

JAN 21 2011

A BILL FOR AN ACT

RELATING TO CIVIL SERVICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

3 "**§76-16 Civil service and exemptions.** (a) The [State
4 ~~Constitution]~~ Hawaii State Constitution mandates that the
5 employment of persons in the civil service, as defined by law,
6 be governed by the merit principle. The legislature declares
7 that the public policy of the State is that all positions in the
8 civil service systems of the respective jurisdictions shall be
9 filled through civil service recruitment procedures based on
10 merit and that the civil service system of the respective
11 jurisdictions shall comprise all positions, whether permanent or
12 temporary, in the jurisdiction now existing or hereafter
13 established and embrace all personal services performed for the
14 jurisdiction, except employees or positions exempted under this
15 section, or sections 46-33 and 76-77.

16 (b) The civil service to which this chapter applies shall
17 comprise all positions in the State now existing or hereafter



1 established and embrace all personal services performed for the
2 State, except the following:

3 (1) Commissioned and enlisted personnel of the Hawaii
4 national guard as such, and positions in the Hawaii
5 national guard that are required by state or federal
6 laws or regulations or orders of the national guard to
7 be filled from those commissioned or enlisted
8 personnel;

9 (2) Positions filled by persons employed by contract where
10 the director of human resources development has
11 certified that the service is special or unique or is
12 essential to the public interest and that, because of
13 circumstances surrounding its fulfillment, personnel
14 to perform the service cannot be obtained through
15 normal civil service recruitment procedures. Any such
16 contract may be for any period not exceeding one year;

17 (3) Positions that must be filled without delay to comply
18 with a court order or decree if the director
19 determines that recruitment through normal recruitment
20 civil service procedures would result in delay or
21 noncompliance, such as the Felix-Cayetano consent
22 decree;



- 1 (4) Positions filled by the legislature or by either house
- 2 or any committee thereof;
- 3 (5) Employees in the office of the governor and office of
- 4 the lieutenant governor, and household employees at
- 5 Washington Place;
- 6 (6) Positions filled by popular vote;
- 7 (7) Department heads, officers, and members of any board,
- 8 commission, or other state agency whose appointments
- 9 are made by the governor or are required by law to be
- 10 confirmed by the senate;
- 11 (8) Judges, referees, receivers, masters, jurors, notaries
- 12 public, land court examiners, court commissioners, and
- 13 attorneys appointed by a state court for a special
- 14 temporary service;
- 15 (9) One bailiff for the chief justice of the supreme court
- 16 who shall have the powers and duties of a court
- 17 officer and bailiff under section 606-14; one
- 18 secretary or clerk for each justice of the supreme
- 19 court, each judge of the intermediate appellate court,
- 20 and each judge of the circuit court; one secretary for
- 21 the judicial council; one deputy administrative
- 22 director of the courts; three law clerks for the chief



1 justice of the supreme court, two law clerks for each
2 associate justice of the supreme court and each judge
3 of the intermediate appellate court, one law clerk for
4 each judge of the circuit court, two additional law
5 clerks for the civil administrative judge of the
6 circuit court of the first circuit, two additional law
7 clerks for the criminal administrative judge of the
8 circuit court of the first circuit, one additional law
9 clerk for the senior judge of the family court of the
10 first circuit, two additional law clerks for the civil
11 motions judge of the circuit court of the first
12 circuit, two additional law clerks for the criminal
13 motions judge of the circuit court of the first
14 circuit, and two law clerks for the administrative
15 judge of the district court of the first circuit; and
16 one private secretary for the administrative director
17 of the courts, the deputy administrative director of
18 the courts, each department head, each deputy or first
19 assistant, and each additional deputy, or assistant
20 deputy, or assistant defined in paragraph (16);

21 (10) First deputy and deputy attorneys general, the
22 administrative services manager of the department of



1 the attorney general, one secretary for the
2 administrative services manager, an administrator and
3 any support staff for the criminal and juvenile
4 justice resources coordination functions, and law
5 clerks;

6 (11) (A) Teachers, principals, vice-principals, complex
7 area superintendents, deputy and assistant
8 superintendents, other certificated personnel,
9 not more than twenty noncertificated
10 administrative, professional, and technical
11 personnel not engaged in instructional work;

12 (B) Effective July 1, 2003, teaching assistants,
13 educational assistants, bilingual/bicultural
14 school-home assistants, school psychologists,
15 psychological examiners, speech pathologists,
16 athletic health care trainers, alternative school
17 work study assistants, alternative school
18 educational/supportive services specialists,
19 alternative school project coordinators, and
20 communications aides in the department of
21 education;



1 (C) The special assistant to the state librarian and
2 one secretary for the special assistant to the
3 state librarian; and

4 (D) Members of the faculty of the University of
5 Hawaii, including research workers, extension
6 agents, personnel engaged in instructional work,
7 and administrative, professional, and technical
8 personnel of the university;

9 (12) Employees engaged in special, research, or
10 demonstration projects approved by the governor;

