

ACT 253

S.B NO. 2859

A Bill for an Act Relating to Public Employment.

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

SECTION 1. The purpose of this Act is to enact statewide legislation to reform the existing public employment laws that were enacted to implement two constitutional mandates—that there be a civil service based on merit and that public employees have the right to bargain collectively.

PART I

SECTION 2. Section 26-5, Hawaii Revised Statutes, is amended to read as follows:

“§26-5 Department of human resources development. (a) The department of human resources development shall be headed by a single executive to be known as the director of human resources development.

[The director shall have the authority to adopt rules as heretofore exercised by the civil service commission. Whenever consistent with economic and efficient administration, the director may delegate any of the duties imposed upon the director by chapter 76 or chapter 77 to the department heads, or any of them, in accordance with standards and procedures issued by the director. The director shall institute and maintain a system of inspection to determine that the personnel laws are applied and administered by the departments in a manner consistent with the purposes and provisions of the civil service law. Whenever an inspection indicates failure on the part of a department to comply with established policies, rules, and standards, the director shall take any action that may be appropriate, including suspension or revocation of any delegation of the director’s authority.]

(b) The department shall administer the state human resources program, including human resources development and training, and central human resources services such as recruitment, examination, [position] classification, [and] pay administration [for all departments.], and payment of any claims as required under chapter 386.

(c) There shall be within the department of human resources development a [commission] board to be known as the [civil service commission] merit appeals board which shall sit as an appellate body on matters [within the jurisdiction of the department of human resources development.] set forth in section 76-14. The [commission] board shall consist of [seven] three members[, one from each county and three at large. At least one member of the commission shall be selected from among persons employed in private industry in skilled or unskilled laboring positions as distinguished from executive or professional positions. The functions, duties, and powers of the commission with respect to appeals shall be as heretofore provided by law for the civil service commission and for the loyalty board existing immediately prior to November 25, 1959.

The functions and authority heretofore exercised by the department of civil service and loyalty board as heretofore constituted are transferred to the department of human resources development established by this chapter]. All members shall have knowledge of public employment laws and prior experience with public employment; provided that at least one member’s experience was with an employee organization as a member or an employee of that organization and at least one member’s experience was with management. The governor shall consider the names of qualified individuals submitted by employee organizations or management before

appointing the members of the board. The chairperson of the board shall be designated as specified in the rules of the board.

(d) The provisions of section 26-34 shall not apply and the board members shall be appointed by the governor for four-year terms and may be re-appointed without limitation; provided that the initial appointments shall be for staggered terms, as determined by the governor. The governor shall fill any vacancy by appointing a new member for a four-year term. The governor may remove for cause any member after due notice and public hearing.

(e) Nothing in this section shall be construed as in any manner affecting the civil service laws applicable to the several counties, the judiciary, or the Hawaii health systems corporation, which shall remain the same as if this chapter had not been enacted.

(f) There is created in the state treasury a special fund, which shall consist of two separate accounts to be expended by the department as follows:

- (1) All revenues received by the department as a result of entrepreneurial efforts in securing new sources of funds not provided for in the department's budget for services rendered by the department shall be deposited into the entrepreneurial account and expended for the department's related activities and programs; provided that the department may use the moneys in the fund to employ necessary personnel or for other purposes in support of departmental entrepreneurial initiatives and programs; and
- (2) All revenues received by the department from the charging of participant fees for in-service training, that are in addition to general fund appropriations in the department's budget for developing and operating in-service training programs, shall be deposited into the in-service training account and expended for the department's training activities and programs."

PART II

SECTION 3. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§76- Classification. (a) Each director shall establish, implement, and maintain one or more classification systems covering all civil service positions, not otherwise exempted by rules. The classification systems shall be constructed with the objective of achieving equal pay for equal work as provided in section 76-1. The director shall adopt rules that allow for the administrative review of classification and initial pricing actions.

(b) Wherever reference is made in statutes that positions are either subject to or exempt from “chapter 77” prior to the effective date of this Act, the positions shall be subject or exempt from the appropriate classification systems established under this section.”

SECTION 4. Chapter 76, Part I, is amended by amending the title to read:

“PART I. GENERAL CIVIL SERVICE PROVISIONS”

SECTION 5. Section 76-1, Hawaii Revised Statutes, is amended to read as follows:

“§76-1 [Purpose of this chapter; statement of policy.] Purposes; merit principle. It is the purpose of this chapter to [establish in the State and each of the

counties a system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees.] require each jurisdiction to establish and maintain a separately administered civil service system based on the merit principle. The merit principle is the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance. It is also the purpose of this chapter to build a career service in government [which will attract, select, and retain the best of our citizens on merit], free from coercive political influences, [with incentives in the form of genuine opportunities for promotions in the service, which will eliminate unnecessary and inefficient employees, and which will provide technically competent and loyal personnel] to render impartial service to the public at all times, [and to render that service] according to the dictates of ethics and morality[.] and in compliance with all laws.

In order to achieve these purposes, it is the declared policy of the State that the [personnel system hereby established be applied and] human resource program within each jurisdiction be administered in accordance with the following [merit principles]:

- (1) Equal opportunity for all [regardless of race, sex, age, religion, color, ancestry, or politics.] in compliance with all laws prohibiting discrimination. No person shall be discriminated against [in any case because of any disability,] 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 of human resources development] when the work may be efficiently performed by [a person with such a disability; provided that the employment will not be hazardous to the appointee or endanger the health or safety of the appointee's co-workers or others;] the person without hazard or danger to the health and safety of the person or others;
- (2) Impartial selection of [the ablest person for government] individuals for public service by means of competitive tests which are fair, objective, and practical;
- (3) [Just opportunity] Incentives for competent employees [to be promoted] within the service[;], whether financial or promotional opportunities and other performance based group and individual awards that encourage continuous improvement to achieve superior performance;
- (4) Reasonable job security for [the] competent [employee, including] employees and discharge of unnecessary or inefficient employees with the right [of appeal from] to grieve and appeal personnel actions[;] through the:
 - (A) Contractual grievance procedure for employees covered by chapter 89; or
 - (B) Internal complaint procedures and the merit appeals board for employees excluded from coverage under chapter 89;
- (5) [Systematic] Equal pay for equal work shall apply between classes in the same bargaining unit among jurisdictions for those classes determined to be equal through systematic classification of [all] positions [through] based on objective criteria and adequate job evaluation[; and], unless it has been agreed in accordance with chapter 89 to negotiate the repricing of classes; and
- (6) [Proper balance in employer-employee relations between the people as the employer and employees as the individual citizens, to achieve a well trained, productive, and happy working force.] Harmonious and cooperative relations between government and its employees, including

employee organizations representing them, to develop and maintain a well-trained, efficient, and productive work force that utilizes advanced technology to ensure effective government operations and delivery of public services.”

SECTION 6. Section 76-5, Hawaii Revised Statutes, is amended to read as follows:

“§76-5 [Furnishing of services and facilities.] Alternatives in providing human resources program services. (a) Whenever consistent with economic and efficient administration, the director may delegate the performance of services under this chapter to the departments. The departments shall perform the services in compliance with any policies, standards, and procedures issued by the director. The delegation may be withdrawn at any time as determined by the director.

(b) Whenever consistent with economic and efficient administration and upon the recommendation of its director, the chief executive may decentralize powers of the director under this chapter, except for rule-making, to an appointing authority. The appointing authority shall exercise the powers, including the issuance of policies, standards, and procedures that would apply to the department or agency. Accountability for all actions taken by the appointing authority or any subordinate employee, as a result of empowerment by the chief executive, shall rest with the appointing authority to the same extent as though the action had been taken by the director.

(c) [Subject to the rules of the state department of human resources development, the director of human resources development may enter into agreements with the judiciary, any county, and the Hawaii health systems corporation to furnish] Whenever consistent with economic and efficient administration, a jurisdiction, if authorized by rules of the jurisdiction, may enter into agreements on furnishing services and facilities [of the state department to the judiciary, any county, and the Hawaii health systems corporation in the administration of civil service including position classification in the judiciary, any county, and the Hawaii health systems corporation.] for human resources. The human resource services furnished under an agreement on behalf of a jurisdiction shall be as fully effective as though these services had been performed by the jurisdiction. The agreements may provide for [the reimbursement to the State of] reciprocity or reimbursement from authorized funds for the [reasonable] value of the services and facilities for human resources furnished[, as determined by the director. The judiciary, all counties, and the Hawaii health systems corporation are authorized to enter into the agreements]. If authorized by the legislature, an agreement on furnishing services and facilities for human resources may be with a private entity and shall be subject to any requirements and parameters set by the legislature or the respective legislative body, as applicable.

(d) When determining how human resource services are to be provided for the state executive branch, consideration shall be given to options, such as restructuring the workforce in conjunction with providing affected employees the option of electing a voluntary severance benefit or an early retirement incentive, or initiating a reduction-in-force.

(e) Whenever human resource services are delegated, decentralized, or performed by agreements as authorized in this section, the director shall institute and maintain a system of inspection to determine that the personnel laws and rules are applied and administered by the departments in a manner consistent with the provisions of this chapter. In the event of any failure to comply with the provisions of this chapter, the director shall take or recommend appropriate action. Such action may include requiring immediate correction be taken, retracting the delegation of

authority, recommending cessation of decentralization, or terminating an agreement for human resource services.”

SECTION 7. Section 76-6, Hawaii Revised Statutes, is amended to read as follows:

“§76-6 Chapter inoperative, when. If any provision of this chapter [or chapter 77] jeopardizes the receipt by the State or any county of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as the fund is jeopardized, be deemed to be inoperative.”

SECTION 8. Chapter 76, Part II, Hawaii Revised Statutes, is amended by repealing the title:

[“PART II. CIVIL SERVICE FOR THE STATE”]

SECTION 9. Section 76-11, Hawaii Revised Statutes, is amended to read as follows:

“§76-11 Definitions. As used in this [part,] chapter, unless the context clearly requires otherwise:

[(1) “Commission” means the civil service commission of the State;]

[(5) “Appointing authority” means a department head or [person] designee having the power to make appointments or changes in the status of employees [in the state service and includes such subordinate, or, under rule of the department of human resources development, subordinates, as the department or person may designate to act for it or the person. Notwithstanding any other provision of law, any department or person may make such a designation;].

“Chief executive” means the governor, the respective mayors, the chief justice of the supreme court, and the chief executive officer of the Hawaii health systems corporation. It may include the superintendent of education and the president of the University of Hawaii with respect to their employees on any matter that applies to employees in general, including employees who are not covered by this chapter.

[(6) “Civil service” includes all positions [in the state service] within a jurisdiction that are not exempted by section 46-33, 76-16[;], or 76-77, or by other law and must be filled through civil service recruitment procedures based on merit.

“Civil service employee” means an employee who has met all requirements for membership in the civil service under section 76-27.

[(7) “Class” [or “class of work” means the logical and reasonable grouping of duties and responsibilities and their identification with respect to

(A) Kind or subject matter of work,

(B) Level of difficulty and responsibility, and

(C) Qualification requirements of the work, so that positions which conform substantially to the same class would receive like treatment in the matter of title, and such personnel processes as salary assignment;] means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and the same pay range may apply to each position allocated to the class.

“Classification system” means classes of positions arranged in a logical and systematic order.

“Day” means a calendar day unless otherwise specified.

[(4) “Department” [includes the judicial branch and] means any department, board, commission, or agency of [the State;] a jurisdiction.

[(2)] “Director” means the [director of human resources development of the State;] head of the central personnel agency for a jurisdiction regardless of title, whether it is the director of human resources development, director of personnel, director of personnel services, or personnel director.

[(3)] “State service” means all offices and other positions in the public service of the State;

[(19)] “Employee” or “public employee” means [a] any person holding a position in [accordance with this chapter whether permanently or otherwise and whether as an officer or otherwise;] the service of a jurisdiction, irrespective of status or type of appointment; provided that, if the context clearly applies only to an employee who is a member of the civil service, “employee” means a civil service employee.

“Employer” or “public employer” means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of the employers or acts in their interest in dealing with public employees. In the case of the judiciary, the administrative director of the courts shall be the employer in lieu of the chief justice for purposes which the chief justice determines would be prudent or necessary to avoid conflict.

“Exclusive representative” means the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

“Jurisdiction” means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation.

“Legislative body” means the legislature in the case of the State, including the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation; the city council in the case of the city and county of Honolulu; and the respective county councils in the case of the counties of Hawaii, Maui, and Kauai.

“Merit appeals board” means a jurisdiction’s appellate body for purposes of section 76-14 regardless of whether it is named merit appeals board, civil service commission, or appeals board.

[(8)] “Promotional examination” means an examination for positions in a particular class, admission to which is limited to regular employees in civil service;

[(9)] “Open-competitive examination” means an examination for positions in a particular class, admission to which is not limited to persons employed in civil service;

[(10)] “Open-competitive list” means a list of persons who have been found qualified by an open-competitive examination for appointment to a position in a particular class;

[(11)] “Promotional list” means a list of persons who have been found qualified by a promotional examination for appointment to a position in a particular class;

[(12)] “Reemployment list” means a list of persons who have been regular employees in the civil service and who are entitled to have their names certified for appointment to a position in the class in which they last held permanent status, or, as provided by section 76-25, in a related

- class in the same or lower range for which they meet the qualification requirements;
- (13) “Eligible list” means a list of persons who have been found qualified for appointment to a position in a particular class, such a list being either open-competitive, promotional, or reemployment;
- (14) “Eligible” means a person whose name is on an active eligible list;
- (15) “Regular employee” means an employee who has been appointed to a position in the civil service in accordance with this chapter and who has successfully completed the employee’s initial probation period;
- (16) “Initial probation period” means a period of not less than six months nor more than one year from the beginning of an employee’s service in civil service;
- (17) “New probation period” means any probation period other than that defined in paragraph (16);
- (18) “Position” means a specific [office or employment, whether occupied or vacant, consisting of a group of all the current duties and responsibilities assigned or delegated by competent authority,] job requiring the full or part-time employment of one person[;].
- [(20) “Position classification plan” means classes of positions arranged in a logical and systematic order.]”

SECTION 10. Section 76-12, Hawaii Revised Statutes, is amended to read as follows:

“§76-12 **General powers and duties of director.** The director [of human resources development] shall:

- (1) Represent the public interest in the improvement of human resources administration in the civil service;
- (2) Assist in fostering the interest of institutions of learning and civic, professional, and employee organizations in the improvement of human resources standards in civil service;
- (3) Advise the [governor] chief executive on policies and problems concerning the human resources [administration;] program; and
- (4) Make investigations concerning the administration of human resources policies in the civil service, including any matter respecting the enforcement or effect of this chapter or the rules adopted thereunder, or the action or failure to act of any officer or employee with respect thereto.”

SECTION 11. Section 76-13, Hawaii Revised Statutes, is amended to read as follows:

“§76-13 **Specific duties and powers of director.** (a)¹ The director [of human resources development] shall direct and supervise all the administrative and technical activities of the director’s department. In addition to other duties imposed upon the director by this chapter [and chapter 77], the director shall:

- [(1) Attend all meetings of the commission;
- (2)] (1) Establish and maintain a roster of all persons in the civil service [in which shall be set forth, as to each, the class of position held, the salary or pay, any change in class, title, pay, or status, and any other necessary data];
- [(3)] (2) Appoint [assistants and] employees necessary to assist the director in the proper performance of the director’s duties and for which appropriations shall have been made;

- [(4)] (3) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee efficiency;
- [(5)] (4) Cooperate fully with appointing authorities, giving full recognition to their requirements and needs, in the administration of this chapter [and chapter 77 in order] to promote public service [and establish] by establishing conditions of service that will attract and retain employees of character and [capacity,] capability, and to increase efficiency and [economy] productivity in governmental departments by [the improvement of] continuously improving methods of human resources administration [with full recognition of the requirements and needs of management;] and maximizing the use of advanced technology;
- [(6)] (5) Encourage and exercise leadership in the development of effective human resources administration within the several departments [in civil service] and make available the facilities of the director's department to this end;
- [(7)] (6) Investigate from time to time the operation and effect of this chapter and [chapter 77 and of] the rules adopted thereunder;
- [(8)] (7) Develop and maintain [a position] classification [plan; and
 - (A) Create and adjust classes of positions and adopt class specifications including title, description of typical duties and responsibilities, statement of training and experience, and other requirements to be met by applicants, covering all positions;
 - (B) Allocate each position and each newly created position to the appropriate class;
 - (C) Reallocate positions to recognize material changes in duties and responsibilities or to correct a previous action; provided that reallocations shall be made effective retroactively to the beginning of the pay period immediately following the date the application for reallocation was filed with the director or any other date provided by the rules; and provided further that an employee who is otherwise properly compensated shall not be required to make reimbursement of overpayment in salary when the overpayment is due to salary increments or repricing actions nullified by the retroactive feature of a classification action; and provided further that the proper salary adjustment shall be made as of the first pay period following the action taken by the director; and
 - (D) Determine the status of employees holding positions affected by classification actions;] systems;
- [(9)] Pay any claims against the State as required under chapter 386; and
- [(8)] Make recommendations and advise the chief executive on appropriate adjustments for employees excluded from collective bargaining as authorized under chapter 89C; and
- [(10)] (9) Perform any other lawful acts deemed by the director to be necessary or desirable to carry out the purposes and provisions of this [part.] chapter."

