

## ACT 48

H.B. NO. 1744

A Bill for an Act Relating to Compensation.

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

SECTION 1. The commission on salaries was established by constitutional amendment that was ratified by Hawaii voters in 2006. The commission is charged with reviewing and recommending salaries for state justices and judges, legislators, the governor, the lieutenant governor, and specified appointed officials within the executive branch. The commission convened in 2006 and submitted its report and recommendations to the legislature in 2007 with a schedule of salary recommendations. By constitutional law, the salaries recommended and submitted by the commission become effective as provided in the recommendation, unless the legislature disapproves the recommendation in its entirety. The legislature did not disapprove the recommendations of the commission convened in 2006.

The legislature notes that the commission's salary recommendations specify a July 1, 2007, effective date for executive and judicial branch official salaries, and a January 1, 2009, effective date for legislator salaries. The state constitution provides that any change in salary that becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted.

The legislature finds that Act 57, Session Laws of Hawaii 2011, establishes a July 1, 2009, until December 31, 2013, salary reduction period for all positions under the Act, but applies different salary provisions to those positions after that period. This has raised concern as to whether those provisions comport with article XVI, section 3.5, of the state constitution, which prohibits the salaries from being decreased during a term of office except by general law applying to all salaried officers of the State.

The legislature also finds that Act 57 also extends the five per cent salary reduction until December 31, 2013, for all salaries but does not address the impact of the reductions on the 2012 commission's recommendations for the executive and judicial salaries for the period July 1, 2013, through December 31, 2013, thus resulting in a possible conflict between the 2011 law and the next commission's recommendations.

The next commission on salaries will convene in 2012 and will submit its report and recommendations to the 2013 legislature. It is the intent that the 2013 legislature deliberate the range of issues related to salary levels that may be recommended by the 2012 commission after those salaries are proposed.

The purpose of this Act is to resolve the ambiguity and concerns arising from provisions contained in Act 57, Session Laws of Hawaii 2011, by:

- (1) Amending the salary reduction period to reflect that it is effective through June 30, 2013;
- (2) Deleting provisions relating to the restoration of salaries to what they would have been on July 1, 2009, but for the salary reductions provided by Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011; and

- (3) Deleting provisions relating to the salary commission that convenes in 2012 as unnecessary, inasmuch as existing provisions set forth the scope of its mandate.

SECTION 2. Section 2 of Act 85, Session Laws of Hawaii 2009, as amended by section 1 of Act 57, Session Laws of Hawaii 2011, is amended to read as follows:

“SECTION 2. (a) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries convened in 2006 for salary increases, beginning July 1, 2009, and [until December 31,] through June 30, 2013, the annual salaries of the governor, the lieutenant governor, the justices and judges of all state courts, the administrative director of the State or an equivalent position, and the department heads or executive officers and the deputies or assistants to the department heads or executive officers of the departments of:

- (1) Accounting and general services;
- (2) Agriculture;
- (3) The attorney general;
- (4) Budget and finance;
- (5) Business, economic development, and tourism;
- (6) Commerce and consumer affairs;
- (7) Defense;
- (8) Hawaiian home lands;
- (9) Health;
- (10) Human resources development;
- (11) Human services;
- (12) Labor and industrial relations;
- (13) Land and natural resources;
- (14) Public safety;
- (15) Taxation; and
- (16) Transportation,

shall be reduced by five per cent from what the salary is as of June 30, 2009, and shall remain at that salary rate ~~[until December 31,]~~ through June 30, 2013 [~~;~~ provided that on January 1, 2014, the salaries of these positions shall be restored to the level they would have been on July 1, 2009, without the salary decrease under this Act; provided further that if any salary recommendations for these positions are made and are to take effect on or after January 1, 2014, by the commission on salaries, and the recommendations are not disapproved by the legislature, then the salary recommendations shall become effective on the date specified by the commission on salaries in accordance with its recommendations].

(b) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries convened in 2006 for salary increases, beginning July 1, 2009, and [until December 31,] through June 30, 2013, the annual salaries of members of the legislature shall be reduced by five per cent from what the salary is as of June 30, 2009 [~~;~~ provided that the salary recommendations of the commission on salaries for legislators effective January 1, 2014, shall become effective on that date in accordance with the recommendations.], and shall remain at that salary rate through June 30, 2013.

(c) For the period from July 1, 2009, ~~[to December 31,]~~ through June 30, 2013, notwithstanding any law to the contrary, the leaves of absence for vacation and sick leave, with pay, of persons affected under subsections (a) and (b) shall be the same as those negotiated, mediated, or arbitrated under chapter 89, Hawaii Revised Statutes, for collective bargaining unit (13) [~~;~~ provided that on

~~January 1, 2014, the leaves of absence under this subsection shall be either: restored to the level they would have been on July 1, 2009, but for this subsection; or commensurate with any salary adjustment recommended for any period on or after January 1, 2014, by the commission on salaries and not disapproved by the legislature].~~

(d) This section shall not be construed to impart any right to additional compensation previously authorized through the adoption of the recommendations of the commission on [salaries' recommendations] salaries convened in 2006, for the period from [~~January 1, 2009,~~] July 1, 2007, through [~~December 31,~~] June 30, 2013, for positions covered under subsections (a) and (b).

(e) This section shall not be enforced to the extent that it is preempted by federal law.”

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

SECTION 4. This Act shall take effect upon its approval; provided that:

- (1) Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011, as amended by this Act shall be repealed at 11:59 p.m. on June 30, 2013;
- (2) The repeal of Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011, as amended by this Act shall not be construed to restore or reinstate for the period of July 1, 2009, through June 30, 2013, any leaves of absence for vacation or sick leave, any salary reduction incurred during the period specified in this paragraph, or any other compensation reduced by the aforementioned Acts; and
- (3) On July 1, 2013, and thereafter, unless modified by the adoption of the recommendations of the commission on salaries scheduled to convene in 2012, all salaries reduced by Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011, as amended by this Act, and notwithstanding section 26-56(d), Hawaii Revised Statutes, shall be at the rates provided for by the recommendations, dated March 14, 2007, of the commission on salaries convened in 2006.

(Approved April 23, 2012.)