

**ACT 281**

H.B. NO. 2967

A Bill for an Act Relating to the Department of Public Safety.

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

SECTION 1. Section 21-17, Hawaii Revised Statutes, is amended to read as follows:

**“§21-17 Sergeants-at-arms; powers and duties.** The sergeant-at-arms of each house of the legislature, and each of his deputies appointed by authority of such house, shall:

- (1) Attend such house during its sittings;
- (2) Maintain order under the direction of the speaker, president, or other presiding officer of such house;
- (3) Under the direction of the clerk of such house, execute the commands of such house and all processes issued by authority thereof, directed to him by the speaker, president, or other presiding officer of such house, or by the chairman or acting chairman of any joint committee established by a concurrent resolution of the two houses of the legislature, or by the chairman or acting chairman of any committee of either house. In [such] this connection the sergeant-at-arms and each of his deputies shall have all the powers and authority of a [sheriff appointed under chapter 601.] police officer, including the power of arrest."

SECTION 2. Section 26-14.6, Hawaii Revised Statutes, is amended to read as follows:

**"[§26-14.6]] Department of public safety.** (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the criminal injuries compensation commission are placed within the department of public safety for administrative purposes only.

(d) Effective July 1, 1990, the functions and authority heretofore exercised by the department of corrections relating to adult and juvenile corrections and the intake service centers; the functions and authority heretofore exercised by the judiciary relating to the sheriff's office and judiciary security personnel; and the functions and authority heretofore exercised by the department of the attorney general relating to state law enforcement officers and narcotics enforcement [agents] investigators with the narcotics enforcement division shall be transferred to the department of public safety.

(e) Effective July 1, 1990, the functions and authority heretofore exercised by the department of health pursuant to chapters 329 and 329C with the exception of sections 329-2, 329-3, and 329-4(3) to (8), shall be transferred to the department of public safety.

(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a "sheriff," "sheriffs," a "sheriff's deputy," "sheriff's deputies," a "deputy sheriff," "deputy sheriffs," or a "deputy" under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 329-55, 353-11, 360-5, 360-14, 383-71, 438-5, 445-37, 482E-4, 485-6, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 653-6, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety.

[(e)] (g) Effective July 1, 1991, the functions and authority heretofore exercised by the director of transportation and the department of transportation

related to law enforcement, including those pertaining to parking at its facilities and security, shall be transferred to the department of public safety.”

SECTION 3. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

**“§76-16 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the State 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 that are required by state or federal laws or regulations or orders of the national guard to be filled from those 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 or is essential to the public interest and that, because of 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;
- (3) Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the 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;
- (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 bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; 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 each judge of the intermediate appellate court, and one law clerk for each judge of the circuit court and the administrative judge of the district court of the first circuit (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); [sheriff, first deputy sheriff, and second deputy sheriff;] and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);

- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, the special assistant to the state librarian, one secretary for the special assistant to the state librarian, 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;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating [on] in the work experience training programs, and 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 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 human services either in charge of welfare or other functions within the department as may be assigned by the director of human services; four additional deputies in the department of health in charge of administration or other functions within the department as may be assigned by the director of health with the approval of the governor; one additional deputy in the department of business and economic development to perform the duties assigned by the director of business and economic development and approved by the governor; one additional deputy in the department of budget and finance to perform the duties assigned by the director of finance and approved by the governor; one additional deputy within the department of land and natural resources to perform the duties to be assigned by the chairperson of the board

- of land and natural resources; one additional deputy in the department of taxation to perform the duties assigned by the director of taxation and approved by 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 personnel 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;
  - (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions; [and]
  - (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution[.]; and
  - (25) Sheriff, first deputy sheriff, and second deputy sheriff.

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 4. Section 329-1, Hawaii Revised Statutes, is amended by deleting the definition of "department".

[“ “Department” means the department of health, State of Hawaii.”]