SECTION 12. Section 76-14, Hawaii Revised Statutes, is amended to read as follows:

“§76-14 [General duties of commission.] Merit appeals board; duties, and jurisdiction. (a) The [civil service commission shall hear and decide] merit appeals board of each jurisdiction shall decide appeals from any action [of the director of human resources development] under this chapter[, as well as from dismissals, demotions, and suspensions as hereinafter provided.] taken by the chief

executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:

- (1) Recruitment and examination;
- (2) Classification and reclassification of a particular position;
- (3) Initial pricing of classes; and
- (4) Other employment actions under this chapter, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6.

(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the merit appeals board. Any employee covered by chapter 76 suffering legal wrong by an action under subsection (a)(2) or (3) shall be entitled to appeal to the merit appeals board. Only employees covered by chapter 76, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the merit appeals board. Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board.

(c) The rules adopted by the merit appeals board shall provide for the following:

- (1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;
- (2) The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;
- (3) The merit appeals board shall prescribe time limits for filing an appeal that require exhaustion of all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed; and
- (4) The merit appeals board shall use the conditions listed in section 76-41(c) in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit.'

SECTION 13. Section 76-15, Hawaii Revised Statutes, is amended to read as follows:

“§76-15 Examination consultants. (a) The director [of human resources development] or an appointing authority may select [officers or] employees in the [state] jurisdiction's service or any individual to act as volunteer subject-matter consultants in the preparation and rating of applications and examinations. Notwithstanding the provisions of chapter 92F, the identity of any volunteer subject-matter consultant, and any information which would result in actual identification of any volunteer subject-matter consultant, are confidential and shall not be disclosed[, unless deemed appropriate by the director].

(b) An appointing authority may excuse any [officer or] employee in the appointing authority's department from the [officer's or] employee's regular duties for the time required for the [officer's or] employee's work as a volunteer subject-matter consultant.

[Officers and employees] Employees shall not be entitled to extra pay for services as volunteer consultants but shall be entitled to reimbursement for necessary traveling and other expenses.”

SECTION 14. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

“§76-16 Civil service and exemptions. (a) The State Constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(b) The civil service to which this [part] chapter 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;] that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or non-compliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant 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 secretary for the judicial council; one deputy administrative direc-

- tor 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, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks 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, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, and alternative school project coordinators 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 employment 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; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental 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 housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation 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.

(c) No position shall be exempted from civil service recruitment procedures unless it is in accordance with this section. In addition to the exemptions under subsection (b), sections 46-33 and 76-77, or other law, the director may exempt additional positions if the reason for exempting the position is for the same reason as a position that is included in the list of exemptions for the respective jurisdiction.

(d) The director may provide for an exemption from civil service recruitment procedures if the appointment to the position has a limitation date and it would be impracticable to recruit under civil service recruitment procedures because the required probation period that is part of the examination process can not be completed by the limitation date. The rules shall not permit additional exemptions from civil service recruitment procedures for the same position when the position will be filled for a duration that would be sufficient to recruit under civil service recruitment procedures and allow for completion of the required probation period.

(e) It is also the public policy of the State that all civil service positions be covered under the classification systems of the jurisdictions, unless the position was exempted from the classification systems by law prior to the effective date of this Act or based on reasons set forth in rules. The rules may include reasons for a temporary exemption of a position, such as the establishment of a new class is pending, or for a permanent exemption when the establishment of a class is impracticable.

(f) The exemption of a position from the classification systems, whether temporary or permanent, or an appointment with a limitation date shall not itself result in an exemption from civil service recruitment procedures. Civil service recruitment procedures based on merit shall be followed for all positions unless exempted under subsection (b), (c), or (d). Applicants referred under civil service recruitment procedures shall be informed if the appointment has a limitation date or if the position is temporarily or permanently exempted from the classification systems.

(g) Each director shall be responsible for ensuring that all exemptions from civil service recruitment procedures or from the classification systems are consistent with this section. With respect to positions exempted under this section prior to the effective date of this Act by any other law, the director shall review these positions to determine whether the positions should continue to be exempt and if so, whether from civil service recruitment procedures or the classification systems, or both. If the director determines that a position should no longer be exempt from either or both based on the intent of this section, the director shall consult with the appropriate appointing authority and its chief executive on removing the exemptions. With the approval of the chief executive, the director shall take whatever action is necessary to remove the exemptions, including submittal of proposed legislation to remove the exemptions.

(h) The director shall establish rules to implement this section that shall be in accordance with the following:

- (1) Whenever a position exempted under subsection (b) or (c) is no longer exempted from the civil service, normal civil service recruitment procedures shall apply, unless the incumbent is to be retained without the necessity for examination by action of the legislature; provided that in such event, the incumbent shall be retained, but only if the incumbent meets the minimum qualification requirements of the position; and
- (2) The manner for setting the compensation of incumbents upon their inclusion in the classification systems shall be fair and equitable in comparison to the compensation of other incumbents with comparable experience in the same or essentially similar classes; provided that the compensation of incumbents who are in the same bargaining unit, prior to and after their inclusion in the classification systems, shall be in accordance with the applicable collective bargaining agreement.

(i) Employees in positions subject to civil service recruitment procedures shall be entitled to become and remain members of the civil service for the duration of their appointments as provided in section 76-27. Employees in positions exempted from civil service recruitment procedures shall not be entitled to membership in the civil service.

(j) Employees in positions that are exempted from the classification plan, whether temporarily or permanently, may be entitled to membership in the civil service as provided in subsection (i).''

SECTION 15. Section 76-17, Hawaii Revised Statutes, is amended to read as follows:

“§76-17 Rules [and regulations]; policies [and], standards[.], and procedures. (a) In conformity with chapter 91, the director [of human resources development] shall prescribe rules [and regulations] to carry out this chapter which shall have the force and effect of law. The rules [and regulations] may include any matter not inconsistent with law concerning the establishment and maintenance of a system of personnel management based on the merit [principles,] principle, including but not limited to matters set forth in this chapter, and may be amended or repealed in like manner as the same were adopted. The rules [and regulations] shall be in conformity with principles of good public administration [and shall be in conformity with sections 76-18 to 76-43].

(b) The director may also issue, without regard to chapter 91, policies, standards, and procedures consistent with rules to facilitate and ensure appropriate functioning of the human resources program.

(c) The section shall not apply to matters that are negotiable under chapter 89 or adjusted under chapter 89C.”

SECTION 16. Section 76-18, Hawaii Revised Statutes, is amended to read as follows:

“§76-18 Examinations[, general character]. There shall be [competitive] examinations for testing [of the relative fitness] the fitness and ability of applicants for positions in civil service. [The examinations shall be practical in their character and shall provide for ascertaining the physical and educational qualifications, experience, knowledge, and skill of applicants and their relative capacity and fitness for the proper performance of the characteristic duties of the class of positions in which they seek to be employed; except that in the case of a promotional examination, the examination shall be limited, at the request of the department head, to the characteristic duties of the class and nothing else. All examinations shall be public and, except as otherwise provided by law, free and open to all citizens of the State but with such limitations as to health, physical condition, age, sex, education, training, experience, habits, and character as the director of human resources development may deem necessary and proper for the class for which the examination is to be given. Disabled veterans or persons with a disability shall not be disqualified for reason of the disability if they possess the physical capacities to perform the duties of the class. Examinations may be oral or written or partly oral and partly written, or tests of manual skill and physical strength, or evaluations of training and experience backgrounds. Except when clearly required by the nature of the service to be performed, written examinations shall not be required of applicants for unskilled labor classes. All examinations shall be under the control of the director or any suitable person or persons as the director may designate to conduct them. All persons who have passed the examination shall be required to take physical examinations as may be required by the director or, in case of the counties, by the civil service commission. The reports of the physical examinations shall be filed with the director.

The director, for purposes of expediting the examination process, may require applicants to take a written examination prior to filing a formal application. Upon successful completion of the written examination, the applicant shall then file a formal application.] The director shall adopt rules to administer the examination programs.”

SECTION 17. Section 76-22.5, Hawaii Revised Statutes, is amended to read as follows:

“§76-22.5 Recruitment [flexibility]. [Notwithstanding section 76-23, the] The director [of human resources development] shall adopt rules in accordance with sections 76-1 and 78-1 to determine, establish, and maintain the manner in which civil service positions [shall] are to be filled [in accordance with section 78-1 and the following standards:

- (1) Equal opportunity for all regardless of race, sex, age, religion, color, ancestry, physical handicap, or politics;
- (2) First consideration for competent employees already within public service; and
- (3) Impartial selection of the ablest person through competitive means which are fair, objective, and practical]. The director shall seek con-

tinuous improvements to streamline the recruitment process so that positions are filled in the most economic, efficient, and expeditious manner possible. This includes maximizing use of new technologies and developing more efficient alternatives to ensure the availability of qualified applicant pools whether it involves a change in the manner in which initial appointments are to be made, increased delegation to departments, or decentralization to appointing authorities, as necessary and appropriate.”

SECTION 18. Section 76-23.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§76-23.5] Travel and transportation expenses.] Recruitment incentives. [Appointing authorities, with the prior approval] Within limits set forth in rules of the director, appointing authorities may pay for all or a portion of the travel and transportation expenses or to provide a monetary incentive to enhance the recruitment of persons employed or appointed to [positions in a class declared to be in a shortage category and on continuous recruitment.] critical-to-fill and labor shortage positions.”

SECTION 19. Section 76-27, Hawaii Revised Statutes, is amended to read as follows:

“§76-27 Probationary service and other requirements for membership[.] in the civil service. (a) All employees [shall successfully serve an initial probation period before becoming members of the civil service. In addition, membership in the civil service shall require that the employee shall have been appointed in accordance with law and shall have satisfied all the requirements for employment prescribed by this chapter or by the rules adopted thereunder, including those qualifications prescribed by section 78-1.] appointed to civil service positions shall constitute the membership of the civil service, but no employee shall be entitled to membership in civil service until the employee has:

- (1) Successfully completed the initial probation period required as part of the examination process to determine the employee’s fitness and ability for the position; and
- (2) Satisfied all requirements for employment prescribed by this chapter and the qualifications prescribed by section 78-1.

(b) Upon becoming a member in the civil service, the employee shall be entitled to hold the member’s position for the duration of the member’s appointment, subject to section 76-46. In addition, civil service employees with permanent appointments, including an employee who has return rights to a position in which the employee has a permanent appointment, shall have layoff rights under section 76-43. All other civil service employees whose appointments have a limitation date shall

not have layoff rights and shall be released at the end of their appointments or earlier if there is lack of work, lack of funds, or other legitimate reasons.

(c) To retain membership in the civil service, all employees must continue to demonstrate their fitness and ability for their current positions by meeting all performance requirements of their positions. If an employee fails to meet performance requirements, section 76-41 shall apply.

(d) A member who is promoted or transferred to another position in the civil service may be required to successfully serve a new probation period [in] as part of the examination process to determine the employee's fitness and ability for the new position but shall be entitled to all the rights and privileges of a member of the civil service, except the right to appeal a [dismissal] discharge from the new position (as distinguished from [dismissal] discharge from the service) for inefficiency during the probationary period, in which case the member shall be returned to the former position[,] or a comparable position.

(e) An employee [who is] serving [a temporary] an appointment with a limitation date may subsequently be [given a probationary appointment in] appointed to the same position or a related position in the same class within the department [whenever] when a permanent position is established or is vacated; provided that the employee [has been] was hired initially [from the appropriate eligible list] through civil service recruitment procedures and the [temporary] period of service [has] as a temporary appointee immediately preceded the [change to probationary status. Upon certification by the appointing authority] appointment to the permanent position. The period of service performed as a temporary appointee may be credited toward the probation period if the appointing authority certifies that the employee has been performing satisfactorily and that the duties the employee has been performing are essentially similar to those required of the probationary appointment[.]. Upon such certification, the period of service performed as a temporary appointee shall be [subtracted from the probationary period required by this section.] credited toward fulfilling the required probation period and the employee shall serve only the [remaining period, if any, as a probationary employee.] remainder of the probation period, if any.”

SECTION 20. Section 76-28, Hawaii Revised Statutes, is amended to read as follows:

“§76-28 Forms required of appointing authorities. [The director of human resources development] Each director shall develop and administer an employment records management system and require appointing authorities to transmit such records as the director may request. Appointing authorities shall maintain records of all appointments, terminations of employment, transfers, resignations, suspensions, demotions, and [dismissals. Appointing authorities shall file necessary forms of such personnel actions as the director may request.] discharges, other employment records and forms deemed appropriate by the director.”

SECTION 21. Section 76-29, Hawaii Revised Statutes, is amended to read as follows:

“§76-29 Person ineligible for appointment. [No] A person [who has committed or attempted any deception or fraud in connection with any application or examination,] shall be [eligible] ineligible for any appointment in the civil service[,] for a specified period of time as determined appropriate by the director for reasons including, but not limited to, the following:

- (1) Deception, fraud, or providing false or misleading statements of material facts in the application or examination process;

- (2) Unauthorized or improper assistance in an examination; or
 (3) A determination of unsuitability for employment.”

SECTION 22. Section 76-30, Hawaii Revised Statutes, is amended to read as follows:

“§76-30 Tenure; resignations. (a) Every member of the civil service shall be entitled to hold the member’s position [during good behavior, subject to suspension, demotion, or dismissal only as provided in this chapter and in the rules and regulations of the department of human resources development.] for the duration of the member’s appointment as provided in section 76-27. Resignations shall be in writing[. In case] in accordance with rules.

(b) If an employee resigns without submitting the employee’s resignation in writing, if an employee does not report to work for fifteen days without notifying the appointing authority of the employee’s employment intentions, if the resignation is submitted while an investigation was pending against the employee, or if the resignation is not accepted for reasons allowed by rules, the [department head] appointing authority shall, within fifteen days following the [resignation,] last day the employee reported to work, file with the director [of human resources development] a statement showing either resignation or termination of employment[.], as appropriate under the circumstances.

(c) If the employee does not report for work without authorization, but, within fifteen days following the last day the employee reported for work, expresses a desire to continue employment, the employee shall not be deemed to have resigned. The appointing authority may take appropriate disciplinary action, including discharge, in consideration of the reasons for the employee’s absence.

(d) Actions taken by the appointing authority under this section shall, if grieved, be filed pursuant to the departmental complaint procedure and the merit appeals board for employees excluded from coverage under chapter 89, as applicable.

(e) Whenever there are provisions in a collective bargaining agreement that conflict with this section, the terms of the agreement shall prevail. Actions taken by the appointing authority shall, if grieved, be filed pursuant to the contractual grievance procedure.”

SECTION 23. Section 76-41, Hawaii Revised Statutes, is amended to read as follows:

“§76-41 Performance [ratings.] appraisal systems; failure to meet performance requirements. (a) There shall be established and maintained [a system of performance ratings] performance appraisal systems for the purpose of [appraising the service] evaluating the performance of employees in the civil service and improving the employees’ performance. [Each department shall rate each employee under its jurisdiction in accordance with the system and shall, upon request by the director of the respective jurisdiction, transmit the final performance ratings to the director of human resources development. A copy of the final performance rating shall be given to the affected employee, and the original shall be filed in the employee’s official personnel file.

