

ACT 128

H.B. NO. 1786

A Bill for an Act Relating to Exempt Employees.

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

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

“§76-16 Civil service and exemptions. (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 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 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 noncompliance, 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 director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, 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) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
 - (B) Effective July 1, 2003, 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, alternative school project coordinators, and communications aides in the department of education;
 - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
 - (D) 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]

- (A) 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]
 - (B) An administrative assistant to the state librarian; and [an]
 - (C) 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 meal periods in the distribution, collection, and counting of meal tickets, 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;
 - (26) A gender and other fairness coordinator hired by the judiciary; and
 - (27) Positions in the Hawaii national guard youth challenge academy.

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 cannot be com-

pleted 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 July 1, 2002, 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 July 1, 2002, 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 exempt positions who have performed work satisfactorily for six or more consecutive years shall be eligible to apply for:

- (1) Intra-departmental and inter-departmental transfers; and
- (2) Intra-departmental and inter-departmental promotional exams

for which they meet the minimum qualifications as prescribed by the class specification.

In evaluating minimum qualifications, related exempt experience may be considered state civil service experience in a class deemed comparable by the department of human resources development, based upon the duties and responsibilities assigned.

~~(j)~~ (k) 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 2. The legislative reference bureau shall compile a list of all statutory references to positions exempted from the civil service and submit a report of its findings to the legislature at least twenty days prior to the convening of the regular session of 2005.

SECTION 3. The department of human resources development shall complete its review of all positions exempted from civil service in accordance with House Concurrent Resolution No. 94, Regular Session of 2003, and submit a report of its findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 2005.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2004, and shall be repealed on July 1, 2006; provided that section 76-16, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2004.

(Approved June 16, 2004.)