

ACT 101

S.B. NO. 1787-78

A Bill for an Act Relating to Public Employment.

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

SECTION 1. Section 78-1, Hawaii Revised Statutes, is amended to read:

"Sec. 78-1 Citizenship and residence of government officials and employees; exemptions. (a) All officers, whether elective or appointive, in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens of the United States and residents of the State for at least three years immediately preceding their appointment.

(b) All employees in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals or permanent resident aliens of the United States and residents of the State at the time of their application for employment.

"Resident" means a person who is physically present in the State at the time he claims to have established his domicile in the State and shows his intent is to make Hawaii his permanent residence. In determining this intent, the following factors shall be considered:

- (1) maintenance of a domicile or permanent place of residence in the state;
- (2) absence of residency in another state.

(c) For the purpose of obtaining services which are essential to the public interest for which no competent person with the qualifications under subsection (b) applies within forty-five days after the first publication of an advertisement of the position or a notice of an examination therefor, which advertisement or notice has been published more than once, and not oftener than once a week, in a newspaper of general circulation in the State, a person without the qualifications may, upon prior certification by the State director of personnel services or the city and county director of civil service or the county personnel director, whichever is applicable, and with the approval of the chief executive officer for the State or the political subdivision concerned, be employed.

(d) The requirement of residency, as defined under subsection (b) above, shall not apply to a resident who was a resident of the State before marrying a non-resident and who continues to reside in the State.

(e) For the positions involved in the performance of services in planning and executing measures for the security of Hawaii and the United States, the employees shall be citizens of the United States in addition to meeting the requirement of residency in subsection (b).

(f) The requirements of subsection (b), (c), and (g) shall not apply to persons recruited by the University of Hawaii under the authority of section 304-11; provided that all persons recruited as Administrative/Professional/Technical personnel of the University of Hawaii shall be subject to the requirement of residency as defined under subsection (b) and the requirement of subsection (g); provided further that appointment of persons to positions requiring highly specialized technical or scientific skills and knowledge may be made without consideration of residency.

(g) A preference shall be granted to State residents who have filed resident income tax returns within the State or who have been claimed as a dependent on such a return at the time of their application for employment with the State or any county or municipal subdivision of the State.

For residents applying for positions covered by chapters 76 and 77, the

preference shall be accomplished as provided in section 76-23.

For residents applying for positions not covered by chapters 76 and 77, the preference shall be accomplished by giving first consideration to such residents, if all other factors are relatively equal."

SECTION 2. Section 76-23, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 76-23 Filling vacancy. All vacant civil service positions shall be filled in the manner prescribed in this part or in section 78-1.

Whenever there is a position to be filled, the appointing authority shall request the director of personnel services to submit a list of eligibles. The director shall thereupon certify a list of five or such fewer number as may be available, taken from eligible lists in the following order: first the promotional lists, second the reemployment lists and third the open-competitive lists; provided, that with respect to the eligibles under unskilled classes, the director shall certify all of the eligibles on such list. The director shall submit eligibles in the order that they appear on the eligible list; provided that if the last of the five eligibles to be certified is one of two or more eligibles who have identical examination scores, such two or more eligibles shall be certified notwithstanding the fact that more than five persons are thereby certified to fill a vacancy; and further provided that, for each eligible without resident preference certified, a resident who has filed a resident income tax return within the State or who has been claimed as a dependent on such a return, as provided by section 78-1, shall also be certified.

In any case where there are three or more eligibles in one department whose names appear as eligibles on an interdepartmental list, upon the request of the appointing authority of such department such three or more names shall be certified to him as eligibles on an intradepartmental eligible list; but where the interdepartmental list has been in existence for more than six months and there are five or more persons in the department qualified for the class, the department may request an intradepartmental promotional examination, in which case the director shall hold either an interdepartmental or an intradepartmental promotional examination. The order in which eligibles are placed on eligible lists shall be fixed by rule. The appointing authority shall make the appointment only from the list of eligibles certified to him unless he finds no person acceptable to him on the list certified by the director, in which case he shall reject the list and request the director to submit a new list, in which event the director shall submit a new list of eligibles selected in like manner; provided that the appointing authority states his reasons in writing for rejecting each of the eligibles on the list previously certified to him by the director or, in case of the counties, by the civil service commission. Eligible lists, other than reemployment lists, shall be effective for one year but this period may be extended by the director.

An appointing authority may fill a vacant position in his department by promoting any regular employee in the department without examination if the employee meets the minimum class qualifications of the position to which he is to be promoted, and if the position is in the same or related series as the position held by the employee; provided, that when there is no material difference between the qualifications of the employees concerned, the employee with the longest

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government service shall receive first consideration for the promotion.

Any regular employee receiving any such promotion without examination shall be ineligible for a second such promotion without examination prior to his having completed one year of satisfactory service in the position to which he was so promoted, but he may at any time be eligible for a promotion to any position through examination.

An employee filling a permanent position temporarily vacant may be given a permanent appointment to the position if it later develops that the vacancy will be permanent, provided he was originally appointed from an appropriate eligible list and the appointing authority certifies that he has been performing the duties of the position in a satisfactory manner.

SECTION 3. Severability. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. 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 5. This Act shall take effect upon its approval.

(Approved May 23, 1978.)

*Edited accordingly.