The department head shall inform an employee in writing whenever the employee’s performance in the employee’s position is substandard. The employee shall also be notified in the notice and from time to time thereafter as may be necessary, of the manner in which the employee’s performance is substandard.] The performance appraisal systems shall be the basis for evaluating whether employees in the civil service meet the performance requirements of their respective positions

as required in section 76-27. For the purposes of this section, “performance requirements” includes any qualification required for the position such as a license.

(b) An appointing authority may release an employee from the employee’s position or discharge an employee from service if the employee fails to meet the performance requirements of the employee’s position under the following conditions:

- (1) The evaluation process and its consequences were discussed with the employee;
- (2) The employee was made aware of the employee’s current job description and job-related performance requirements;
- (3) The evaluation procedures were observed, including providing the employee the opportunity to meet, discuss, and rebut the performance evaluation and apprising the employee of the consequences of failure to meet performance requirements;
- (4) The evaluation was fair and objective;
- (5) The employee was provided performance feedback during the evaluation period and, as appropriate, the employee was offered in-service remedial training in order for the employee to improve and meet performance requirements;
- (6) The evaluation was applied without discrimination; and
- (7) Prior to the end of the evaluation period that the employee is being considered for discharge due to failure to meet performance requirements, the feasibility of transferring or demoting the employee to another position for which the employee qualifies was considered.

(c) Any civil service employee who fails to meet performance requirements shall have the right to grieve under:

- (1) A collective bargaining grievance procedure that culminates in a final and binding decision by a performance judge pursuant to section 89- ; or
- (2) The departmental complaint procedure that culminates in a final and binding decision by the merit appeals board under section 76-14.

The performance judge or the merit appeals board, as the case may be, shall use the conditions in subsection (b) as tests in reaching a decision on whether the employer’s action, based on a failure by the employee to meet performance requirements of the employee’s position, was with or without merit.”

SECTION 24. Section 76-42, Hawaii Revised Statutes, is amended to read as follows:

“§76-42 [Grievance] Internal complaint procedures. (a) The director [of human resources development] shall promulgate a uniform plan for the creation of [grievance] internal complaint procedures in the various departments[,] that shall apply to matters within the jurisdiction of the merit appeals board. The internal complaint procedures may also be used for other matters, such as, when a complaint procedure is required by law to be available or when a jurisdiction deems it would be beneficial to avoid the time and expense of litigation; provided that matters subject to collective bargaining grievance procedures shall not be processed under the internal complaint procedures. The rules [and regulations] relating to [grievance] internal complaint procedures shall conform to the following [principles]:

- (1) [An employee may, without resort to formal procedures, discuss informally any problem relating to the employee’s conditions of employment with any of the employee’s supervisors.] The procedures shall encourage informal discussions and expeditious resolution of all complaints. Informal resolution includes the use of any administrative re-

view process available. A written decision shall be issued to the complainant on the outcome of any efforts to resolve the complaint informally and, if not resolved, the decision shall be accompanied by information on the filing of a formal complaint with the department or the merit appeals board, as applicable.

- (2) In presenting a [grievance, the employee] complaint, the complainant shall be assured freedom from coercion, discrimination, or reprisal.
- (3) [An employee] The complainant shall have the right to be represented by a person or persons of the [employee's] complainant's own choosing at any stage in the presentation of the [employee's grievance.] complaint.
- (4) To minimize confusion and possible loss of rights, the time and manner for filing a formal complaint shall be as uniform and easily understandable as possible to the employees or general public. Complaint forms, instructions, and the complaint procedures should be easily accessible to the employees or general public and the procedures should allow for complaints to be filed at central locations convenient to the public. The complaint shall be referred to the appropriate individual at the lowest level of the internal complaint procedures who has the authority to act on the complaint and who shall be responsible for contacting the complainant. If it is discovered after filing of the complaint that the matter complained of is not within the authority of a department to act, the department shall notify the complainant accordingly and refer the complaint to the appropriate agency, if known. The deadline for filing a formal complaint under the internal complaint procedures shall be tolled after receipt of a reply to the informal complaint if efforts were made to resolve the complaint informally.
- [4] (5) All proceedings relating to the handling of a complaint by a person who is not an employee shall as far as practicable be conducted during office hours at times convenient to the complainant. All proceedings relating to the handling of employee [grievances] complaints shall so far as practicable be conducted during [office hours.] the employee's work hours to permit the employee time off from work with pay.
- (6) The departmental complaint procedure shall culminate in a written decision by the chief executive or the chief executive's designee, whether the director or other appropriate authority who is assigned responsibility for making the final decision on the action being complained of.

(b) The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. If the appeal is not under the jurisdiction of the merit appeals board, but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with the appropriate agency regardless of whether the internal complaint procedures under this section are used."

SECTION 25. Section 76-43, Hawaii Revised Statutes, is amended to read as follows:

"§76-43 Layoff. [Rules and regulations shall be promulgated by the director of human resources development to govern the conditions under which an employee is to be released from the employee's position] When it is necessary to release employees due to lack of work [or], lack of funds[.], or other legitimate reasons, employees with permanent appointments in civil service positions shall have layoff

rights. Layoffs shall be made in accordance with procedures negotiated under chapter 89 or established under chapter 89C, as applicable.’’

SECTION 26. Section 76-45, Hawaii Revised Statutes, is amended to read as follows:

“§76-45 Suspension. An appointing authority may, for disciplinary purposes, suspend any employee without pay [for such length of time as the appointing authority considers appropriate, but not exceeding thirty days at any one time nor more than sixty days in any calendar year. No single suspension for a period of five working days or more, whether consecutively or not, shall take effect unless the appointing authority gives the employee a written notice setting forth the specific reasons upon which the suspension is based. With the approval of the director, an employee may be suspended for a period longer than thirty days pending an investigation or hearing of any charge against the employee. Where an employee has been suspended pending an investigation or hearing of any charge against the employee and the charge is subsequently dropped or not substantiated, the employee shall be reinstated in the employee’s position without loss of pay.

An employee who is suspended for a period not in excess of four working days, whether consecutively or not, shall be entitled to a written notice from the appointing authority setting forth the specific reasons upon which the suspension is based. The written notice shall be given to the employee or mailed to the employee within forty-eight hours after the suspension.] or place an employee on leave without pay pending an investigation. Suspensions and leaves without pay pending an investigation shall be in accordance with procedures negotiated under chapter 89 or established under chapter 89C, as applicable.’’

SECTION 27. Section 76-46, Hawaii Revised Statutes, is amended to read as follows:

“§76-46 [Dismissals;] Discharges; demotions. An appointing authority may [dismiss] discharge or demote any employee when the appointing authority considers that the good of the service will be served thereby. [Dismissals] Discharges may be made only for such causes [as] that will promote the efficiency of government service.

[No dismissal or demotion of a regular employee shall be effective for any purpose unless at least ten days before the effective date thereof the appointing authority shall have given to the employee a written statement setting forth the specific reasons upon which the dismissal or demotion is based.] Demotions or discharges shall be in accordance with procedures negotiated under chapter 89 or established under chapter 89C, as applicable.’’

SECTION 28. Section 76-47, Hawaii Revised Statutes, is amended to read as follows:

“§76-47 [Appeals from suspensions, dismissals and demotions.] Merit appeals boards; appointment, authority, procedures. (a) Each jurisdiction shall establish a merit appeals board that shall have exclusive authority to hear and decide appeals relating to matters set forth in section 76-14 concerning the civil service of the jurisdiction.

(b) Members of the merit appeals board shall be persons that can objectively apply the merit principle to public employment. Other qualifications of board members and other matters pertaining to the establishment of the merit appeals board, whether composition of the board, manner of appointment, term of office,

limitation on terms, chairperson, removal of members, and name for its merit appeals board, shall be left to the determination of each jurisdiction based on its own preferences and needs. A jurisdiction may continue to use its civil service commission or appeals board, with or without modification, as its merit appeals board to assume all of the functions and responsibilities under section 76-14; provided that the merit appeals board for the State shall be as provided in section 26-5.

(c) The merit appeals board shall adopt rules of practice and procedure consistent with section 76-14 and in accordance with chapter 91, except that, in the case of the judiciary and the Hawaii health systems corporation, the adoption, amendment, or repeal of rules shall be subject to the approval of their respective chief executives. The rules shall recognize that the merit appeals board shall sit as an appellate body and that matters of policy, methodology, and administration are left for determination by the director. The rules may provide for the sharing of specific expenses among the parties that are directly incurred as a result of an appeal as the merit appeals board deems would be equitable and appropriate, including but not limited to expenses for transcription costs or for services, including traveling and per diem costs, provided by persons other than the board members or permanent staff of the board. Official business of the merit appeals board shall be conducted in meetings open to the public, except as provided in chapter 92.

(d) Whenever the board determines that mediation may result in a satisfactory resolution of an appeal, may narrow the issues on appeal, or otherwise expedite a decision, the board may require the parties to submit the issues to mediation, which shall not be subject to chapter 92. Mediation may be provided by any member or members of the merit appeals board or by a public or nonprofit agency which offers mediation or similar services for resolving or narrowing differences among the parties.

(e) Any [regular] civil service employee, who is suspended, [dismissed,] discharged, or demoted and who is not included in an appropriate bargaining unit under section 89-6, may appeal to the [civil service commission] merit appeals board within twenty days after [notice has been sent the employee of the suspension, dismissal, or demotion provided that the twenty-day period shall be extended to twenty days from the final notice on the employee's grievance should the employee exercise the grievance channel.] a final decision is made under the internal complaint procedures.

Upon the appeal, both the appealing employee and the appointing authority shall have the right to be heard publicly, present evidence and be represented by counsel, who shall have the right to examine and cross-examine witnesses. At the hearing technical rules of evidence shall not apply and the evidence shall be taken stenographically or recorded by machine. For the purpose of hearing the appeals fairly and expeditiously, the [commission] board may at any time appoint a competent and qualified disinterested person to act as its hearing officer. The hearing officer shall hear the matter in the same manner as if it were before the [commission] board and upon the conclusion of the hearing, shall report the hearing officer's findings of fact and the hearing officer's conclusions and recommendations based thereon to the [commission] board and to the employee. The [commission] board shall render the final decision in accordance with section 91-11.

If the [commission finds that the action appealed from was taken by the appointing authority for any political, religious or racial reason, the employee shall be reinstated to the employee's position without loss of pay for the period of the employee's suspension or separation therefrom. In all other cases, if the commission] board finds that the reasons for the action are not substantiated in any material respect, the [commission] board shall order that the employee be reinstated in the employee's position, without loss of pay, but if the [commission] board finds that the reasons are substantiated or are only partially substantiated, the [commission] board

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shall sustain the action of the appointing authority, provided that the [commission] board may modify the action of the appointing authority if it finds the circumstances of the case so require and may thereupon order such disposition of the case as it may deem just.

[When an employee is dismissed and not reinstated after the appeal, the commission, in its discretion, may direct that the employee's name be placed on an appropriate reemployment list for employment in any similar position other than one from which the employee has been removed.]

The findings and decisions of the [commission] board shall be final on all appeals, unless an appeal is taken as provided in chapter 91.

Notwithstanding any other law to the contrary, when an appeal hearing is before a merit appeals board of a county [civil service commission, including the civil service commission of] or the city and county of Honolulu, the attorney general shall be counsel for the [commission] board and the county attorney or corporation counsel shall be counsel for the appointing authority. If, however, an appeal hearing is before the state [commission,] merit appeals board, the attorney general shall be counsel for the appointing authority and the county attorney or corporation counsel of the county, including the city and county of Honolulu, in which the appeal hearing is being conducted shall be counsel for the [commission.] state merit appeals board.

Notwithstanding any other law to the contrary, when the decision and order of the merit appeals board of a county [civil service commission, including the civil service commission of] or the city and county of Honolulu, is appealed as provided in chapter 91, the attorney general shall be counsel for the [commission] board and the county attorney or corporation counsel shall be counsel for the appointing authority. When the decision and order of the state [civil service commission] merit appeals board is appealed as provided in chapter 91, the attorney general shall be counsel for the appointing authority and the county attorney or corporation counsel of the county, including the city and county of Honolulu, in which the chapter 91 appeal is being conducted, shall be counsel for the state [civil service commission.] merit appeals board.”

SECTION 29. Section 76-49, Hawaii Revised Statutes, is amended to read as follows:

“**§76-49 Subpoenas, oaths.** The [civil service commission] merit appeals board shall have such powers as may be provided by law with respect to compelling the attendance of witnesses and administering oaths to witnesses, and as to all matters within the scope of [their] its authority the director [of human resources development] and any hearing officer shall have similar powers.”

SECTION 30. Section 76-50, Hawaii Revised Statutes, is amended to read as follows:

“**§76-50 Compensation and expenses of [commission.] a merit appeals board.** Each member of [the civil service commission shall be paid compensation at the rate of \$10 per day for each day's actual attendance at a meeting, but not to exceed, in the aggregate, \$100 in any month and when any member is required to travel from any island to another island in the State in the performance of such duties, the member shall be allowed the member's reasonable traveling expenses.] a merit appeals board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.”

SECTION 31. Section 76-51, Hawaii Revised Statutes, is amended to read as follows:

“**§76-51 [Political] Prohibited activities by [commissioners prohibited.] members of a merit appeals board.** No person who occupies any elective or appointive office [or any position] under the state or county government shall be eligible for membership on or continue to be a member of the [civil service commission.] merit appeals board. The term “appointive office” for the purpose of this section, shall not include notaries public. No member of the [commission] merit appeals board shall, during the member’s term of office, serve as an officer or committee member of any political party organization, including a precinct organization, or present oneself as a candidate or be a candidate for nomination or election to any public office at any election. The office of any member who violates this section or [part IV of this chapter,] section 84-13 or 84-14 shall be conclusively presumed to have been abandoned and vacated by reason thereof and the [governor] chief executive shall thereupon appoint a qualified person to fill the vacancy. As an alternative remedy, proceedings in the nature of quo warranto may be brought by any person to oust any member who violates this section or [part IV of this chapter.] section 84-13 or 84-14.”

SECTION 32. Chapter 76, Part III, Hawaii Revised Statutes, is amending by amending the title to read:

**“[PART III.] PART II. SPECIAL CIVIL SERVICE PROVISIONS
FOR THE COUNTIES OF HAWAII, MAUI, AND KAUAI”**

SECTION 33. Section 76-71, Hawaii Revised Statutes, is amended to read as follows:

“**§76-71 Department of civil service.** There shall be a department of civil service for each of the counties of Hawaii, Maui, and Kauai, which shall include a personnel director and a [commission consisting of five members appointed by the mayor with the approval of the council of the respective counties.] merit appeals board established under section 76-47.”

SECTION 34. Section 76-75, Hawaii Revised Statutes, is amended to read as follows:

“**§76-75 Personnel director.** The [commission] merit appeals board shall appoint and may at pleasure remove a personnel director, who shall be the chief administrative officer of the department of civil service. The director shall, at the time of the director’s appointment, and thereafter, be thoroughly familiar with the principles and methods of personnel administration and shall believe in applying merit principles and scientific administrative methods to public personnel administration.”

SECTION 35. Section 76-77, Hawaii Revised Statutes, is amended to read as follows:

“**§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; provided that the positions shall be included in the [position] classification [plan;] systems;
- (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, and witnesses;
- (7) Positions filled by persons employed by contract where the personnel director has certified [and where the 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 recruited through normal civil service procedures; provided that no contract pursuant to this paragraph shall be for any period exceeding one year;
- (8) Positions of a temporary nature needed in the public interest where the need does not exceed ninety days; provided that before any person may be employed to render temporary service pursuant to this paragraph, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; and provided further that the employment of any person pursuant to this paragraph may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director [and approval of 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 for each department head; provided that the positions shall be included in the [position] classification [plan;] systems;
- (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 by the director;
- (13) Positions filled by persons with a severe disability who are certified by the state vocational rehabilitation office as able to safely perform the duties of the positions;
- (14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions; and
- (15) The following positions in the office of the prosecuting attorney: private secretary to the prosecuting attorney, secretary to the first deputy prosecuting attorney, and administrative or executive assistants to the prosecuting attorney; provided that the positions shall be included in the [position] classification [plan.] systems.