SECTION 5. Section 329-4, Hawaii Revised Statutes, is amended to read as follows:

**“§329-4 Duties of the commission.** The commission shall:

- (1) Act in an advisory capacity to the department of public safety relating to the scheduling of substances provided in part II of this chapter, by recommending the addition, deletion, or rescheduling of all substances enumerated in part II of this chapter.
- (2) Act in an advisory capacity to the department of public safety relating to establishment and maintenance of the classes of controlled substances, as provided in part II of this chapter.
- (3) Assist the department of health in coordinating all action programs of community agencies (state, county, military, or private) specifically focused on the problem of drug abuse.

- (4) Assist the department of health in carrying out educational programs designed to prevent and deter abuse of controlled substances.
- (5) Encourage research on abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, it may, with the approval of the director of health:
  - (A) Establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;
  - (B) Make studies and undertake programs of research to:
    - (i) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;
    - (ii) Determine patterns of abuse of controlled substances and the social effects thereof; and
    - (iii) Improve methods for preventing, predicting, understanding, and dealing with the abuse of controlled substances.
- (6) Create public awareness and understanding of the problems of drug abuse.
- (7) Sit in an advisory capacity to the governor and other state departments as may be appropriate on matters relating to the commission's work.
- (8) Act in an advisory capacity to the director of health in substance abuse matters under chapter 321, part XVI. For the purposes of this paragraph, "substance" shall include alcohol in addition to any drug on schedules I through IV of this chapter and any substance which includes in its composition volatile organic solvents."

SECTION 6. Section 607-2, Hawaii Revised Statutes, is amended to read as follows:

**"§607-2 Fees to be accounted for.** With the exception of such fees as are intended to reimburse officers for actual expenditures made by them, [and subject to section 601-36,] all judges', clerks', sheriffs', and deputy sheriffs' fees provided for in this chapter and accruing from any action pending in any court shall be deposited to the credit of the general fund of the State."

SECTION 7. Section 651-1, Hawaii Revised Statutes, is amended to read as follows:

**"§651-1 General provisions.** This part shall apply to circuit and district courts. A judge of any court of record may make any order at chambers which may by the provisions of this part be made by the court in term time. When the proceedings are before a district judge, the judge shall be regarded as the clerk of the court for all purposes contemplated herein. The phrase "police officer," as used in this part, means a licensed process server, or the [sheriff of the State or the sheriff's deputy,] director of public safety or the director's duly authorized representative, and any chief of police or subordinate police officer [duly authorized by the sheriff]. Nothing in this part shall be construed to permit a district judge to issue a writ of attachment to be served out of the circuit in which the judge's court is situated, or to permit an attachment of real estate, or any interest therein, under a writ issued by a district court judge."

SECTION 8. Section 846-11, Hawaii Revised Statutes, is amended to read as follows:

**“§846-11 [Office of correctional information and statistics.] Coordination with department of public safety.** The data center shall coordinate its activities with the records system of the intake service centers of the [office of correctional information and statistics.] department of public safety. Criminal history record information shall be provided from this office to the data center and the functions of each shall be coordinated so that there will be no overlap, or duplication of efforts.”

SECTION 9. Act 211, Session Laws of Hawaii 1989, is amended by amending section 23 to read as follows:

“SECTION 23. **Appeals.** The right of appeal from administrative actions or determinations as provided by law shall not be impaired by this Act.

Except as otherwise provided by this Act, wherever a right of appeal from administrative actions or determinations is provided by law to or from any officer, board, department, bureau, commission, administrative agency, or instrumentality of the State which, or any of the programs of which, is transferred by this Act to the department of public safety, the right of appeal shall lie to or from the department of public safety when the transfer is made. The right of appeal shall exist to the same extent and in accordance with the applicable procedures that are in effect immediately prior to the [effective] date of approval of this Act.

If the provisions of the preceding paragraph relating to appeals cannot be effected by reason of abolishment, splitting, or shifting of functions or otherwise, the right of appeal shall lie to the circuit court of the State pursuant to the Hawaii Rules of Civil Procedure.”

SECTION 10. Chapter 329, Hawaii Revised Statutes, with the exception of sections 329-2 and 329-3, Hawaii Revised Statutes, is amended by replacing all references to “department” or “department of health” with “department of public safety” and “director” or “director of health” with “director of public safety,” as appropriate.