11 (13) Positions filled by inmates, kokuas, patients of state
12 institutions, persons with severe physical or mental
13 handicaps participating in the work experience
14 training programs, and students and positions filled
15 through federally funded programs that provide
16 temporary public service employment such as the
17 federal Comprehensive Employment and Training Act of
18 1973;

19 (14) A custodian or guide at Iolani Palace, the Royal
20 Mausoleum, and Hulihee Palace;

21 (15) Positions filled by persons employed on a fee,
22 contract, or piecework basis, who may lawfully perform



1 their duties concurrently with their private business
2 or profession or other private employment and whose
3 duties require only a portion of their time, if it is
4 impracticable to ascertain or anticipate the portion
5 of time to be devoted to the service of the State;

6 (16) Positions of first deputies or first assistants of
7 each department head appointed under or in the manner
8 provided in section 6, Article V, of the Hawaii State
9 Constitution; three additional deputies or assistants
10 either in charge of the highways, harbors, and
11 airports divisions or other functions within the
12 department of transportation as may be assigned by the
13 director of transportation, with the approval of the
14 governor; four additional deputies in the department
15 of health, each in charge of one of the following:
16 behavioral health, environmental health, hospitals,
17 and health resources administration, including other
18 functions within the department as may be assigned by
19 the director of health, with the approval of the
20 governor; an administrative assistant to the state
21 librarian; and an administrative assistant to the
22 superintendent of education;



- 1 (17) Positions specifically exempted from this part by any
2 other law; provided that all of the positions defined
3 by paragraph (9) shall be included in the position
4 classification plan;
- 5 (18) Positions in the state foster grandparent program and
6 positions for temporary employment of senior citizens
7 in occupations in which there is a severe personnel
8 shortage or in special projects;
- 9 (19) Household employees at the official residence of the
10 president of the University of Hawaii;
- 11 (20) Employees in the department of education engaged in
12 the supervision of students during meal periods in the
13 distribution, collection, and counting of meal
14 tickets, and in the cleaning of classrooms after
15 school hours on a less than half-time basis;
- 16 (21) Employees hired under the tenant hire program of the
17 Hawaii public housing authority; provided that not
18 more than twenty-six per cent of the authority's work
19 force in any housing project maintained or operated by
20 the authority shall be hired under the tenant hire
21 program;



1 (22) Positions of the federally funded expanded food and
2 nutrition program of the University of Hawaii that
3 require the hiring of nutrition program assistants who
4 live in the areas they serve;

5 (23) Positions filled by severely handicapped persons who
6 are certified by the state vocational rehabilitation
7 office that they are able to perform safely the duties
8 of the positions;

9 (24) One public high school student to be selected by the
10 Hawaii state student council as a nonvoting member on
11 the board of education as authorized by the State
12 Constitution;

13 (25) Sheriff, first deputy sheriff, and second deputy
14 sheriff;

15 (26) A gender and other fairness coordinator hired by the
16 judiciary; and

17 (27) Positions in the Hawaii national guard youth and adult
18 education programs.

19 The director shall determine the applicability of this
20 section to specific positions.

21 Nothing in this section shall be deemed to affect the civil
22 service status of any incumbent as it existed on July 1, 1955.



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

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

19 (e) It is also the public policy of the State that all
20 civil service positions be covered under the classification
21 systems of the jurisdictions, unless the position was exempted
22 from the classification systems by law prior to July 1, 2002, or



1 based on reasons set forth in rules. The rules may include
2 reasons for a temporary exemption of a position, such as the
3 establishment of a new class is pending, or for a permanent
4 exemption when the establishment of a class is impracticable.

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

15 (g) Temporary service performed pursuant to section
16 76-77(8) shall not count toward civil service experience
17 requirements.

18 [~~g~~] (h) Each director shall be responsible for ensuring
19 that all exemptions from civil service recruitment procedures or
20 from the classification systems are consistent with this
21 section. With respect to positions exempted under this section
22 prior to July 1, 2002, by any other law, the director shall



1 review these positions to determine whether the positions should
2 continue to be exempt and if so, whether from civil service
3 recruitment procedures or the classification systems, or both.
4 If the director determines that a position should no longer be
5 exempt from either or both based on the intent of this section,
6 the director shall consult with the appropriate appointing
7 authority and its chief executive on removing the exemptions.
8 With the approval of the chief executive, the director shall
9 take whatever action is necessary to remove the exemptions,
10 including submittal of proposed legislation to remove the
11 exemptions.

12 [~~h~~] (i) The director shall establish rules to implement
13 this section that shall be in accordance with the following:

14 (1) Whenever a position exempted under subsection (b) or
15 (c) is no longer exempted from the civil service,
16 normal civil service recruitment procedures shall
17 apply, unless the incumbent is to be retained without
18 the necessity for examination by action of the
19 legislature; provided that in such event, the
20 incumbent shall be retained, but only if the incumbent
21 meets the minimum qualification requirements of the
22 position; and



1 (2) The manner for setting the compensation of incumbents
2 upon their inclusion in the classification systems
3 shall be fair and equitable in comparison to the
4 compensation of other incumbents with comparable
5 experience in the same or essentially similar classes;
6 provided that the compensation of incumbents who are
7 in the same bargaining unit, prior to and after their
8 inclusion in the classification systems, shall be in
9 accordance with the applicable collective bargaining
10 agreement.