The director shall determine the applicability of this section to specific positions and shall determine whether or not positions [excluded] exempted by

paragraphs (7) and (8) shall be included in the [position] classification [plan.] systems.

Nothing in this section shall be deemed to affect the civil service status of any incumbent private secretary of a department head who held that position on May 7, 1977.”

SECTION 36. Section 76-2, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 76-3, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 76-4, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 76-5.5, Hawaii Revised Statutes, is repealed.

SECTION 40. Section 76-7, Hawaii Revised Statutes, is repealed.

SECTION 41. Section 76-8, Hawaii Revised Statutes, is repealed.

SECTION 42. Section 76-8.5, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 76-9, Hawaii Revised Statutes, is repealed.

SECTION 44. Section 76-10, Hawaii Revised Statutes, is repealed.

SECTION 45. Section 76-11.5, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 76-19, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 76-20, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 76-21, Hawaii Revised Statutes, is repealed.

SECTION 49. Section 76-23, Hawaii Revised Statutes, is repealed.

SECTION 50. Section 76-24, Hawaii Revised Statutes, is repealed.

SECTION 51. Section 76-25, Hawaii Revised Statutes, is repealed.

SECTION 52. Section 76-26, Hawaii Revised Statutes, is repealed.

SECTION 53. Section 76-31, Hawaii Revised Statutes, is repealed.

SECTION 54. Section 76-32, Hawaii Revised Statutes, is repealed.

SECTION 55. Section 76-33, Hawaii Revised Statutes, is repealed.

SECTION 56. Section 76-35, Hawaii Revised Statutes, is repealed.

SECTION 57. Section 76-36, Hawaii Revised Statutes, is repealed.

SECTION 58. Section 76-37, Hawaii Revised Statutes, is repealed.

SECTION 59. Section 76-39, Hawaii Revised Statutes, is repealed.

SECTION 60. Section 76-44, Hawaii Revised Statutes, is repealed.

SECTION 61. Section 76-48, Hawaii Revised Statutes, is repealed.

SECTION 62. Section 76-52, Hawaii Revised Statutes, is repealed.

SECTION 63. Section 76-53, Hawaii Revised Statutes, is repealed.

SECTION 64. Section 76-54, Hawaii Revised Statutes, is repealed.

SECTION 65. Section 76-55, Hawaii Revised Statutes, is repealed.

SECTION 66. Section 76-56, Hawaii Revised Statutes, is repealed.

SECTION 67. Section 76-72, Hawaii Revised Statutes, is repealed.

SECTION 68. Section 76-73, Hawaii Revised Statutes, is repealed.

SECTION 69. Section 76-74, Hawaii Revised Statutes, is repealed.

SECTION 70. Section 76-78, Hawaii Revised Statutes, is repealed.

SECTION 71. Section 76-79, Hawaii Revised Statutes, is repealed.

SECTION 72. Section 76-80, Hawaii Revised Statutes, is repealed.

SECTION 73. Section 76-81, Hawaii Revised Statutes, is repealed.

PART III

SECTION 74. Chapter 78, Hawaii Revised Statutes, is amended by adding twelve new sections to be appropriately designated and to read as follows:

“**§78- Definitions.** As used herein, unless the context clearly requires otherwise, the terms “appointing authority,” “chief executive,” “director,” “employee,” “employer,” and “jurisdiction” shall have the same meaning as those terms are defined in section 76-11.

§78- Prospective employees; suitability for public employment. (a)¹ All prospective employees, regardless of the positions they will assume, shall demonstrate their suitability for public employment by:

- (1) Passing a pre-employment controlled substance drug test if required by the employing jurisdiction; and
- (2) Attesting that during the three-year period immediately preceding the date of application for employment, the person was not convicted of any controlled substance-related offense.

If an applicant fails to meet the suitability requirements of the employing jurisdiction, the applicant shall be disqualified from further employment consideration or deemed ineligible for appointment under section 76-29 on the basis of unsuitability for public employment.

§78- Experimental modernization projects. (a) It is the intent of this section to encourage and facilitate improvements in the human resource programs of the several jurisdictions. With the approval of the chief executive, the director may

conduct experimental modernization projects to determine whether specific changes in its human resource program would result in a more desirable program for the jurisdiction.

(b) Prior to the implementation of any experimental modernization project, the director shall:

- (1) Develop a plan identifying the purposes of the project, the methodology to be used, the duration of the project, the criteria for evaluation of the project, and the cost of the project, if any;
- (2) Consult with the employees who would be involved in the conduct of the project; and
- (3) Negotiate with the exclusive representative if a modification or waiver of any provision in a collective bargaining agreement is necessary to conduct the project.

(c) While the project is in progress, it shall not be limited by state or local personnel laws and rules, but shall be in compliance with all equal employment opportunity laws and laws prohibiting discrimination.

§78- Office hours. Offices of the State and counties shall be open for the transaction of public business as determined by the chief executive. Offices need not be open for the transaction of public business on the state holidays designated under section 8-1 and as observed under section 8-2.

§78- Leaves of absence. (a) Employees shall be eligible for vacation leave, sick leave, and other leaves of absence, with or without pay, as negotiated under chapter 89 or adjusted under chapter 89C, as applicable.

(b) When an employee is transferred from one department to another within the same jurisdiction or to another jurisdiction within the State, the employee shall be given credit for the vacation earned or accumulated in the department from which the employee transferred, and the director of finance of the State or the equivalent officers of the several jurisdictions shall make the appropriate transfer of funds to implement the employee transfer. Moneys received from any such transfer of funds by a state agency financed by the general fund of the State shall be deposited with the director of finance of the State to the credit of the general fund of the State; provided that, when an employee is transferred from one department to another within the same jurisdiction, the transfer of funds shall not be made if the employee's salary is paid from the same fund. Compensation for any period of vacation allowance shall be paid at the rate to which the employee is entitled at the time the allowance is granted.

(c) Upon discharge, an employee shall be entitled to all of the employee's accumulated vacation allowance plus the employee's current accrued vacation allowance to and including the date of discharge, notwithstanding that the current accrued vacation allowance may not have been recorded at the time. If any employee dies with accumulated or current accrued vacation earned but not taken, an amount equal to the value of the employee's pay over the period of such earned vacation, and any earned and unpaid wages, shall be paid to the person or persons who may have been designated as the beneficiary or beneficiaries by the employee during the employee's lifetime in a verified written statement filed with the comptroller or other disbursing officer who issues warrants or checks to pay the employee for the employee's services as a public employee, or, failing the designation, to the employee's estate.

(d) Whenever an employee is to be discharged, voluntarily or involuntarily, the employee, at the option of the appointing authority, may be discharged and paid forthwith, in lieu of the employee's vacation allowance, the amount of compensation to which the employee would be entitled or which the employee would be allowed

during the vacation period if the employee were permitted to take the employee's vacation in the normal manner, and in such case the employee's position may be declared vacant and may be permanently filled by a new appointee before the expiration of any vacation period following the date of the discharge. For an employee hired after June 30, 1997, who is to be discharged, voluntarily or involuntarily, the amount of compensation to be paid in lieu of vacation allowance under this section shall be computed using the rate of pay and amount of accumulated and accrued vacation on the date the employee is discharged. Prompt notice upon such forms and in such manner as may be required shall be given by the department head of any action taken under this provision.

§78- Injured employee; liability of third persons. (a) Whenever any police officer, firefighter, or any other officer or employee who is temporarily exposed to unusually hazardous conditions, or who is a member of a class, recognized by the action of pricing, to be a class exposed to unusually hazardous conditions, receives personal injury arising out of and in the performance of duty and without negligence on the employee's part, the employee shall be placed on accidental injury leave unless suspended or discharged for cause. The employee shall be continued on the department's payroll, as though the employee did not sustain an industrial injury, as follows:

- (1) During the first four months of the disability, at the employee's full regular monthly salary; and
- (2) Thereafter, during the period of total disability from work at sixty per cent of the employee's regular monthly salary.

The employee shall be entitled to all rights and remedies allowed under chapter 386; provided that any salary paid under this section shall be applied on account of any compensation allowed under chapter 386 or any benefits awarded under part III of chapter 88 to the employee.

(b) When the employer pays benefits to or incurs medical expenses on behalf of any of its employees under this section for any injury sustained under circumstances creating in some person or entity other than the employer a legal liability to pay damages in respect thereto, the employer or the employee may proceed against such third persons and recover all payments made, paid, or due under this section. The employer or employee shall have all of the rights and remedies contained in or provided for under section 386-8.

§78- Credits for employees receiving workers' compensation benefits; wage supplement. (a) Where an employee is absent from work because of injuries incurred within the scope of the employee's employment and the employee is receiving workers' compensation benefits, the employee shall continue to earn vacation, sick leave, and retirement credits as though the employee were not absent but performing duties of the employee's regular employment. Section 386-57 or any other law to the contrary notwithstanding, the employee may elect to have deducted from the employee's workers' compensation benefit checks an amount calculated in the same manner as if the employee were not absent but performing duties of the employee's regular employment to be used as the employee's contribution to the retirement system.

(b) An employee who is receiving workers' compensation wage loss replacement benefits may use the employee's accumulated sick leave or vacation credits to supplement the workers' compensation wage loss replacement benefits to a sum not to exceed the employee's regular salary.

§78- Leave sharing program. (a) The chief executive of a jurisdiction may establish a leave sharing program to allow employees to donate accumulated

vacation leave credits to another employee within the same jurisdiction who has a serious personal illness or injury or who has a family member who has a serious personal illness or injury. The program shall allow employees who are not entitled to vacation leave to donate accumulated sick leave credits.

(b) The director of a jurisdiction desiring to establish a leave sharing program shall develop rules governing donors, recipients, and an approval process that ensures fair treatment and freedom from coercion of employees and imposes no undue hardship on the employer's operations. If it is administratively infeasible to allow leave sharing between different departments or different bargaining units, the rules may limit leave sharing to employees within the same department or same bargaining unit, as necessary. At a minimum, the rules shall require that an eligible recipient must have:

- (1) No less than six months of service within the respective jurisdiction;
- (2) Exhausted or is about to exhaust all vacation leave, sick leave, and compensatory time credits; provided that sick leave need not be exhausted when the illness or injury involves a family member;
- (3) A personal illness or injury or a family member's illness or injury certified by a competent medical examiner as being serious and the cause of the recipient's inability to work; provided that the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted; and
- (4) No disciplinary record of sick leave abuse within the past two years.

§78- Temporary inter- and intra-governmental assignments and exchanges. (a) With the approval of the respective employer, a governmental unit of this State may participate in any program of temporary inter- or intra-governmental assignments or exchanges of employees as a sending or receiving agency. "Agency" means any local, national, or foreign governmental agency or private agency with government sponsored programs or projects.

(b) As a sending agency, a governmental unit of this State may consider its employee on a temporary assignment or exchange as being on detail to a regular work assignment or on leave of absence without pay from the employee's position. The employee on temporary assignment or exchange shall be entitled to the same rights and benefits as any other employee of the sending agency.

(c) As a receiving agency, a governmental unit of this State shall not consider the employee on a temporary assignment or exchange who is detailed from the sending agency as its employee, except for the purpose of disability or death resulting from personal injury arising out of and in the course of the temporary assignment or exchange. The employee on detail may not receive a salary from the receiving agency, but the receiving agency may pay for or reimburse the sending agency for the costs, or any portion of the costs, of salaries, benefits, and travel and transportation expenses if it will benefit from the assignment or exchange.

(d) An agreement consistent with this section and policies of the employer shall be made between the sending and receiving agencies on matters relating to the assignment or exchange, including but not limited to supervision of duties, costs of salary and benefits, and travel and transportation expenses; provided that the agreement shall not diminish any rights or benefits to which an employee of a governmental unit of this State is entitled under this section.

(e) As a receiving agency, a governmental unit of this State may give the employee of the sending agency on a temporary assignment or exchange an exempt appointment and grant the employee rights and benefits as other exempt appointees of the receiving agency if it will benefit from the assignment or exchange.

§78- In-service training programs. Each director shall monitor, make recommendations, and develop policies and guidelines for suitable in-service training programs and activities so that the quality of service rendered by government employees may be continually improved. Participating agencies may be charged fees for training programs.

§78- Incentive and service awards. (a) Each chief executive may establish incentive and service awards programs to recognize employees who contribute to the efficiency, economy, or other improvement of government operations or who perform exceptionally meritorious special acts or services in the public interest in connection with or related to their official employment. The programs may allow appointing authorities to establish their own programs consistent with the policies of the chief executive.

(b) The programs may provide for cash awards to recognize suggestions, inventions, superior accomplishments, length of service, and other personal or group efforts. A cash award shall be in addition to the employee's regular compensation of the recipients. The acceptance of a cash award shall constitute an agreement that use by the government of any idea, method, or device for which the award is made shall not form the basis of a further claim upon the government by the employees or the employees' heirs and assigns.

(c) Awards and expenses for programs may be paid from funds available to the departments and agencies benefiting from or responsible for recognizing the employee's or group of employees' contribution, as determined by the chief executive or appointing authority, as applicable. All administrative decisions made on the issuance of awards under this section shall be final and deemed a performance of a discretionary function of the chief executive or appointing authority.

§78- Cafeteria plans. (a) Each chief executive may establish a wage and salary reduction benefit program which qualifies as a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986, as amended. The cafeteria plan shall allow eligible employees to elect to reduce their pretax compensation in return for payment by the jurisdiction of the expenses of eligible benefits.

(b) In addition to any other powers and duties authorized by law, each chief executive may enter into all contracts necessary to establish, administer, or maintain the cafeteria plans.

(c) The contributions, interest earned, and forfeited participant balances may be held in trust outside of the jurisdiction's treasury for the benefit of the participants and the plan. The funds in trust shall not be subject to the jurisdiction's general creditors. Interest earned or forfeited participant balances may be used to defray participant fees and other administrative costs."

SECTION 75. Section 78-1, Hawaii Revised Statutes, is amended to read as follows:

“§78-1 Citizenship and residence [of government officials and employees]; exceptions. (a) All elective officers 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 assumption of office.

(b) All appointive officers in the service of the government of the State or [in the service of] any county [or municipal subdivision of the State] who are employed as department heads[, first assistants, first deputies, second assistants, or second deputies] and deputies or assistants to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding

their appointment[; however, all]. All others appointed 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 appointment. A national or permanent resident alien [appointed pursuant to this section] appointee shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

(c) All [employees in the service of] persons seeking employment with 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, or eligible under federal law for unrestricted employment in the United States, and residents of the State at the time of their application for employment[.] and as a condition of eligibility for continued employment.

“Resident” means a person who is physically present in the State at the time the person claims to have established the person’s domicile in the State and shows the person’s intent is to make Hawaii the person’s 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[.]; and
- (3) Former residency in the State.

(d) [For the purpose of obtaining services which are essential to the public interest for which no competent person with the qualifications under subsection (c) applies within forty-five days after the first public notice of the position or a notice of an examination therefor, which notice has been given more than once, and not more often than once a week, statewide, a person without the qualifications, upon prior certification by the state director of human resources development or the personnel director of the appropriate county, and with the approval of the chief executive officer for the State or the political subdivision concerned, may be employed.] The appointing authority may approve the appointment of persons without consideration of the requirements under subsection (c) when services essential to the public interest require highly specialized technical and scientific skills or knowledge for critical-to-fill and labor shortage positions.

(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 (c).

(f) [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.

(g) This section shall not apply to persons recruited by the University of Hawaii under the authority of section 304-11.”

SECTION 76. Section 78-4, Hawaii Revised Statutes, is amended to read as follows:

“§78-4 **Boards and commissions; service limited.** (a) Any other provision of law to the contrary notwithstanding, no person shall be allowed to serve on more

than one state board or commission expressly created by a state statute or the state constitution.