SECTION 11. Section 10 of Act 211, Session Laws of Hawaii 1989, is repealed.

[“SECTION 10. Effective July 1, 1990, sections 21-8, 21-17, 26-7, 26-9, 26-24, 28-11, 47-10, 52-36, 76-16, 88-51, 105-54, 134-11, 134-51, 143-1, 143-7, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 326-35, 326-36, 326-37, 326-38, 346-4.5, 353-11, 360-5, 360-14, 383-71, 438-5, 445-37, 482E-4, 485-6, 487-10, 501-42, 501-171, 501-218, 521-78, 576D-11, 578-4, 584-6, 587-33, 603-29 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-1, 651-33, 651-37, 651-51, 653-6, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23, Hawaii Revised Statutes, are amended by replacing all references to “sheriff”, “sheriffs”, or “office of the sheriff”, with references to the director of public safety or the department of public safety, as appropriate.”]

SECTION 12. Section 353C-4, Hawaii Revised Statutes, is amended to read as follows:

**“[§353C-4] Appointment of employees with police powers and other employees.** (a) The director may appoint employees to be public safety officers who shall have all of the powers of police officers; provided that the director may establish and assign the employees to positions or categories of positions that may have differing titles, specific duties, and limitations upon the exercise of police powers.

(b) The director may appoint other personnel necessary to carry out the functions of the department.

(c) The state law enforcement officers transferred from the department of the attorney general by Act 211, Session Laws of Hawaii, 1989, shall be responsible for public safety in state buildings as well as the personal protection of government officials and employees while in the conduct of their duties. The duties of state law enforcement officers shall also include the service of process, including subpoenas, warrants, and other legal documents, and other duties as the director may assign, including the performance of duties of other public safety officers within the department. State law enforcement officers shall have all of the powers of police officers, including the power of arrest.”

SECTION 13. Chapter 79, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§79- Assignment to the department of public safety.** (a) Any other law to the contrary notwithstanding, any permanent state civil service employee upon the request of the director of public safety, with the concurrence of the employee’s department head, and approval of the governor, shall be assigned to a position in the department of public safety without examination, provided they meet the minimum qualifications for the position, and shall be entitled to additional compensation in the form of an assignment differential of not more than twenty per cent above the basic rate of pay the employee was receiving upon assignment to the department of public safety; provided that the assignment differential shall be recomputed each time the employee’s basic rate of pay is changed.

(b) The department of public safety shall not initiate a request for any employee from another department to fill a position under this section, without first offering permanent employees within the department of public safety a promotional opportunity. To be considered for the position, employees must possess the minimum qualifications for the position for which they are applying. Employees from within the department of public safety who are selected to fill a position under this section shall be entitled to the additional compensation provided by subsection (a).

(c) The period of such assignments under subsection (a) and (b) to the department of public safety shall not exceed twenty-four months nor shall the number of those assigned positions exceed eight at any time. Assignment of any employee under subsections (a) and (b) must be made by the director of public safety no later than June 30, 1991.

(d) Upon completion of the employee’s assignment to the department of public safety, the employee shall return to the former position in which the employee last held a permanent appointment, the assignment differential shall be terminated, and the employee shall be compensated as though the employee had remained in the former position continuously. No employee shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges as a consequence of the assignment to the department of public safety.”



SECTION 14. The department of public safety shall review its role and responsibility for narcotics enforcement, prepare a report setting forth the objectives, functions, and priorities of narcotics enforcement, and make recommendations for statutory amendments as may be appropriate with respect to the powers and duties of its state law enforcement officers engaged in narcotics enforcement. The report shall be submitted to the legislature not less than twenty days before the convening of the regular session of 1991.

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 16. This Act shall take effect upon its approval; provided that sections 1, 3, 4, 5, 6, 10, and 11 shall take effect on July 1, 1990; and provided further that section 13 shall be repealed on June 30, 1993.

(Approved June 25, 1990.)

**Note**

1. Edited pursuant to HRS §23G-16.5.