11 ~~[(i)]~~ (j) Employees in positions subject to civil service
12 recruitment procedures shall be entitled to become and remain
13 members of the civil service for the duration of their
14 appointments as provided in section 76-27. Employees in
15 positions exempted from civil service recruitment procedures
16 shall not be entitled to membership in the civil service.

17 ~~[(j)]~~ (k) Employees in positions that are exempted from
18 the classification plan, whether temporarily or permanently, may
19 be entitled to membership in the civil service as provided in
20 subsection ~~[(i)-]~~ (j)."

21 SECTION 2. Section 76-77, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§76-77 Civil service and exemptions. The civil service
2 to which this part applies comprises all positions in the public
3 service of each county, now existing or hereafter established,
4 and embraces all personal services performed for each county,
5 except the following:

6 (1) Positions in the office of the mayor; provided that
7 the positions shall be included in the classification
8 systems;

9 (2) Positions of officers elected by public vote,
10 positions of heads of departments, and positions of
11 one first deputy or first assistant of heads of
12 departments;

13 (3) Positions of deputy county attorneys, deputy
14 corporation counsel, deputy prosecuting attorneys, and
15 law clerks;

16 (4) Positions of members of any board, commission, or
17 agency;

18 (5) Positions filled by students; positions filled through
19 federally funded programs which provide temporary
20 public service employment such as the federal
21 Comprehensive Employment and Training Act of 1973; and
22 employees engaged in special research or demonstration



1 projects approved by the mayor, for which projects
2 federal funds are available;

3 (6) Positions of district judges, jurors, and witnesses;

4 (7) Positions filled by persons employed by contract where
5 the personnel director has certified that the service
6 is special or unique, is essential to the public
7 interest, and that because of the circumstances
8 surrounding its fulfillment, personnel to perform the
9 service cannot be recruited through normal civil
10 service procedures; provided that no contract pursuant
11 to this paragraph shall be for any period exceeding
12 one year;

13 (8) Positions of a temporary nature needed in the public
14 interest where the need does not exceed ninety days;
15 provided that before any person may be employed to
16 render temporary service pursuant to this paragraph,
17 the director shall certify that the service is of a
18 temporary nature and that recruitment through normal
19 civil service recruitment procedures is not
20 practicable; and provided further that the employment
21 of any person pursuant to this paragraph may be
22 extended for good cause for [a] up to _____



1 additional [~~period~~] consecutive periods not to exceed
2 ninety days per period, upon similar certification by
3 the director;

4 (9) Positions of temporary election clerks in the office
5 of the county clerk employed during election periods;

6 (10) Positions specifically exempted from this part by any
7 other state statutes;

8 (11) Positions of one private secretary for each department
9 head; provided that the positions shall be included in
10 the classification systems;

11 (12) Positions filled by persons employed on a fee,
12 contract, or piecework basis who may lawfully perform
13 their duties concurrently with their private business
14 or profession or other private employment, if any, and
15 whose duties require only a portion of their time,
16 where it is impracticable to ascertain or anticipate
17 the portion of time devoted to the service of the
18 county and that fact is certified by the director;

19 (13) Positions filled by persons with a severe disability
20 who are certified by the state vocational
21 rehabilitation office as able to safely perform the
22 duties of the positions;



- 1 (14) Positions of the housing and community development
2 office or department of each county; provided that
3 this exemption shall not preclude each county from
4 establishing these positions as civil service
5 positions;
- 6 (15) The following positions in the office of the
7 prosecuting attorney: private secretary to the
8 prosecuting attorney, secretary to the first deputy
9 prosecuting attorney, and administrative or executive
10 assistants to the prosecuting attorney; provided that
11 the positions shall be included in the classification
12 systems; and
- 13 (16) Positions or contracts for personal services with
14 private persons or entities for services lasting no
15 more than one year and at a cost of no more than
16 \$750,000; provided that the exemption under this
17 paragraph shall apply to contracts for building,
18 custodial, and grounds maintenance services with
19 qualified community rehabilitation programs, as
20 defined in section 103D-1001, lasting for no more than
21 a year and at a cost of no more than \$850,000.



1 The director shall determine the applicability of this
 2 section to specific positions and shall determine whether or not
 3 positions exempted by paragraphs (7) and (8) shall be included
 4 in the classification systems.

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

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

10 SECTION 4. This Act shall take effect upon its approval.

11

INTRODUCED BY: Amor Mercado Ke

Michael Kahala
 Arid Y Jee
 Clarence K. Siskhara
 Michelle Sedani

Michelle
B. B. S.

Niles Gabbard
 Romy de Paak
 Yea d...
 Jie

CPM 182



Will Egan
 Carol F...
 18

Report Title:

Civil Service; 89-Day Hires; Extension Limits

Description:

Limits the number of periods of consecutive extensions for 89-day hires (to be determined in committee). Prohibits the time served as an 89-day hire for positions in the public interest from being credited toward civil service experience requirements.

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