use designees will expand the perspective of the board while increasing its operational flexibility.

Collective bargaining and employment laws and rules dictate various aspects of a law enforcement officer's career from start to finish. Explicitly authorizing the board to study and evaluate these laws, rules, and agreements will allow the board to establish standards, certifications and training requirements in a purposeful and intentional manner.

The board administrator position is being made exempt from civil service because the new board requires flexibility to meet its broad duties and responsibilities and tight deadlines. The board's role, and that of the administrator, are unique and not within the traditional civil service classification system. The board needs the discretion to hire or terminate without the burden of complying with civil service requirements.

Impact on the public: The public will benefit from careful consideration of the existing laws, rules and agreements by a better-resourced, larger, and more operationally flexible board. This should result in better standards, certification, and training requirements and thereby increase public confidence in law enforcement and improve public safety generally.

Impact on the department and other agencies: Approval of this bill will have a direct positive effect on the board's ability to execute its responsibilities.

Additionally, county police officers, state public safety officers, and employees with police powers at the Department of Transportation, Department of Land and

Natural Resources, Department of the Attorney General, and Department of Taxation will all benefit from better standards, certification, and training requirements.

GENERAL FUND: \$292,500.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Department of Transportation, Department of Land and Natural Resources, and Department of Taxation.

EFFECTIVE DATE: Upon approval.