

A Bill for an Act Relating to Selective Employment and the Civil Service.

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

SECTION 1. The purpose of this Act is to provide public employment opportunities for the severely handicapped persons who are unable to compete with others not so handicapped.

Many handicapped persons have found public employment through the normal civil service procedures. There are, however, severely handicapped persons who are able to work but unable to compete for employment through the normal procedures and therefore are not being considered for public employment.

To recognize the burden of their handicapping condition and their ability to work, the removal of the requirement that they compete with others will make possible their employment in the government.

SECTION 2. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 76-16 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the state service now existing or hereafter established and embraces all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard which are required by state or federal laws or regulations, or orders of the national guard, to be filled from such commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of personnel services has certified that the service is special or unique, is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions of a temporary nature needed in the public interest where the need for the same does not exceed one year, but before any person may be employed to render such temporary service the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and household employees at Washington Place and eight employees in the office of the lieutenant governor;
- (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, jury commissioners, notaries

- public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court, and one law clerk for each judge of the intermediate appellate court and of the circuit court (provided that the law clerk for a judge of the circuit court shall be employed in lieu of and shall have the powers and duties of a court officer and bailiff under section 606-14); and one private secretary for each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
  - (10) Assistant and deputy attorneys general and law clerks;
  - (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty non-certificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work and administrative, professional, and technical personnel of the university;
  - (12) Employees engaged in special, research, or demonstration projects approved by the governor, for which projects federal funds are available;
  - (13) Positions filled by inmates, kokua, and patients of state institutions, and persons with severe physical or mental handicaps participating on the Work Experience Training Programs, students, and positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
  - (14) A custodian or guide at Iolani Palace, Royal Mausoleum, and Hulihee Palace;
  - (15) Positions filled by persons employed on a fee, contract, or piecework basis who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
  - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, article V of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or such other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; one additional deputy to administer all hospitals within the jurisdiction of the department of health; one additional deputy in the department of health to administer all environmental health programs within the jurisdiction of the department; one additional deputy in the department of social services and housing either in charge of welfare or such other functions within the department as may be assigned

by the director of social services; one additional deputy in the department of health in charge of administration or such other functions within the department as may be assigned by the director of health with the approval of the governor; and an administrative assistant to the superintendent of education;

- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe manpower shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the Hawaii housing authority, provided that no more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii which require hiring of nutrition program assistants who live in the areas they serve; and
- (23) Positions filled by the severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to safely perform the duties of the positions.

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 3. Section 76-77, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 76-77 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

- (1) Positions in the office of the mayor, but the positions shall be included in the position classification plan;
- (2) Positions of officers elected by public vote; positions of heads of departments and positions of one first deputy or first assistant of heads of departments;
- (3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;
- (4) Positions of members of any board, commission, or agency;
- (5) Positions filled by students; positions filled through federally funded programs which provide temporary public service employment such as the

- federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;
- (6) Positions of district judges, jurors, jury commissioners, and witnesses;
  - (7) Positions filled by persons employed by contract where the personnel director has certified and where such certification has received the approval of the commission that the service is special or unique, is essential to the public interest and that, because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
  - (8) Positions of a temporary nature needed in the public interest where the need for the same does not exceed ninety days; but before any person may be employed to render such temporary service the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; provided that the employment of any person for service of a temporary nature may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director, approved by the commission;
  - (9) Positions of temporary election clerks in the office of the county clerk employed during election periods;
  - (10) Positions specifically exempted from this part by any other state statutes;
  - (11) Positions of one private secretary of heads of departments, but such positions shall be included in the position classification plan;
  - (12) Positions filled by persons employed on a fee, contract, or piecework basis who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified to by the director.
  - (13) Positions filled by the severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to safely perform the duties of the positions.

The director shall determine the applicability of this section to specific positions and the director shall determine whether or not positions excluded by paragraphs (7) and (8) of this section shall be included in the position classification plan.

Nothing in this section shall be deemed to affect the civil service status of any incumbent, private secretary of heads of departments as it existed on May 7, 1977."

SECTION 4. Section 78-2, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 78-2 Equal opportunity.** No person shall be discriminated against in any case because of any physical or mental handicap, in examination, appointment, reinstatement, reemployment, promotion, transfer, demotion, or removal, with respect to any position the duties of which, in the opinion of the director, may be efficiently performed by a person with a physical or mental handicap; provided that the employment will not be hazardous to the person appointed or endanger the health

## ACT 111

or safety of his fellow employees or others.

To promote employment opportunities for the severely handicapped individuals, all departments or agencies of the state and county governments shall develop and implement programs for the selective employment of the severely handicapped individuals. Such programs shall provide for the certification by the state vocational rehabilitation office that the severely handicapped individual possesses the skills necessary to safely perform the duties of the position to which the individual will be placed.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 6. This Act shall take effect upon its approval.

(Approved May 22, 1980.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.