

ACT 114

S.B. NO. 3154

A Bill for an Act Relating to Public Employment.

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

SECTION 1. Section 76-23, Hawaii Revised Statutes, is amended to read as follows:

“§76-23 Filling vacancy. (a) All vacant civil service positions shall be filled in the manner prescribed in this part or in section 78-1.

(b) 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 recall lists, third the reemployment lists, and fourth the open-competitive lists; provided that laid-off regular employees shall be placed on an appropriate recall list; provided further that with respect to the eligibles under unskilled classes, the director shall certify all of the eligibles on such list. Where there is more than one vacant position in a class to be filled, the director may certify an additional eligible for each additional vacancy. The director shall submit eligibles in the order that they appear on the eligible list before applying veterans preference; provided that veterans whose examination scores, after addition of applicable preference, are equal to or exceed the examination score of the last eligible certified, shall also be certified; and further provided that if the last eligible to be certified is one of two or more eligibles who have identical examination scores, [such] those 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 resident income tax return, as provided by section 78-1, shall also be certified.

(c) 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] the department [such] those three or more names shall be certified to the appointing authority 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 the appointing authority unless the appointing authority finds no acceptable person on the list certified by the director, in which case the appointing authority 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 reasons in writing for rejecting each of the eligibles on the list previously certified to the appointing authority by the director or, in case of the counties, by the civil service commission. Eligible lists, other than the recall and reemployment lists, shall be effective for one year but this period may be extended by the director.

(d) [An] After giving appropriate notice, an appointing authority may fill a vacant position [in the authority's department] by promoting any regular employee [in] of the department without examination [if the]; provided that:

- (1) The employee meets the minimum [class] qualifications of the class and vacant position [to which the employee 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];
- (2) The noncompetitive promotion shall be based on appropriate selection documentation indicating that the person promoted is the best qualified; and
- (3) When there is no material difference between the qualifications of the employees concerned, the employee with the longest continuous civil service employment within the State or county granting the promotion 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 such employee having completed one year of satisfactory service in the position to which the employee was so promoted, but the employee may at any time be eligible for a promotion to any position through examination.

(e) 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 the employee was originally appointed from an appropriate eligible list and the appointing authority certifies that the employee has been performing the duties of the position in a satisfactory manner.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1990.)