(b) [Any other provision of the law to the contrary notwithstanding, no nomination or appointment to a state or county board or commission, whether temporary or permanent and which requires part-time service, shall be denied to a person of or over the age of majority due to that person's age; provided that this subsection shall not apply when a law relating to a particular board or commission requires a member or members thereof to be of a specified age or age groups.

(c) This section shall not apply when in conflict with any federal law.] Any prohibition in any law against the holding of outside employment or dual public office, employment, or position by an employee shall not bar the appointment of an employee to membership on a board or commission unless service on the board or commission would be inconsistent or incompatible with or would tend to interfere with the duties and responsibilities of the other office, employment, or position held by the employee.

(c) When any employee must be away from the employee's regular work because of service as a member on a board or commission, the employee shall not, as a result of the absence, suffer any loss of the employee's regular salary or wages. The time spent in service as a board or commission member outside of the employee's regular work hours shall not be considered as time worked."

SECTION 77. Section 78-12, Hawaii Revised Statutes, is amended to read as follows:

"§78-12 Salary withheld for indebtedness to the government. (a) In case any officer, agent, employee or other person in the service of [the State, any county, or any independent board or commission,] a jurisdiction is indebted to [the State, any county, or to any independent board or commission,] a jurisdiction and the indebtedness has been determined by a hearing pursuant to chapter 91, upon demand of the officer charged with the duty of collecting the indebtedness, the [comptroller or other] disbursing officer charged with the duty of paying the indebted officer, agent, employee, or other person, after notice to the indebted person, shall withhold one-quarter of the salary, wages, or compensation due the indebted person and pay the same, from time to time as the same shall become due, to the officer charged with the duty of collecting the indebtedness, until the full amount of the indebtedness, together with penalties and interest thereon, is paid.

(b) If the indebtedness has arisen or been incurred by reason of the indebted officer, agent, employee, or other person having embezzled, stolen, or otherwise unlawfully acquired any moneys or other property of the¹ [State, any county, or any independent board or commission,] a jurisdiction the whole amount of the salary, wages, or compensation, or so much thereof as may be required to pay the indebtedness in full, shall be withheld and paid over to the officer charged with the duty of collecting the indebtedness.

(c) The officer, agent, employee or other person in the service of the [State, any county, or any independent board or commission] alleged¹ to be indebted to [the State, any county, or to any independent board or commission] a jurisdiction may waive the right to a hearing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

- (1) The priority right to payment of the total amount of the alleged indebtedness; and
- (2) The right of the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.

(d) The operation of all garnishment process served upon the [comptroller or other paying] disbursing officer shall be stayed until the indebtedness has been fully paid.

(e) If the indebtedness has occurred as a result of salary or wage overpayment, the [comptroller or other] disbursing officer shall determine the amount of indebtedness and notify the employee in writing of the indebtedness. If the employee contests the [comptroller or other] disbursing officer's determination of indebtedness, the employee may request a hearing pursuant to chapter 91[, and upon conclusion of the hearing or if the employee waives the hearing, if].

(f) Regardless of whether a contested determination of indebtedness is pending, the disbursing officer shall commence immediate recovery of the indebtedness as provided in this subsection. If the indebtedness is equal to or less than \$1,000, the [comptroller or other] disbursing officer shall immediately deduct from any subsequent periodic payment normally due the employee any amount up to the total amount of indebtedness[. For] and for indebtedness greater than \$1,000, the [comptroller or other] disbursing officer shall deduct:

- (1) An amount agreed to by the employee and [employer,] the appointing authority, but not less than \$100 per pay period; or
- (2) One-quarter of the salary, wages, or compensation due the employee until the indebtedness is repaid in full.

In addition to paragraph (1), an employee and the appointing authority may agree to offset any remaining amount of indebtedness by applying the current value of appropriate leave or compensatory time credits posted in the employee's respective accounts as balances that would otherwise be payable in cash upon separation from service; provided that credits shall not be applied to any extent that would require a refund of any moneys already deducted or repaid or that would require the payment of any moneys to the employee equivalent to a cashing out of leave or compensatory time credits.

(g) If the determination of indebtedness was contested and is subsequently found to be incorrect:

- (1) Any moneys repaid or deducted under subsection (e) for any indebtedness in excess of the correct amount shall be promptly refunded with interest, to be calculated at a rate and in such manner as the disbursing officer establishes by rules; or
- (2) All leave or compensatory time credits applied to offset any indebtedness in excess of the correct amount shall be re-credited to the employee's respective leave or compensatory time accounts and shall not result in a cash payment.

(h) If an employee is entitled to contest the determination of indebtedness under a collective bargaining grievance procedure, that procedures¹ shall be used in lieu of a hearing under subsection (e). A collective bargaining agreement may include overpayment recovery procedures; provided that the parties do not agree on any provision that would be inconsistent with subsections (f) and (g)."

SECTION 78. Section 78-17, Hawaii Revised Statutes, is amended to read as follows:

“§78-17 Payment of salaries or wages upon [termination of] discharge from service. Whenever in any case, and for whatever cause, the employment of any officer, agent, employee, or other person in the public service is [terminated, he] discharged, the discharged person shall be paid immediately upon the approval of

the head of the department in which [he] the person was engaged whatever salary or wages that are due [him.] the person.”

SECTION 79. Chapter 78, Part I, Hawaii Revised Statutes, is amended by repealing the title:

[“[PART I.] GENERAL PROVISIONS”]

SECTION 80. Section 78-2, Hawaii Revised Statutes, is repealed.

SECTION 81. Section 78-2.5, Hawaii Revised Statutes, is repealed.

SECTION 82. Section 78-5, Hawaii Revised Statutes, is repealed.

SECTION 83. Section 78-6, Hawaii Revised Statutes, is repealed.

SECTION 84. Section 78-14, Hawaii Revised Statutes, is repealed.

SECTION 85. Section 78-15, Hawaii Revised Statutes, is repealed.

SECTION 86. Section 78-16, Hawaii Revised Statutes, is repealed.

SECTION 87. Section 78-19, Hawaii Revised Statutes, is repealed.

SECTION 88. Section 78-22, Hawaii Revised Statutes, is repealed.

SECTION 89. Section 78-51, Hawaii Revised Statutes, is repealed.

SECTION 90. Chapter 78, Part II, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 91. Chapter 89, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§89- Resolution of disputes; grievances. (a) A public employer shall enter into written agreement with the exclusive representative setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. The grievance procedure shall be valid and enforceable and shall be consistent with the following:

- (1) A dispute over the terms of an initial or renewed agreement shall not constitute a grievance;
- (2) No employee in a position exempted from chapter 76, who serves at the pleasure of the appointing authority, shall be allowed to grieve a suspension or discharge unless the collective bargaining agreement specifically provides otherwise; and
- (3) With respect to any adverse action resulting from an employee’s failure to meet performance requirements of the employee’s position, the grievance procedure shall provide that the final and binding decision shall be made by a performance judge as provided in this section.

(b) The performance judge shall be a neutral third party selected from a list of persons whom the parties have mutually agreed are eligible to serve as a performance judge for the duration of the collective bargaining agreement. The parties, by

mutual agreement, may modify the performance judge list at any time and shall determine a process for selection from the list.

(c) The performance judge shall use the conditions in section 76-41(b) as tests in reaching a decision on whether the employer's action, based on a failure by the employee to meet the performance requirements of the employee's position, was with or without merit.

(d) If it is alleged that the adverse action was not due to a failure to meet performance requirements but for disciplinary reasons without just and proper cause, the performance judge shall first proceed with a determination on the merits of the employer's action under subsection (c). If the performance judge determines that the adverse action may be based on reasons other than a failure to meet performance requirements, the performance judge shall then determine, based on appropriate standards of review, whether the disciplinary action was with or without proper cause and render a final and binding decision."

SECTION 92. Section 89-1, Hawaii Revised Statutes, is amended to read as follows:

"§89-1 Statement of findings and policy. (a) The legislature finds that joint decision-making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work[.]; to provide a rational method for dealing with disputes and work stoppages[.]; and to maintain a favorable political and social environment.

(b) The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by:

- (1) [recognizing] Recognizing the right of public employees to organize for the purpose of collective bargaining[.];
- (2) [requiring the] Requiring public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other conditions of employment, while, at the same time, [(3)] maintaining the merit [principles and the principle of equal pay for equal work among state and county employees pursuant to sections 76-1, 76-2, 77-31, and 77-33,] principle pursuant to section 76-1; and [(4) creating]
- (3) Creating a labor relations board to administer the provisions of chapters 89 and 377."

SECTION 93. Section 89-2, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Day" means a calendar day unless otherwise specified.

"Jurisdiction" means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, and the Hawaii health systems corporation."

2. By amending the definitions of "arbitration", "collective bargaining", "cost items", "employee" or "public employee", "employer" or "public em-

ployer”, “exclusive representative”, “fact-finding”, “impasse”, “legislative body”, “mediation”, and “strike” to read:

““Arbitration” means the procedure whereby parties involved in an impasse [mutually agree to] submit their differences to a third party, whether a single arbitrator or an arbitration panel, for [a final and binding] an arbitration decision. It may include mediation whereby the neutral third party is authorized to assist the parties in a voluntary resolution of the impasse.

“Collective bargaining” means the performance of the mutual obligations of the public employer and [the] an exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession. For the purposes of this definition, “wages” includes the number of incremental and longevity steps, the number of pay ranges, and the movement between steps within the pay range and between the pay ranges on a pay schedule under a collective bargaining agreement.

“Cost items” [includes wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment, the implementation of which requires an appropriation by a] means all items agreed to in the course of collective bargaining that an employer cannot absorb under its customary operating budgetary procedures and that require additional appropriations by its respective legislative body[.] for implementation.

“Employee” or “public employee” means any person employed by a public employer, except elected and appointed officials and [such] other employees [as may be] who are excluded from coverage in section 89-6(c).

“Employer” or “public employer” means the governor in the case of the State, the respective mayors in the case of the [city and county of Honolulu and the] counties [of Hawaii, Maui, and Kauai], the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, [and] the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of these employers or acts in their interest in dealing with public employees. In the case of the judiciary, the [governor shall be the employer for the purposes of this chapter.] administrative director of the courts shall be the employer in lieu of the chief justice for purposes which the chief justice determines would be prudent or necessary to avoid conflict.

“Exclusive representative” means the employee organization[, which as a result of certification by the board, has the right to be] certified by the board under section 89-8 as the collective bargaining agent [of] to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

“Fact-finding” means identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual differences by one or more [impartial] neutral fact-finders, and the making of recommendations for settlement of the impasse.

“Impasse” means failure of a public employer and an exclusive representative to achieve agreement in the course of [negotiations.] collective bargaining. It includes any declaration of an impasse under section 89-11.

“Legislative body” means the legislature in the case of the State, including the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation; the city council, in the case of the city and county of

Honolulu[,]; and the respective county councils, in the case of the counties of Hawaii, Maui, and Kauai.

“Mediation” means assistance by [an impartial] a neutral third party to [reconcile] resolve an impasse between the public employer and the exclusive representative [regarding wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment] through interpretation, suggestion, and advice [to resolve the impasse].

“Strike” means a public employee’s refusal, in concerted action with others, to report for duty, or the employee’s wilful absence from the employee’s position, or the employee’s stoppage of work, or the employee’s abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; and except in the case of absences authorized by public employers, includes such refusal, absence, stoppage, or abstinence by any public employee out of sympathy or support for any other public employee who is on strike or because of the presence of any picket line maintained by any other public employee; provided that, nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.”

3. By repealing the definitions of “certification”, “professional employee”, and “supervisory employee”.

[““Certification” means official recognition by the board that the employee organization is, and shall remain, the exclusive representative for all of the employees in an appropriate bargaining unit for the purpose of collective bargaining, until it is replaced by another employee organization, decertified, or dissolved.

“Professional employee” includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A)(iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A).

“Supervisory employee” means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”]

SECTION 94. Section 89-3, Hawaii Revised Statutes, is amended to read as follows:

“**§89-3 Rights of employees.** Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or

other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except [to the extent of making such payment of amounts] for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4.'”

SECTION 95. Section 89-5, Hawaii Revised Statutes, is amended to read as follows:

“§89-5 Hawaii labor relations board. (a) There is created a Hawaii labor relations board to ensure that collective bargaining is conducted in accordance with this chapter and that the merit principle under section 76-1 is maintained.

(b) The board shall be composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairperson, shall be representative of the public. All members shall be appointed by the governor for terms of six years each. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons [representing their interests] to serve as members of the board and the governor shall first consider these persons in selecting the members of the board [to represent management and labor].

(c) Each member shall hold office until the member’s successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms.

(d) The members shall devote full time to their duties as members of the board. Effective January 1, 1989, and January 1, 1990, the salary of the chairperson of the board shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and the salary of each of the other members shall be ninety-five per cent of the chairperson’s salary. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during the member’s term.

(e) Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during the acting member’s term of service, shall have the same powers and duties as the regular member.

(f) The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. Section 103D-209(b) notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.

(g) The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. [The] All members of the board and employees other than clerical and stenographic employees shall be exempt from chapters 76[, 77,] and 89. Clerical and stenographic employees shall be appointed in accordance with [chapters 76 and 77.] chapter 76.

(h) At the close of each fiscal year, the board shall make a written report to the governor [of such facts as it may deem essential to describe] on its activities, including the cases and their dispositions, and the names, duties, and salaries of its officers and employees. Copies of the report shall be transmitted to the [legislative bodies.] other chief executives, the exclusive representatives, and the legislative body of each jurisdiction.

[(b)] (i) In addition to the powers and functions provided in other sections of this chapter, the board shall:

- (1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions;
- [(2)] (2) Resolve any dispute concerning cost items;
- (3) [(2)] Establish procedures for, resolve disputes with respect to, and supervise the conduct of, elections for the determination of employee representation;
- [(3)] Resolve controversies under this chapter;
- (4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper;
- (5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions;
- (6) [Establish,] Determine qualifications and establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators, members of fact-finding [boards,] panels, or arbitrators;
- (7) Establish a fair and reasonable range of daily or hourly rates at which mediators, members of fact-finding [boards,] panels, and arbitrators [serving pursuant to section 89-11(b)(3)] on the lists established under paragraph (6) are to be compensated [and apportion the costs of arbitration to the parties involved];
- (8) Conduct studies on problems pertaining to public employee-management relations, and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and employee organizations necessary to carry out its functions and responsibilities; make available to [employee organizations, as may exist,] all concerned parties, including mediators, members of fact-finding [boards,] panels and arbitrators, [and other concerned parties] statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations; [and]
- (9) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91[.]; and

(10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it.

(j) For the purpose of minimizing travel and per diem expenses for parties who are not located on Oahu, the board shall utilize more cost efficient means such as teleconferencing which does not require appearances on Oahu, whenever practicable, to conduct its proceedings. Alternatively, it shall consider conducting its proceedings on another island whenever it is more cost efficient in consideration of the parties and the witnesses involved.”

SECTION 96. Section 89-6, Hawaii Revised Statutes, is amended to read as follows:

“**§89-6 Appropriate bargaining units.** (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in [blue-collar] blue collar positions;
- (2) Supervisory employees in [blue-collar] blue collar positions;
- (3) Nonsupervisory employees in [white-collar] white collar positions;
- (4) Supervisory employees in [white-collar] white collar positions;
- (5) Teachers and other personnel of the department of education under the same [salary] pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
- (6) Educational officers and other personnel of the department of education under the same [salary] pay schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Institutional, health, and correctional workers;
- (11) Firefighters;
- (12) Police officers; and
- (13) Professional and scientific employees, [other than registered professional nurses.] who cannot be included in any of the other bargaining units.

(b) Because of the nature of work involved and the essentiality of certain occupations that require specialized training, [units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may vote either for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for these supervisory employees shall be (2) or (4), as the case may be.] supervisory employees who are eligible for inclusion in units (9) through (13) shall be included in units (9) through (13), respectively, instead of unit (2) or (4).

