

A Bill for an Act Relating to Personnel of the Judicial Branch.

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

SECTION 1. Findings and Purpose.

The Constitution of the State of Hawaii provides for three separate and coequal branches of government, the executive branch, the judicial branch, and the legislative branch.

The legislature finds that this concept has been partially implemented, but that the statutes relating to personnel administration are not completely consistent with these constitutional principles.

This remains particularly so with respect to those statutes which appear to permit the executive branch to exercise various administrative controls over the personnel of the judiciary. The purpose of this Act is to conform the personnel laws of the state of Hawaii to the concept that the judiciary is a separate branch of government. At the same time the legislature wishes to preserve the merit principle of judicial administration. This Act recognizes that the state civil service system has two parts, the executive civil service system and the judicial civil service system.

Under this theory the chief justice is generally equated to the governor and the administrative director of the courts is equal to the director of personnel services. For purposes of chapter 89, Collective Bargaining, however, the governor is considered the employer for the judicial as well as the executive branch in order to avoid potential conflict of interest.

To provide additional clarification of the application of Title 7 intended by this Act, the judiciary is given a status coequal with the executive branch of the State and the several counties.

SECTION 2. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"Sec. 76- Judiciary; powers and duties. All of the powers and duties assigned in parts I, IV, and V of this chapter to the governor or the director of personnel services shall with respect to the judiciary be assigned to the chief justice of the supreme court or the administrative director of the courts."

SECTION 3. Section 76-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 76-4 Agreements of state and county departments and judiciary. The state department of personnel services, the judiciary, and the several departments of civil service of the counties may enter into agreements for the joint administration of such matters as may be practicable and consistent with this chapter and chapter 77, including the conducting of examinations and other procedures for the establishment and use of eligible lists, reciprocity in the use of eligible lists, and the conducting of salary studies. All eligible lists established or used under the agreements shall be as fully effective as those established or used separately."

SECTION 4. Section 76-5, Hawaii Revised Statutes, is amended to read as

follows:

"Sec. 76-5 Service to judiciary and counties by State. Subject to the rules of the state department of personnel services, the director of state personnel services may enter into agreements with the judiciary and any county to furnish services and facilities of the state department to the judiciary and any county in the administration of civil service including position classification in the judiciary and any county. The agreements may provide for the reimbursement to the State of the reasonable value of the services and facilities furnished, as determined by the director. The judiciary and all counties are authorized to enter into the agreements."

SECTION 5. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"Sec. 76- Civil service for the judiciary. There shall be a civil service system for the judiciary. Except as otherwise specifically provided in this section, all of the provisions of part II shall apply to the judiciary.

- (1) All of the powers and duties assigned to the director of personnel services in part II shall, with respect to the judiciary, be exercised by the administrative director of the courts.
- (2) When applying part II to the judiciary, the term "state" wherever it appears means the judiciary; the term "governor" means the chief justice of the supreme court; the "director" means the administrative director of the courts; and the "department" means the judicial branch."

SECTION 6. Section 76-9, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 76-9 Employees of the judiciary. It is the intent of the legislature that the personnel of the judiciary shall form a separately administered part of the system of personnel administration established by this chapter and chapter 77, unless specifically exempted by this chapter or any other law; provided that:

- (1) The judiciary shall have a status coequal with the executive branch of the State and with the several counties for purposes of the development of a position classification plan, the formulation of personnel rules and regulations, and the administration of the judiciary personnel system, including, but not limited to the classification, reclassification, allocation, and reallocation of a particular position, the publication of a vacancy announcement, the examination of applicants, and the preparation of eligible lists;
- (2) In the development of a position classification plan, the formulation of personnel rules and regulations, and the administration of the judiciary personnel system, the chief justice or his designee shall consult with the director of personnel services;
- (3) Any action of the chief justice or his designee including the classification, reclassification, allocation, and reallocation of a particular position, the publication of a vacancy announcement, the examination

of applicants, the preparation of an eligible list, and appeals from suspensions, dismissals and demotions may be appealed by any person, employee or the exclusive bargaining unit representative to the judiciary personnel appeals board. The board shall be composed of three members, one representative from the department of personnel services, one representative of the judiciary and one exclusive bargaining unit representative. The provisions contained in section 26-34 shall not apply to the members of the judiciary personnel appeals board. The board shall sit as an appellate body on matter within the jurisdiction of the judiciary with equal authority as the civil service commission established by section 26-5, Hawaii Revised Statutes.

- (4) Nothing in chapter 76 and 77 shall be construed to require the approval of the governor or any executive agency for the judiciary to establish such positions in the judicial branch as may be authorized and funded by the legislature."

SECTION 7. Chapter 77, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 77- Applicability of chapter to judiciary. All of the provisions of this chapter apply with equal force to the judiciary as to the State."

SECTION 8. Section 77-1, Hawaii Revised Statutes, is amended by amending the definition of "director" to read as follows:

- (6) "Director" means the director of personnel services in the case of the State, the administrative director of the courts in the case of the judiciary, director of civil service in the case of the city and county of Honolulu or the respective personnel directors in the case of the counties of Hawaii, Maui, and Kauai."

SECTION 9. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 78- Applicability of chapter to judiciary. All of the provisions of this chapter apply with equal force to the judiciary as to the State. The powers and duties assigned in this chapter shall, with respect to the judiciary, be assigned to the chief justice of the supreme court in the place and stead of the governor or chief executive officer for the state, and to the administrative director of the courts in the place and stead of the director of personnel services."

