

ACT 145

S.B. NO. 1804

A Bill for an Act Relating to Public Employment.

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

SECTION 1. 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 shall comprise all positions in the State now existing or hereafter established and embrace 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 human resources development 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, 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; one deputy administrative director of the courts; 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, one additional law clerk for the civil administrative judge of the circuit court of the first circuit, one additional law clerk for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the family court administrative judge of the family court of the fifth circuit, one additional law clerk for the civil motions judge of the circuit court of the first circuit, one additional law clerk for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; 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 in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service em-

ployment such as the federal Comprehensive Employment and Training Act of 1973;

- (14) A custodian or guide at Iolani Palace, the 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; [three] four additional deputies in the department of health, each in charge of one of the following: administration, behavioral health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; 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 not 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 that require the 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;
- (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;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff; and
- (26) A gender and other fairness coordinator hired by the judiciary.

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 2. Act 212, Session Laws of Hawaii 1994, is amended by amending section 3 to read as follows:

“SECTION 3. (a) Except for positions in the department of education [and]; positions in the University of Hawaii[.]; positions in the Hawaii state hospital of the department of health; positions in the correctional facilities of the department of public safety; positions in programs that are one hundred per cent federally funded; positions in the Hawaii housing authority that are one hundred per cent specially funded or one hundred per cent federally funded; the commissioner of financial institutions of the department of commerce and consumer affairs; the chief negotiator for the office of collective bargaining; and positions whose salaries are set forth in sections 26-52, 26-53, and 26-54, Hawaii Revised Statutes, with respect to positions in the executive branch vacated pursuant to section 2:

- (1) Thirty per cent of the positions vacated in each department may be refilled by the head of the department to ensure the continued ability of the department to carry out its public purpose;
- (2) Thirty per cent of the positions vacated in each department shall be held vacant for fiscal year 1995-1996 and shall be assigned to a statewide personnel pool; provided that after June 30, 1996, the governor may propose the transfer of vacant positions between executive departments as necessary to fill essential positions, subject to approval by the legislature through the executive budget; and
- (3) Forty per cent of the positions vacated in each department shall be eliminated.

(b) With respect to positions in the judiciary vacated pursuant to section 2:

- (1) Thirty per cent of the positions vacated may be refilled by the chief justice to ensure the continued ability of the judiciary to carry out its public purpose;
- (2) Thirty per cent of the positions vacated shall be held vacant for fiscal year 1995-1996; and
- (3) Forty per cent of the positions vacated shall be eliminated.

(c) With respect to positions in the University of Hawaii vacated pursuant to section 2:

- (1) Seventy per cent of the positions vacated may be refilled by the president of the University of Hawaii, with the approval of the board of regents; provided that these positions shall be reallocated as necessary to restructure and organize the university to ensure the continued provision of appropriate, direct, student-related services; and
- (2) Thirty per cent of the positions vacated shall be held vacant for fiscal year 1995-1996; provided that after June 30, 1996, the president of the University of Hawaii may propose the transfer of vacant positions between divisions, programs, and departments as necessary to fill essential positions, subject to approval by the legislature through the executive budget.

(d) With respect to positions in the department of education vacated pursuant to section 2, twenty per cent of the vacated statewide administrative positions shall be eliminated.

(e) With respect to:

- (1) Positions in the Hawaii state hospital of the department of health;
- (2) Positions in the correctional facilities of the department of public safety;
- (3) Positions in programs that are one hundred per cent federally funded;
- (4) Positions in the Hawaii housing authority that are one hundred per cent specially funded or one hundred per cent federally funded;

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- (5) The commissioner of financial institutions of the department of commerce and consumer affairs;
- (6) The chief negotiator for the office of collective bargaining; and
- (7) Positions whose salaries are set forth in sections 26-52, 26-53, and 26-54, Hawaii Revised Statutes;

vacated pursuant to section 2; one hundred per cent of the vacated positions; the commissioner of financial institutions of the department of commerce and consumer affairs; and the chief negotiator for the office of collective bargaining, may be refilled by the head of the department to ensure the continued ability of the department to carry out its public purpose.

[(e)] (f) Funding allocations for positions vacated pursuant to this Act and refilled pursuant to this section shall be computed on the basis of the average monthly salary of the department from which the person retired, and shall be distributed accordingly. All amounts already allocated for positions vacated pursuant to this Act shall be returned to the general fund. Each department shall report its position reallocations to the director of finance, who shall report this information to the legislature no later than twenty days prior to the convening of the regular session of 1996.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1995.

(Approved June 9, 1995.)