(c) The [compensation plans for blue-collar positions pursuant to section 77-5 and for white-collar positions pursuant to section 77-13, the salary schedules for teachers pursuant to section 302A-624 and for educational officers pursuant to section 302A-625, and the appointment and classification of faculty pursuant to sections 304-11 and 304-13, existing on July 1, 1970,] classification systems of each jurisdiction shall be the bases for differentiating [blue-collar] blue collar from [white-collar] white collar employees, professional from institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from

educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination[, but, in addition, the]. The nature of the work, including whether [or not] a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall [also] be considered[.] also.

[(b)] (d) For the purpose of [negotiations,] negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor [or the governor's designated representatives of not less than three together with not more than two members of the board of education in the case of units (5) and (6), the governor or the governor's designated representatives of not less than three together with not more than two members of the board of regents of the University of Hawaii in the case of units (7) and (8), and the governor or the governor's designated representatives together with the mayors of all the counties or their designated representatives in the case of the remaining units. The designated employer representatives for units (5), (6), (7), and (8) shall each have one vote and in the case of the remaining units, the governor shall be entitled to four votes and the mayor of each county shall each have one vote, which may be assigned to their designated representatives.] together with the following employers:

- (1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit;
- (2) For bargaining units (11) and (12), the governor shall have four votes and the mayors shall each have one vote;
- (3) For bargaining units (5) and (6), the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote;
- (4) For bargaining units (7) and (8), the governor shall have three votes, the board of regents of the University of Hawaii shall have two votes, and the president of the University of Hawaii shall have one vote.

Any decision to be reached by the applicable employer group shall be on the basis of simple majority[.], except when a bargaining unit includes county employees from more than one county. In such case, the simple majority shall include at least one county.

(e) In addition to a collective bargaining agreement under subsection (d), each employer may negotiate, independently of one another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

[(c) No elected] (f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official[, member];
- (2) Member of any board or commission[, representative of a public employer,];
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county [department or] agency[,], or [any] major division [thereof, as well as any first deputy, first assistant], and legal counsel[, and other top-level managerial and administrative personnel, secretary];
- (4) Secretary to top-level managerial and administrative personnel[, individual] under paragraph (3);

- (5) Individual concerned with confidential matters affecting employee-employer relations[, part-time];
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5)[, temporary];
- (7) Temporary employee of three months' duration or less[, employee];
- (8) Employee of the executive office of the governor[, or a household employee at Washington Place[, employee];
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor[, staff];
- (11) Staff of the legislative branch of the State[, employee of the executive office of the lieutenant governor, inmate,];
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward or student of a state institution[, student];
- (15) Student help[, any commissioned and enlisted personnel of the Hawaii national guard, or staff of the legislative branches of the city and county of Honolulu and counties of Hawaii, Maui, and Kauai, except employees of the clerks' offices of said city and county and counties, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.]; or
- (16) Staff of the Hawaii labor relations board.

[(d)] (g) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific [positions and] individuals, employees[.], or positions."

SECTION 97. Section 89-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In any election [in which] where none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted[, with the ballot providing for a selection between the two choices receiving the largest number of valid votes cast in the election. The board shall certify the [results of the] election[, and where an] results and the employee organization [receives] receiving a majority of the votes cast[, the board] shall [certify the employee organization] be certified as the exclusive representative of all employees in the appropriate bargaining unit for the purpose of collective bargaining. The employee organization shall remain certified as the exclusive representative until it is replaced by another employee organization, decertified, or dissolved."

SECTION 98. Section 89-9, Hawaii Revised Statutes, is amended to read as follows:

"**§89-9 Scope of negotiations[.]; consultation.** (a) The employer and the exclusive representative shall meet at reasonable times, including meetings sufficiently in advance of the [employer's budget-making process,] April 16 impasse date under section 89-11, and shall negotiate in good faith with respect to wages, hours, [the number of incremental and longevity steps and movement between steps within the salary range,] the amounts of contributions by the State and respective counties to the Hawaii public employees health fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to [negotiations under this chapter] collective bargaining and which are to be embodied

in a written agreement[, or any question arising thereunder,] as specified in section 89-10, but such obligation does not compel either party to agree to a proposal or make a concession; provided that the parties may not negotiate with respect to cost items as defined by section 89-2 for the biennium 1999 to 2001, and the cost items of employees in bargaining units under section 89-6 in effect on June 30, 1999, shall remain in effect until July 1, 2001.

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other party in writing, setting forth the time and place of the meeting desired and [generally] the nature of the business to be discussed, [and shall mail the notice by certified mail to the last known address of the other party] sufficiently in advance of the meeting.

(c) Except as otherwise provided [herein,] in this chapter, all matters affecting employee relations, including those that are, or may be, the subject of a [regulation promulgated] rule adopted by the employer or any [personnel] director, [are] shall be subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with [the] exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

(d) Excluded from the subjects of negotiations are matters of classification [and], reclassification, benefits of but not contributions to the Hawaii public employees health fund, recruitment, examination, initial pricing, and retirement benefits except as provided in section 88-8(h)[, and the salary ranges now provided by law; provided that the number of incremental and longevity steps, the amount of wages to be paid in each range and step, and movement between steps within the salary range shall be negotiable]. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit [principles] principle or the principle of equal pay for equal work pursuant to [sections 76-1, 76-2, 77-31, and 77-33,] section 76-1 or which would interfere with the rights and obligations of a public employer to:

- (1) [direct] Direct employees;
- (2) [determine qualification,] Determine qualifications, standards for work, the nature and contents of examinations[, hire,];
- (3) Hire, promote, transfer, assign, and retain employees in positions [and suspend,];
- (4) Suspend, demote, discharge, or take other disciplinary action against employees for proper cause; [(3) relieve]
- (5) Relieve an employee from duties because of lack of work or other legitimate reason; [(4) maintain]
- (6) Maintain efficiency [of] and productivity, including maximizing the use of advanced technology, in government operations; [(5) determine]
- (7) Determine methods, means, and personnel by which the employer's operations are to be conducted; and [take]
- (8) Take such actions as may be necessary to carry out the missions of the employer in cases of emergencies; provided that the].

The employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit[, procedures governing]; the suspension, demotion, discharge, or other disciplinary actions taken against employees[, and procedures governing] within the bargaining unit; and the layoff of employees; provided further that violations within the bargaining unit. Violations of the procedures so negotiated may be [the] subject [of a] to the grievance [process agreed to by the employer and the exclusive representative.] procedure in the collective bargaining agreement.

(e) Negotiations relating to contributions to the Hawaii public employees health fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for a health benefits plan, as defined in section 87-1(8), and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of fact-finding or arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii public employees health fund.

(f) The repricing of classes within an appropriate bargaining unit may be negotiated as follows:

- (1) At the request of the exclusive representative and at times allowed under the collective bargaining agreement, the employer shall negotiate the repricing of classes within the bargaining unit. The negotiated repricing actions that constitute cost items shall be subject to the requirements in section 89-10.
- (2) If repricing has not been negotiated under paragraph (1), the employer of each jurisdiction shall ensure establishment of procedures to periodically review, at least once in five years, unless otherwise agreed to by the parties, the repricing of classes within the bargaining unit. The repricing of classes based on the results of the periodic review shall be at the discretion of the employer. Any appropriations required to implement the repricing actions that are made at the employer's discretion shall not be construed as cost items.'

SECTION 99. Section 89-10, Hawaii Revised Statutes, is amended to read as follows:

“§89-10 Written agreements; [appropriations for implementation; enforcement.] enforceability; cost items. (a) Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned[.], except for an agreement reached pursuant to an arbitration decision. Ratification is not required for other agreements effective during the term of the collective bargaining agreement, whether a supplemental agreement, an agreement on reopened items, or a memorandum of agreement, and any agreement to extend the term of the collective bargaining agreement. The agreement shall be reduced to writing and executed by both parties. [The agreement may contain] Except for cost items, all provisions in the agreement that are in conformance with this chapter, including a grievance procedure and an impasse procedure culminating in [final and binding] an arbitration[, and] decision, shall be valid and enforceable [when entered into in accordance with provisions of this chapter.] and shall be effective as specified in the agreement, regardless of the requirements to submit cost items under this section and section 89-11.

(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies, except that if any cost items require appropriation by the state legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor's next operating budget within ten days after the date on which the agreement is ratified. The state legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining.

(c) Because effective and orderly operations of government are essential to the public, it is declared to be in the public interest that in the course of collective bargaining, the public employer and the exclusive representative for each bargaining unit shall by mutual agreement include provisions in the collective bargaining agreement for that bargaining unit for an expiration date which will be on June 30th of an odd-numbered year.

The parties may include provisions for [the] reopening [date] during the term of a collective bargaining agreement[.]; provided that [such provisions shall not allow for the reopening of] cost items as defined in section 89-2[.] shall be subject to the requirements of this section.

(d) [All existing rules and regulations adopted by the employer, including civil service or other personnel regulations, which are not contrary to this chapter, shall remain applicable. If] Whenever there is a conflict between the collective bargaining agreement and any of the rules [and regulations,] adopted by the employer, including civil service or other personnel policies, standards, and procedures, the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d).

Whenever there are provisions in a collective bargaining agreement concerning a matter under chapter 76 or 78 that is negotiable under chapter 89, the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d)."

SECTION 100. Section 89-11, Hawaii Revised Statutes, is amended to read as follows:

“§89-11 Resolution of disputes; [grievances;] impasses. (a) [A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. In the absence of such a procedure, either party may submit the dispute to the board for a final and binding decision. A dispute over the terms of an initial or renewed agreement does not constitute a grievance.

(b) A public employer [shall have the power to] and an exclusive representative may enter, at any time, into a written agreement [with the exclusive representative of an appropriate bargaining unit] setting forth an alternate impasse procedure culminating in [a final and binding] an arbitration decision[.] pursuant to subsection (f), to be invoked in the event of an impasse over the terms of an initial or renewed agreement. The alternate impasse procedure shall specify whether the parties desire an arbitrator or arbitration panel, how the neutral arbitrator is to be selected or the name of the person whom the parties desire to be appointed as the neutral arbitrator, and other details regarding the issuance of an arbitration decision. When an impasse exists, the parties shall notify the board if they have agreed on an alternate impasse procedure. The board shall permit the parties to proceed with their procedure and assist at times and to the extent requested by the parties in their procedure. In the absence of [such a procedure, either party may request the assistance of the board by submitting to the board and to the other party to the dispute a clear, concise statement of each issue on which an impasse has been reached together with a certificate as to the good faith of the statement and the contents therein. The board, on its own motion, may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.] an alternate impasse procedure, the board shall assist in the resolution of the impasse at times and in the manner prescribed in subsection (d) or (e), as the case may be. If the parties

subsequently agree on an alternate impasse procedure, the parties shall notify the board. The board shall immediately discontinue the procedures initiated pursuant to subsection (d) or (e) and permit the parties to proceed with their procedure.

(b) An impasse during the term of a collective bargaining agreement on reopened items or items regarding a supplemental agreement shall not be subject to the impasse procedures in this section. The parties may mutually agree on an impasse procedure, but if the procedure culminates in an arbitration decision, the decision shall be pursuant to subsection (f).

(c) An impasse over the terms of an initial or renewed agreement and the date of impasse shall be as follows:

(1) More than ninety days after written notice by either party to initiate negotiations, either party may give written notice to the board that an impasse exists. The date on which the board receives notice shall be the date of impasse;

(2) If neither party gives written notice of an impasse and there are unresolved issues on April 15 of an even-numbered year, the board shall declare on April 15 that an impasse exists and April 16 shall be the date of impasse.

(d) [The board shall render assistance to resolve the impasse according to the following schedule:] If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (5), teachers and other personnel of the department of education; or bargaining unit (7), faculty of the University of Hawaii and the community college system, the board shall assist in the resolution of the impasse as follows:

(1) [Mediation. Assist the parties involved] Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public[,] from a list of qualified persons maintained by the board[, within three days after the date of the impasse, which shall be deemed to be the day on which notification is received or a determination is made that an impasse exists].

(2) Fact-finding. If the [dispute] impasse continues [fifteen] twenty days after the date of [the] impasse, the board shall immediately appoint[, within three days,] a fact-finding [board] panel of not more than three members, representative of the public[,] from a list of qualified persons maintained by the board. The fact-finding [board,] panel shall, in addition to powers delegated to it by the board, [have the power to] make recommendations for the resolution of the [dispute.] impasse pursuant to subsection (f). The fact-finding [board,] panel, acting by a majority of its members, shall transmit a report on its findings of fact and [any] recommendations for the resolution of the [dispute] impasse to both parties within [ten] sixty days after its appointment[.] and notify the board of the date when it transmitted the fact-finding report. [If the dispute remains unresolved five days after the transmittal of the findings of fact and any recommendations, the board shall publish the findings of fact and any recommendations for public information if the dispute is not referred to final and binding arbitration.

(3) Arbitration. If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision. The arbitration panel shall consist of three arbitrators, one selected by each party, and the third and impartial arbitrator selected by the other

two arbitrators. If either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a neutral arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected by the parties as described above. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas, and administering oaths, in accordance with procedures prescribed by the board to resolve the impasse. If the dispute remains unresolved within fifty days after the date of the impasse, the arbitration panel shall transmit its findings and its final and binding decision on the dispute to both parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiations within ten days to the appropriate legislative bodies.

The time frame prescribed in the foregoing schedule may be altered by mutual agreement of the parties, subject to the approval of the board.

The costs for mediation and fact-finding shall be borne by the board. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties involved in the dispute.

(c) If the parties have not mutually agreed to submit the dispute to final and binding arbitration, either party shall be free to take whatever lawful action it deems necessary to end the dispute; provided that no action shall involve the disruption or interruption of public services within sixty days after the fact-finding board has made public its findings of fact and any recommendations for the resolution of the dispute. The employer]

(3) Mediation. If the impasse continues ten days after the transmittal of the fact-finding report, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. The parties shall make the fact-finding report available to the mediator or mediators.

(4) Fact-finding report made public. If the impasse continues sixty days after the transmittal of the fact-finding report, the parties shall make available to the board the fact-finding report which shall be released by the board for public information.

(5) Submission of fact-finding report and response of the parties. If the impasse continues and the parties have not mutually agreed to submit the dispute to arbitration for a decision by January 31 of an odd-numbered year, the employers shall submit on February 1 to the appropriate legislative bodies the [employer's] employers' recommendations for the settlement of the [dispute] impasse on all cost items together with the [findings of fact and any recommendations made by the fact-finding board.] fact-finding report. The exclusive representative may submit to the appropriate legislative [body] bodies its recommendations for the settlement of the [dispute on all] cost items[.] in impasse.

[(d)] (e) If [a dispute] an impasse exists between a public employer and the exclusive representative of [appropriate] bargaining unit (2), supervisory employees in blue collar positions; [appropriate] bargaining unit (3), nonsupervisory employees in white collar positions; [appropriate] bargaining unit (4), supervisory employees in

white collar positions; [appropriate] bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; [appropriate] bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; [optional appropriate] bargaining unit (9), registered professional nurses; [optional appropriate] bargaining unit (10), institutional, health, and correctional workers; [optional appropriate] bargaining unit (11), firefighters; [optional appropriate] bargaining unit (12), police officers; or [optional appropriate] bargaining unit (13), professional and scientific employees, [other than registered professional nurses, exists over the terms of an initial or renewed agreement more than ninety working days after written notification by either party to initiate negotiations, either party may give written notice to the board that an impasse exists and] the board shall assist in the [voluntary] resolution of the impasse [by appointing a mediator within three days after the date of impasse. If the dispute continues to exist fifteen working days after the date of impasse, the dispute shall be submitted to arbitration proceedings as provided herein.

The board shall immediately determine whether the parties to the dispute have mutually agreed upon an arbitration procedure and whether the parties have agreed upon a person or persons whom the parties desire to be appointed as the arbitrator or as a panel of arbitrators, as the case may be.

