

## ACT 34

H.B. NO. 1222

A Bill for an Act Relating to Public Employees.

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

SECTION 1. Section 76-14, Hawaii Revised Statutes, is amended to read as follows:

**“§76-14 Merit appeals board; duties, and jurisdiction.** (a) The merit appeals board of each jurisdiction shall decide appeals from any action under this chapter 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[:], including denial or loss of promotional opportunity or demotion due to reclassification of positions in a reorganization;
- (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

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(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(b) 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.

(d) Notwithstanding the provisions of this section, the merit appeals board shall have the authority to hear and decide appeals pending before the state civil service commission as of June 30, 2002, in accordance with the jurisdictional requirements and procedures applicable to the state civil service commission as of June 30, 2002.

(e) This section shall be construed liberally to determine whether the appeal falls within the jurisdiction of the merit appeals board."

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 Statutory material to be repealed is bracketed and stricken.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

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

(Approved April 28, 2005.)