SECTION 10. Chapter 79, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 79- Judiciary; powers and duties. All of the powers and duties assigned in this chapter to the governor or the director of personnel services shall with respect to the judiciary be assigned to the chief justice of the supreme court or the administrative director of the courts."

SECTION 11. Chapter 80, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 80- Judiciary; powers and duties. All of the powers and duties assigned in this chapter to the governor or director of personnel services shall

with respect to the judiciary be assigned to the chief justice of the supreme court or the administrative director of the courts."

SECTION 12. Chapter 81, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 81- Judiciary; powers and duties. All of the powers and duties assigned in this chapter to the governor or the department or director of personnel services shall with respect to the judiciary be exercised by the chief justice of the supreme court or the administrative director of the courts."

SECTION 13. Chapter 82, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 82- Judiciary; powers and duties. All of the powers and duties assigned in this chapter to the governor or the director of personnel services shall with respect to the judiciary be assigned to the chief justice of the supreme court or the administrative director of the courts."

SECTION 14. Chapter 83, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 83- Judiciary; powers and duties. All of the powers and duties assigned this chapter to the governor or the director of personnel services shall with respect to the judiciary be exercised by the chief justice of the supreme court or the administrative director of the courts."

SECTION 15. Chapter 84, Hawaii Revised Statutes, is amended by adding to Part IV a new section to be appropriately designated and to read as follows:

"Sec. 84- Judicial branch. The powers and duties assigned in this part IV to the governor shall, with respect to employees in the judicial branch, be assigned to the chief justice of the supreme court."

SECTION 16. Section 89-2(9) is amended by amending the definition of "employer" to read as follows:

"(9) "Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai, the board of education in the case of the department of education, and the board of regents in the case of the university of Hawaii, and any individual who represents one of these employers or acts in their interest in dealing with public employees. In the case of the Judiciary, the governor shall be the employer for the purposes of this chapter."

SECTION 17. Section 601-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) He shall possess the following powers, subject to such rules as may be adopted by the supreme court:

- (1) To assign circuit judges from one circuit to another;
- (2) In a circuit court with more than one judge, (A) to make assignments of calendars among the circuit judges for such period as he may determine and, as deemed advisable from time to time, to change assignments of calendars or portions thereof (but not individual cases) from one judge

to another, and (B) to appoint one of the judges, for such period as he may determine, as the administrative judge to manage the business of the court, subject to the rules of the supreme court and the direction of the chief justice;

- (3) To prescribe for all of the courts a uniform system of keeping and periodically reporting statistics of their business;
- (4) To procure from all of the courts estimates for their appropriations; with the cooperation of the representatives of the court concerned to review and revise them as he deems necessary for equitable provisions for the various courts according to their needs and to present the estimates, as reviewed and revised by him, to the legislature as collectively constituting a unified budget for all of the courts;
- (5) To exercise exclusive authority over the preparation, explanation, and administration of the judiciary budget, programs, plans, and expenditures, including without limitation policies and practices of financial administration and the establishment of guidelines as to permissible expenditures, provided that all expenditures of the judiciary shall be in conformance with program appropriations and provisions of the legislature, and all powers of administration over judiciary personnel that are specified in title 7; and
- (6) To do all other acts which may be necessary or appropriate for the administration of the judiciary."

SECTION 18. Section 601-3, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 601-3 Administrative director. The chief justice with the approval of the supreme court, shall appoint an administrative director of the courts to assist him in directing the administration of the judiciary. The administrative director shall be a resident of the State of a continuous period of three years prior to his appointment, and shall be appointed without regard to chapters 76 and 77 and shall serve at the pleasure of the chief justice. He shall hold no other office or employment. Effective July 1, 1975, he shall receive a salary of not more than \$36,800 a year. Effective January 1, 1976, he shall receive a salary of not more than \$40,000 a year. He shall, subject to the direction of the chief justice, perform the following functions:

- (1) Examine the administrative methods of the courts and make recommendations to the chief justice for their improvement;
- (2) Examine the state of the dockets of the courts, secure information as to their needs of assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice to the end that proper action may be taken;
- (3) Examine the estimates of the courts for appropriations and present to the chief justice his recommendations concerning them;
- (4) Examine the statistical systems of the courts and make recommendations to the chief justice for a uniform system of judicial statistics;
- (5) Collect, analyze, and report to the chief justice statistical and other data concerning the business of the courts;

- (6) Assist the chief justice in the preparation of the budget, the six-year program and financial plan, the variance report and any other reports requested by the legislature;
- (7) Carry out all duties and responsibilities that are specified in title 7 as it pertains to employees of the judiciary; and
- (8) Attend to such other matters as may be assigned by the chief justice.

The administrative director shall, with the approval of the chief justice, appoint a deputy administrative director of the courts subject to chapter 76 but not subject to chapter 77 and such assistants as may be necessary. Such assistants shall be appointed subject to chapters 76 and 77. The salary of the deputy administrative director shall be ninety-five per cent of the administrative director's salary. The administrative director shall be provided with necessary office facilities.

The judges, clerks, officers, and employees of the courts shall comply with all requests of the administrative director for information and statistical data relating to the business of the courts and expenditures of public funds for their maintenance and operation."

SECTION 19. No regular civil service employees shall lose their status or have their statutory rights and benefits reduced as a result of this Act.

SECTION 20. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 21. This Act shall take effect on July 1, 1977.

(Approved June 2, 1977.)

*Edited accordingly.