If the board determines that an arbitration procedure mutually agreed upon by the parties will result in a final and binding decision, and that an arbitrator or arbitration panel has been mutually agreed upon, it shall appoint such arbitrator or arbitration panel and permit the parties to proceed with the arbitration procedure mutually agreed upon.] as follows:

- (1) Mediation. During the first twenty days after the date of impasse, the board shall immediately appoint a mediator, representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse.
- (2) Arbitration. If[, after eighteen working days from the date of impasse, the parties have not mutually agreed upon an arbitration procedure and an arbitrator or arbitration panel,] the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the [issues in dispute] impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.
 - (A) Arbitration panel. [Within twenty-one working days from the date of impasse, two] Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The [impartial] neutral third member of the arbitration panel [shall be selected by the two previously selected panel members and], who shall chair the arbitration panel[.], shall be selected by mutual agreement of the parties. In the event that the [two previously selected arbitration panel members] parties fail to select [an impartial third arbitrator] the neutral third member of the arbitration panel within [twenty-four working] thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the [impartial] neutral arbitrator shall be selected. Within five [calendar] days after receipt of such list, the parties shall alternately strike names [therefrom] from the list until a single name is left, who shall be immediately appointed by the board as the [impartial] neutral arbitrator and chairperson of the arbitration panel.

- (B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final [offer] position which shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions [other than those relating to contributions by the State and respective counties to the Hawaii public employees health fund] which each party is proposing for inclusion in the final agreement.
- (C) Arbitration hearing. Within one hundred twenty [calendar] days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final [offers. Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues, with or without the assistance of a mediator, at any time prior to the conclusion of the hearing conducted by the arbitration panel.] positions. The arbitrator, or the chairperson of the arbitration panel together with the other two members, are encouraged to assist the parties in a voluntary resolution of the impasse through mediation, to the extent practicable throughout the entire arbitration period until the date the panel is required to issue its arbitration decision.
- (D) Arbitration decision. Within thirty [calendar] days after the conclusion of the hearing, a majority of the arbitration panel shall [issue a final and binding] reach a decision[.] pursuant to subsection (f) on all provisions that each party proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision.

(f) [In reaching a decision, the arbitration panel] A fact-finding panel in making its report and an arbitrator or arbitration panel in reaching its decision shall give weight to the following factors [listed below] and shall include in [a written opinion] its written report or decision an explanation of how the factors were taken into account [in reaching the decision]:

- (1) The lawful authority of the employer[.], including the ability of the employer to use special funds only for authorized purposes or under specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public.
- (4) The financial ability of the employer to meet these costs[.]; provided that the employer's ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues.
- (5) The present and future general economic condition of the counties and the State.
- (6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages,

hours, and conditions of employment of other persons performing similar services, and of other state and county employees in Hawaii.

- (7) The average consumer prices for goods or services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii public employees health fund. The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii public employees health fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

(h) Any time frame provided in an impasse procedure, whether an alternate procedure or the procedures in this section, may be modified by mutual agreement of the parties. In the absence of a mutual agreement to modify time frames, any delay, failure, or refusal by either party to participate in the impasse procedure shall not be permitted to halt or otherwise delay the process, unless the board so orders due to an unforeseeable emergency. The process shall commence or continue as though all parties were participating.

(i) Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues at any time prior to the issuance of an arbitration decision.

(j) The costs and expenses for mediation and fact-finding services provided under subsection (d) or (e) shall be borne by the board. The costs and expenses for any other services performed by neutrals pursuant to mutual agreement of the parties and the costs for a neutral arbitrator shall be borne equally by the parties. All other costs incurred by either party in complying with [these provisions,] this section, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them[, except that all costs and expenses of the impartial arbitrator shall be borne equally by the parties].”

SECTION 101. Section 89-12, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) [Participation in a strike] It shall be unlawful for any employee [who] to participate in a strike if the employee:

- (1) [is] Is not included in [an] the appropriate bargaining unit [for which an exclusive representative has been certified by the board,] involved in an impasse; or
- (2) [is] Is included in [an] the appropriate bargaining unit [for which process for resolution of a dispute is by referral to final and binding arbitration, or] involved in an impasse that has been referred to arbitration for a decision; or
- (3) [is] Is an essential employee[.], but only when the employee is designated to fill an essential position.

(b) It shall be lawful for an employee, who is not prohibited from striking under [paragraph] subsection (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike [after] under the following conditions:

- (1) [the] The requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith[.];
- (2) [the] The proceedings for the prevention of any prohibited practices have been exhausted[.];
- (3) [sixty days have elapsed since the fact-finding board has made public its findings and any recommendation,] The collective bargaining agreement and any extension of the agreement has expired; and
- (4) [the] The exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.”

SECTION 102. Section 89-15, Hawaii Revised Statutes, is amended to read as follows:

“§89-15 Financial reports to employees. Every employee organization shall keep an adequate record of its financial transactions [and]. It shall make available [annually,] to [the] all employees who [are members of the organization, within sixty days after the end of its fiscal year, a detailed written] pay the employee organization dues or its equivalent an annual financial report [thereof] in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant[.], within one hundred twenty days after the end of its fiscal year. In the event of failure [of compliance] to comply with this section, [any] an employee [within the organization] may petition the board for an order compelling [such] compliance. [An] The order [of the board on such petition] shall be enforceable in the same manner as other orders of the board under this chapter.”

SECTION 103. Section 89-18, Hawaii Revised Statutes, is amended to read as follows:

“§89-18 Penalty. Any person who wilfully assaults, resists, prevents, impedes, or interferes with [a mediator, member of the fact-finding board, or arbitrator, or] any member of the board or any of [the] its agents or employees [of the board] in the performance of duties pursuant to this chapter, shall be fined not more than \$500 or imprisoned not more than one year, or both. The term “agent” includes a neutral third party who assists in a resolution of an impasse under section 89-11.”

SECTION 104. Section 89A-1, Hawaii Revised Statutes, is amended to read as follows:

“§89A-1 Office of collective bargaining [in the state government established.] and managed competition. (a) There shall be established an office of collective bargaining and managed competition in the office of the governor to assist the governor in [negotiating with and entering into written agreements between the public employers] implementation and review of the managed process of public-private competition for particular government services through the managed competition process and negotiations between the State and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment.

(b) The position of chief negotiator for the State is hereby established to head the office. The chief negotiator shall be experienced in labor relations. [The governor shall appoint and remove the chief negotiator and the deputy negotiators, who shall not be subject to chapters 76, 77, and 89. Effective January 1, 1989, and January 1, 1990, the salary of the chief negotiator shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively. The chief negotiator and deputy negotiators shall be included in any benefit program generally applicable to the officers and employees of the State. All other employees shall be appointed in accordance with chapters 76 and 77. The chief negotiator shall serve as one of the governor’s designated representatives as set forth in section 89-6(b).] The governor shall appoint the chief negotiator and may also appoint deputy negotiators to assist the chief negotiator. The governor, at pleasure, may remove the chief negotiator and any deputy negotiator. All other employees shall be appointed by the chief negotiator. All employees in the office of collective bargaining shall be included in any benefit programs generally applicable to employees of the State.

(c) Subject to the approval of the governor, the office of collective bargaining and managed competition shall:

- (1) Assist the governor in formulating the State’s philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and
- (2) Coordinate the managed competition process to ensure the negotiations of subject matters that are negotiable under the collective bargaining laws in the public sectors.

(d) No employee of the office of collective bargaining shall be included in the civil service, any civil service classification system, or any appropriate bargaining unit; provided that any civil service position on the effective date of this Act shall not be exempted from civil service until the incumbent in that position on the effective date of this Act vacates that position.”

SECTION 105. Chapter 89C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§89C- Definitions.** As used in this chapter:

“Adjustment” means a change in wages, hours, benefits, or other term and condition of employment.

“Appropriate authority” means the governor, the respective mayors, the chief justice of the supreme court, the board of education, the board of regents, the Hawaii health system corporation board, the auditor, the ombudsman, and the director of the legislative reference bureau. These individuals or boards may make adjustments for their respective excluded employees.

“Excluded employee” or “employee” means any individual who is employed by an appropriate authority and is not included in an appropriate bargaining unit under section 89-6 and, therefore, is not entitled to collective bargaining coverage under chapter 89.”

SECTION 106. Section 89C-1, Hawaii Revised Statutes, is amended to read as follows:

“**§89C-1 Purpose.** [The legislature finds that existing statutes do not permit the chief executives of the State and counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice of the supreme court sufficient flexibility to make appropriate and timely adjustments in the compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, and other benefits for public officers and employees who are excluded from collective bargaining coverage under chapter 89. To this end, the legislature grants to the respective chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice, the authority to make such adjustments for officers and employees excluded from collective bargaining in conformance with this chapter.

Nothing in this chapter shall be construed to interfere with or diminish any authority already provided by statutes to the chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, or the chief justice.] The legislature finds that the appropriate authorities do not have sufficient flexibility to adjust the wages, hours, benefits, and other terms and conditions of employment for their respective excluded public officers and employees. The organizational status and employment conditions of these individuals in the excluded group are diverse and include: cabinet members, board and commission members, managerial employees, and non-managerial employees; appointees, civil service employees, and employees exempt from civil service; permanent and temporary employees; and full-time, part-time, seasonal, casual, and intermittent employees. Sufficient flexibility must be provided so that timely and relevant adjustments can be made. To this end, the legislature grants appropriate authorities the necessary flexibility to make adjustments as provided in this chapter; provided that nothing in this chapter shall be construed to interfere with or diminish authority already provided to them.”

SECTION 107. Section 89C-2, Hawaii Revised Statutes, is amended to read as follows:

“**§89C-2 Adjustments authorized; limitations, restrictions.** [Any provision of law to the contrary notwithstanding, the compensation, hours, terms, and

conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, and other benefits for public officers and employees who are excluded from collective bargaining shall be adjusted by the chief executives of the State or counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, or the chief justice, as applicable. The chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice, or their designated representatives, shall determine the adjustments to be made and which excluded officers or employees are to be granted adjustments under this chapter, in accordance with the following guidelines and limitations:

- (1) For excluded officers and employees under the same compensation plans as officers and employees within collective bargaining units, such adjustments shall be not less than those provided under collective bargaining agreements for officers and employees hired on a comparable basis.
- (2) For excluded officers and employees in the excluded managerial compensation plan, such adjustments shall be not less than those provided under collective bargaining to officers and employees in the professional and scientific employees bargaining unit. Alternate adjustments may be granted to officers and employees whose work is related to that of officers and employees in the other optional bargaining units in order to maintain appropriate pay relationships with such officers and employees.
- (3) No adjustment in compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, or other benefits shall be established which is in conflict with the system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment conduct, movement, and separation of public officers and employees.
- (4) The compensation of officers or employees whose salaries presently are limited or fixed by legislative enactment shall not be adjusted under this chapter, but shall continue to be adjusted by the appointing authority within limits established by law or by legislative enactment.
- (5) The compensation of officers or employees, who are not covered under the same compensation plans as officers and employees within collective bargaining units and whose salaries presently are authorized to be fixed by the appointing authority, need not be adjusted under this chapter. The appointing authority may continue to make specific adjustments in the salaries of individual officers or employees from available funds appropriated.
- (6) Adjustments to the amounts of contributions by the State and respective counties to the Hawaii public employees health fund on behalf of officers or employees who are not covered by adjustments made under this chapter shall be made by legislative enactment.]

Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

- (1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action, shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body;
- (2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority,

- shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;
- (3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;
 - (4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;
 - (5) For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and
 - (6) No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law.”

SECTION 108. Section 89C-3, Hawaii Revised Statutes, is amended to read as follows:

“§89C-3 Adjustments for [officers and] excluded civil service employees [covered by chapter 77]. [The state director of human resources development and the directors of personnel services of the counties who shall serve as representatives of their respective chief executives, and the administrative director of the courts who shall serve as the representative of the chief justice, shall decide by majority vote on the adjustments to be made under this chapter for officers and employees covered under chapter 77. Any adjustments and their effective dates shall be uniform among the jurisdictions.] (a) Each jurisdiction shall determine the adjustments that are relevant for its respective excluded civil service employees based on recommendations from its respective personnel director.

(b) In formulating recommendations to the appropriate authority, the respective director shall:

- (1) Establish procedures that allow excluded civil service employees and employee organizations representing them the opportunity to provide input on the kinds of adjustments that are relevant and important to them for the director’s consideration;
- (2) Ensure that adjustments for excluded civil service employees result in compensation and benefit packages that are appropriate for what they do and the contribution they make in consideration of the compensation and benefit packages provided under collective bargaining agreements for counterparts and subordinates within the jurisdiction; and
- (3) Confer with other directors on proposed adjustments to ensure adjustments are consistent with chapter 76.”

SECTION 109. Section 89C-4, Hawaii Revised Statutes, is amended to read as follows:

“§89C-4 Adjustments for [other officers and employees. (a) The respective representatives of the State, counties, and the judiciary shall submit to their respective chief executives and to the chief justice, recommendations on the adjust-

ments to be made under this chapter for other officers and employees within their respective personnel systems. The conference of personnel directors shall confer prior to the submittal of any recommended adjustment by each director to the director's chief executive or by the administrative director of the courts to the chief justice. Any adjustments and their effective dates shall be uniform, if practicable, among the jurisdictions.

(b) The superintendent of education and the president of the University of Hawaii shall submit to the board of education and the board of regents, respectively, recommendations on the adjustments to be made under this chapter for officers and employees within their respective personnel systems. The superintendent and the president shall confer with the state director of human resources development prior to the submittal of any recommended adjustment. Any adjustments adopted by the board of education or the board of regents which presently require the approval of the governor shall remain subject to the approval of the governor.

(c) The auditor, the director of the legislative reference bureau, and the ombudsman shall decide by majority vote on the adjustments to be made under this chapter for officers and employees within their respective offices, including employees of the state ethics commission which is administratively within the office of the auditor. The auditor, the director of the legislative reference bureau, and the ombudsman shall confer with the state director of human resources development prior to voting on any adjustment. Any adjustments and their effective dates shall be uniform for employees under sections 23-8, 23G-2, 84-35, and 96-3.] **excluded employees exempt from civil service.** Each appropriate authority shall determine the adjustments that are relevant for their respective excluded employees who are exempt from civil service in consideration of the compensation and benefit packages provided for other employees in comparable agencies."

SECTION 110. Section 89C-5, Hawaii Revised Statutes, is amended to read as follows:

“§89C-5 [Implementation; effective date, appropriations, approval. (a) Adjustments made under this chapter which do not exceed those for officers and employees in collective bargaining units shall take effect on the same dates as appropriate collective bargaining agreements. Any such adjustments which constitute cost items shall be subject to appropriations by the appropriate legislative bodies. Such cost items shall be submitted separately from any cost items under collective bargaining to the appropriate legislative bodies, except that if appropriation by the state legislature is required, and it is not in session at the time, such cost items shall be submitted for inclusion in the governor's next operating budget. The state legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items shall be returned for revision.

(b) Any other adjustments made under this chapter which constitute cost items or which were specifically provided for by legislative enactment shall be subject to approval or rejection as a whole by the appropriate legislative body. Such adjustments for officers and employees covered under chapter 77 shall be subject to the approval or rejection as a whole by all appropriate legislative bodies acting in concert. If the state legislature or the legislative body of any county rejects any of the adjustments submitted to it, all adjustments for officers and employees covered under chapter 77 or all adjustments for other officers and employees, as the case may be, shall be returned for revision.

(c) The chief executives of the State or counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the

ombudsman, or the chief justice, shall not make any adjustments nor use funds for purposes of this chapter without the prior approval of the appropriate legislative bodies as required in this section.] **Implementation; approval and appropriations.** (a) Adjustments that do not require appropriations by the respective legislative bodies may be implemented without legislative action.

(b) All other adjustments requiring appropriations shall be submitted to the respective legislative body for appropriations, at such time and in such manner as the legislative body may require. The legislative body shall appropriate funds of the amount requested or funds of a different amount after discussing the reasons with the appropriate authority.

(c) No adjustment shall be made and no funds shall be used for purposes of this chapter unless the legislative body has appropriated the funds necessary to implement the adjustment.”

SECTION 111. Section 89C-6, Hawaii Revised Statutes, is amended to read as follows:

“§89C-6 Chapter takes precedence, when. Adjustments made in accordance with this chapter shall take precedence over all contrary local ordinances, executive orders, legislation, or rules adopted by the State or a county, or any department, agency, board, or commission thereof, including the personnel departments [of human resources development or of personnel services or the civil service commissions.] or the merit appeals boards.”

PART V. SEPARATION INCENTIVES

SECTION 112. The purpose of this part is to provide the tools necessary to facilitate the restructuring of government. Specifically, this part authorizes the state executive branch to offer a voluntary severance or a special retirement incentive benefit to state employees who elect to voluntarily separate from service when their positions are identified for abolishment or when they are directly affected by a reduction-in-force or a workforce restructuring plan.

This part also extends to other jurisdictions the option to provide a special retirement incentive to their respective employees under a reduction-in-force or a workforce restructuring plan.

SECTION 113. As used herein:

“Directly affected” means an employee who receives official reduction-in-force notification of displacement from the employee’s position as a result of a senior employee exercising reduction-in-force rights.

“Employee” means an individual in a position covered by chapter 88, Hawaii Revised Statutes, that has been identified for abolishment or directly affected as a result of a reduction-in-force or workforce restructuring plan, but excludes any elected or appointed official and school level personnel with the department of education engaged in administrative or instructional work, such as, principals and teachers.

“Jurisdiction” means the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the Hawaii health systems corporation, the office of Hawaiian affairs, and the legislative branches of the State and county governments.

“Reduction-in-force” includes layoff under chapter 76, Hawaii Revised Statutes.

“State executive branch” includes the department of education and the University of Hawaii, but excludes the Hawaii health systems corporation which is considered a separate jurisdiction under this part.

SECTION 114. Voluntary severance benefits. (a) Any civil service employee entitled to reduction-in-force rights under chapter 76, Hawaii Revised Statutes, and who receives official notification that the employee’s position is being abolished or who is directly affected by a reduction-in-force or workforce restructuring plan proposed by a department, may elect to receive a voluntary severance benefit provided under this section in lieu of exercising any reduction-in-force rights under chapter 89 or 89C, Hawaii Revised Statutes, as applicable, and in lieu of receiving any special retirement incentive benefit under section 115.

(b) A one-time lump sum cash bonus voluntary severance benefit shall be calculated at five per cent of the employee’s base salary for every year of service worked, up to ten years, and shall not exceed fifty per cent of the employee’s annual base salary.

For the purposes of this section, “base salary” means an employee’s annual salary for the position from which the employee is to be separated, excluding all other forms of compensation paid or accrued, whether a bonus, allowance, differential, or value of leave or compensatory time off credits. Compensation excluded from base salary includes but is not limited to: shortage category differential, night shift differential, overtime, compensatory time off credits, vacation or sick leave credits, and workers’ compensation benefits.

(c) A voluntary severance benefit shall be in addition to any payment owing to the employee upon separation from service, including accumulated unused vacation allowances or compensatory time credits.

(d) All voluntary severance benefits paid under this section shall be subject to applicable state income tax laws and rules.

(e) A voluntary severance benefit provided under this section shall not be considered as a part of a discharged employee’s salary, service credit, or a cost item under section 89-2, Hawaii Revised Statutes, when calculating retirement benefits or sick and vacation leave.

SECTION 115. Special retirement incentive benefit. (a) Any employee who receives official notification that the employee’s position is being abolished or who is directly affected by the result of a reduction-in-force or workforce restructuring plan proposed by a department may elect, if the employee is a vested member of the employees’ retirement system and meets any of the criteria specified in subsection (c), the special retirement benefit provided by this section in lieu of exercising any reduction-in-force rights under chapter 89 or 89C, Hawaii Revised Statutes, as applicable, and in lieu of receiving any voluntary severance benefits under section 114. To receive the special retirement incentive benefit offered under this section, the employee shall comply with the application and time frame requirements specified in subsection (b).

(b) Any employee who elects to retire and receive the special retirement incentive benefit under this section shall notify the employee’s employing department and file a formal application for retirement with the employees’ retirement system not less than thirty days nor more than ninety days prior to the date of retirement.

(c) Notwithstanding the age and length of service requirements of sections 88-73 and 88-281, Hawaii Revised Statutes, an employee member shall qualify for the special retirement incentive benefit if, on the employee’s retirement date, the employee meets any one of the following criteria:

- (1) Has at least ten years of credited service as a contributory class A or B member and is at least fifty years of age;
- (2) Has at least twenty years of credited service as a contributory class A or B member, irrespective of age;
- (3) Has at least ten years of credited service as a noncontributory class C member and is at least fifty-seven years of age; or
- (4) Has at least twenty-five years of credited service as a noncontributory class C member, irrespective of age.

(d) Any employee who exercises the option of the special retirement incentive benefit under this section because the employee does not qualify with respect to the age and length of service requirements under sections 88-73 and 88-281, Hawaii Revised Statutes, to receive a retirement benefit without penalty, shall not have the retirement benefit reduced in accordance with the actuarial formula normally used by the employees' retirement system for the calculation of early retirement benefits.

(e) The head of each affected department shall transmit a list of employees who elected and received the special retirement incentive benefit to the board of trustees of the employees' retirement system not less than thirty days but not more than ninety days prior to the employee's retirement date. The head of each affected department shall certify that the employees on the list have in fact selected the special retirement incentive benefit in lieu of receiving the voluntary severance benefit and exercising any reduction-in-force rights under chapter 89 or 89C, Hawaii Revised Statutes, as applicable.

(f) The board of trustees of the employees' retirement system shall make payments with respect to all eligible employees who retire pursuant to this section. The board shall determine the portion of the additional actuarial present value of benefits to be charged to the State based on retirements authorized under this section. If necessary, the State shall make additional payments to the employee's retirement system in the amounts required to amortize the additional actuarial present value of benefits over a period of five years. The unfunded actuarial present values of benefits payable under this section are part of the unfunded accrued liability of the employees' retirement system under sections 88-122 and 88-123, Hawaii Revised Statutes.

SECTION 116. No voluntary severance or special retirement incentive benefit shall be payable to an employee discharged for disciplinary reasons or for reasons other than a reduction-in-force or workforce restructuring plan.

SECTION 117. No employee who has received any benefit under this part shall be reemployed by the State in any capacity as follows:

- (1) For an employee receiving a voluntary severance benefit under section 114, unless the gross amount of the voluntary severance benefit paid under section 114 is returned to the appropriate fund prior to the commencement of reemployment if the employee is reemployed within five years from the date of separation; or
- (2) For an employee receiving a special retirement incentive benefit under section 115, unless all benefits derived from the specific¹ retirement incentive benefit under section 115, as determined by the board of trustees of the employees' retirement system, are forfeited prior to the commencement of reemployment.

SECTION 118. After payments of all costs associated with the voluntary severance and special retirement incentive benefits, the remaining payroll balances shall not be expended for any purpose and shall be lapsed into the appropriate fund.

SECTION 119. The head of each affected state department who provided benefits under this part shall:

- (1) Transmit a report of every position identified for abolishment and vacated under this part to the directors of finance and human resources development who shall abolish these positions from the appropriate budget and personnel files. The governor shall report this information to the legislature no later than twenty days prior to the convening of each regular session beginning with 2001;
- (2) Reduce its personnel count by every position identified for abolishment and vacated under this part, whether the former incumbent vacated the position as a result of accepting a voluntary severance benefit or special retirement incentive benefit authorized under this part or of exercising reduction-in-force rights; and
- (3) Transmit a list that includes each employee who received benefits under this part and the benefit received by the employee to the directors of finance and human resources development.

SECTION 120. The departments of human resources development and budget and finance shall develop and administer guidelines and timeframes for participating agencies to implement the voluntary separation and special retirement incentive benefits under this part.

The department of human resources development, the employees' retirement system, and the public employees health fund shall work cooperatively to ensure briefings are provided prior to the implementation of any workforce restructuring plan to educate the employees whose positions are being abolished or who are directly affected by a reduction-in-force or workforce restructuring plan.

The department of human resources development shall report to the legislature on any restructuring or reengineering activities initiated as a consequence of this part within the various departments of the state executive branch no later than twenty days prior to the convening of each regular session beginning with the 2001 regular session.

The report shall include but not be limited to a description of the abolished positions and how the new workforce structure will more efficiently serve the needs of the agency's clients and appropriate criteria by which to measure the new workforce structure's effectiveness.

SECTION 121. The governor is authorized to provide funds to obtain matching federal moneys to retrain employees in the state executive branch who separated from service under this part.

SECTION 122. Optional participation by a county, the judiciary, the Hawaii health systems corporation, the office of Hawaiian affairs, or the legislative branch of the State or a county. The city and county of Honolulu, the county of Hawaii, the county of Kauai, the county of Maui, the judiciary, the Hawaii health systems corporation, the office of Hawaiian affairs, or the legislative branch of the State or a county may opt to provide the special retirement incentive benefit under section 115 to their respective employees under a workforce restructuring plan; provided that the special retirement incentive is in lieu of any voluntary severance benefit that may be offered under its plan and is consistent with all of the provisions in section 115. All references to the State in section 115 shall include the jurisdiction opting to provide the special retirement incentive benefit. The chief executive or other appropriate authority of the respective jurisdictions shall ensure that approval of its respective legislative body is obtained, if required, before offering the special retirement incentive under section 115.

SECTION 123. The auditor shall conduct a study on the effects on state government caused by this part and shall submit a report to the legislature and the governor not later than twenty days prior to the convening of the 2004 regular session.

SECTION 124. This part shall be repealed on June 30, 2003.

PART VI

SECTION 125. Chapter 302A, part III, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- School personnel engaged in instructional work, other than teachers and educational officers. (a) The board of education shall appoint teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work/study assistants, alternative school educational/supportive services specialists, and alternative school project coordinators as may be required to carry out the purposes of this chapter. The board, in consultation with the department of human resources development, shall prescribe the duties and qualifications for positions, adopt classification systems, classify and fix the compensation of positions accordingly, provide a classification appeals procedure, and establish probationary and other requirements for tenure that protects employees from being disciplined without proper cause.

(b) Employees in positions under subsection (a) shall be board of education appointees exempt from chapter 76, but the application of section 89-6 with respect to collective bargaining coverage and the employer for purposes of collective bargaining shall not be affected. Except for rights or benefits specifically conditioned upon membership in the civil service, the wages, hours, benefits, and other terms and conditions of employment for these employees in existence on the effective date of this Act shall remain in effect, but may be changed as provided in chapter 89 or 89C, as applicable. Any employee who is a member of the civil service on the effective date of this Act shall be granted tenure by the board of education without the necessity of meeting any probationary or other requirements for tenure that the board of education establishes.”

PART VII

SECTION 126. Section 88E-3, Hawaii Revised Statutes, is amended to read as follows:

“§88E-3 Board of trustees. (a) The authority to establish the plan and [make] implement this chapter [effective] is vested in the board of trustees. The board shall be placed within the department of human resources development for administrative purposes.

(b) The board shall adopt such rules to carry out this chapter in accordance with chapter 91[.]; provided that rules necessary for the plan to be in compliance with federal laws or regulations may be adopted without regard to chapter 91. The board may engage services, as necessary, to establish, administer, or maintain the plan under its direction. An administrator may be engaged only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the board.”

SECTION 127. Section 88E-8, Hawaii Revised Statutes, is amended to read as follows:

“**§88E-8 Deferred funds.** Sums deferred under the plan, as well as property and rights purchased with such amounts and income attributable to such amounts, shall be held in trust outside the state treasury in accordance with section 457 of the Internal Revenue Code of 1986, as amended, for the exclusive benefit of participants and their beneficiaries.”

SECTION 128. Section 88F-3, Hawaii Revised Statutes, is amended by amending subsection (b) as follows:

“(b) The board shall adopt, in accordance with chapter 91, rules [as are] necessary to implement this chapter[.]; provided that rules necessary for the plan to be in compliance with federal laws or regulations may be adopted without regard to chapter 91. The board may engage services, as necessary, to establish, administer, or maintain the plan under its direction. An administrator may be engaged only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the board.”

SECTION 129. Section 88F-6, Hawaii Revised Statutes, is amended to read as follows:

“**§88F-6 Deferred funds.** Sums deferred under the plan, as well as property and rights purchased with the amounts and income attributable to the amounts, shall be held in trust outside the state treasury in accordance with section 457 of the Internal Revenue Code of 1986, as amended, for the exclusive benefit of participants and their beneficiaries.”

SECTION 130. Section 398-1, Hawaii Revised Statutes, is amended by amending the definition of “employer” to read as follows:

““Employer” means any individual or organization, [including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions,] any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.”

PART VIII

SECTION 131. Chapter 77, Hawaii Revised Statutes, is repealed.

SECTION 132. Chapter 79, Hawaii Revised Statutes, is repealed.

SECTION 133. Chapter 80, Hawaii Revised Statutes, is repealed.

SECTION 134. Chapter 81, Hawaii Revised Statutes, is repealed.

SECTION 135. Chapter 82, Hawaii Revised Statutes, is repealed.

SECTION 136. Chapter 83, Hawaii Revised Statutes, is repealed.

SECTION 137. Section 88E-10, Hawaii Revised Statutes, is repealed.

SECTION 138. Section 88F-8, Hawaii Revised Statutes, is repealed.

SECTION 139. Section 302A-634, Hawaii Revised Statutes, is repealed.

SECTION 140. Section 302A-635, Hawaii Revised Statutes, is repealed.

PART IX

SECTION 141. There is appropriated out of the general revenues of the State of Hawaii the sum of \$600,000, or so much thereof as may be necessary for fiscal year 2000-2001, to be paid into the special fund created in section 2 of this Act, section 26-5(f), Hawaii Revised Statutes. The sum appropriated shall be expended by the department of human resources development for the purposes of the fund.

SECTION 142. There is appropriated out of the general revenues of the State of Hawaii the sum of \$128,000, or so much thereof as may be necessary for fiscal year 2000-2001, for the REACH (Resource for Employee Assistance and Counseling Help) program that provides short-term counseling for troubled state employees who need help in dealing with personal problems affecting their work performance. The sum appropriated shall be expended by the department of human resources development.

SECTION 143. There is appropriated out of the employees' retirement system's investment earnings the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2000-2001, and the same sum, or so much as may be necessary for fiscal year 2001-2002, for the employees' retirement system to process the special retirement incentive benefit provided to state employees in the executive branch whose positions are being eliminated as authorized in section 115 of this Act. The sum appropriated shall be expended by the employees' retirement system.

SECTION 144. The department of human resources shall submit, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2001, a report of the positions that were permanently exempted from the civil service prior to the effective date of this Act which it reviewed during the year. The report shall include, but not be limited to, when the position was established, the purpose of the position, the reason for the exemption from civil service, and findings and recommendations on whether the position should remain exempt or be converted to a civil service position. With respect to positions that should remain exempt, the department shall indicate whether the position should be exempted permanently and, if so, whether from civil service recruitment procedures or the classification systems, or both. With respect to positions recommended for inclusion into the civil service, the department shall submit proposed legislation to convert exempt positions to civil service positions and address the impact of the conversion on the incumbents in these positions, if any.

SECTION 145. All acts passed by the legislature during the regular session of 2000, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 146. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State or a county, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does

not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules prescribed to implement this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 147. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall 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 148. On or before July 1, 2002, any existing rule, ordinance, executive order or directive, or provision in a collective bargaining agreement, that is not consistent with this Act shall be amended to conform with this Act. Any new or amended rule, ordinance, executive order or directive that must be adopted, enacted, or negotiated to carry out this Act shall take effect no later than July 1, 2002.

SECTION 149. The provisions of sections 131, 132, 133, 134, 135, and 136 of this Act notwithstanding, the rights, benefits, and privileges currently enjoyed by civil servants under chapters 77, 79, 80, 81, 82, and 83 shall not be diminished or impaired, unless comparable rights, benefits, and privileges are either negotiated into collective bargaining agreements or established by executive order for civil servants.

SECTION 150. Upon the repeal of chapter 77, Hawaii Revised Statutes, wherever the words “chapters 76 and 77” appear in the Hawaii Revised Statutes, the revisor of statutes shall substitute the words “chapter 76” as the context requires.

SECTION 151. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 152. This Act shall take effect on July 1, 2002; provided that section 26-5(f), Hawaii Revised Statutes, in Section 2 and Parts V and IX of this Act shall take effect on July 1, 2000.

(Approved June 19, 2000.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.