A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT STANDARDS BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI‘I:

SECTION 1. The legislature, by Act 220, Session Laws of Hawaii 2018, enacted chapter 139, Hawaii Revised Statutes, to create a law enforcement standards board for the certification of law enforcement officers, including county police officers, state public safety officers, and employees with police powers at the departments of transportation, of land and natural resources, of the attorney general, and of taxation.

The board is responsible for establishing minimum standards for employment as a law enforcement officer and certifying persons qualified as law enforcement officers. It is also responsible for establishing minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for the training of law enforcement officers. It must consult and cooperate with the counties, state agencies, other governmental agencies, universities and colleges, and other institutions, concerning the development of law enforcement officer training schools and programs. The board is also
responsible for regulating and enforcing the certification
requirements of law enforcement officers.

These are important and substantial duties that require
evaluation to ensure that existing legal obligations are not
compromised. Before imposing new standards impacting the
employment of law enforcement officers, the board must consider
collective bargaining and other employment requirements. At a
minimum, the board must evaluate how probationary periods,
training requirements (i.e., the types of training, the number
of hours of training, and the availability of training
facilities), and the issuance, suspension, and revocation of
certification will impact obligations already established by
law.

Such evaluation should include consideration of the study
conducted by the legislative reference bureau pursuant to Act
124, Session Laws of Hawaii 2018, and any additional study
necessary to determine the impact of uniform standards,
certification, and training for all law enforcement.

The board has determined that it will need significantly more
time and funds to accomplish its mission.

The purposes of this Act are to clarify board membership
requirements to facilitate participation and representation, to
c enable the board to research the impact of uniform standards,
certification, and training on existing legal requirements, to
establish new deadlines for the completion of the board's
significant responsibilities, and to provide appropriate funds
and resources to enable the board to accomplish its mission.

SECTION 2. Section 76-16, Hawaii Revised Statutes, is
amended by amending subsection (b) to read as follows:

"(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) (A) Positions filled by inmates, patients of state institutions, persons with severe physical or mental disabilities participating in the work experience training programs;

(B) Positions filled with students in accordance with guidelines for established state employment programs; and

(C) Positions that provide work experience
training or temporary public service employment
that are filled by persons entering the workforce
or persons transitioning into other careers under
programs such as the federal Workforce Investment
Act of 1998, as amended, or the Senior Community
Service Employment Program of the Employment and
Training Administration of the United States
Department of Labor, or under other similar state
programs;

(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 Hawaii 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:
(A) Any exemption created after July 1, 2014, shall
expire three years after its enactment unless
affirmatively extended by an act of the
legislature; and
(B) 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
Hawaii public housing authority; provided that not
more than twenty-six per cent of the authority's
workforce in any housing project maintained or
operated by the authority 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 persons with severe disabilities
who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;

(24) The sheriff;

(25) A gender and other fairness coordinator hired by the judiciary;

(26) Positions in the Hawaii National Guard youth and adult education programs;

(27) In the state energy office in the department of business, economic development, and tourism, all energy program managers, energy program specialists, energy program assistants, and energy analysts;

(28) Administrative appeals hearing officers in the department of human services;

(29) In the Med-QUEST division of the department of human services, the division administrator, finance officer, health care services branch administrator, medical director, and clinical standards administrator;

(30) In the director's office of the department of human services, the enterprise officer, information security and privacy compliance officer, security and privacy compliance engineer, and security and privacy compliance analyst; [and]
The Alzheimer's disease and related dementia services coordinator in the executive office on aging; and

(32) The administrator for the law enforcement standards board.

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."

SECTION 3. Section 139-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is established the law enforcement standards board within the department of the attorney general for administrative purposes only. The purpose of the board shall be to provide programs and standards for training and certification of law enforcement officers. The law enforcement standards board shall consist of the following voting members: nine ex officio individuals or their designees, five law enforcement officers, and four members of the public.

(1) The nine ex officio members of the board shall consist of the:

(A) Attorney general or the attorney general's designee;"
(B) Director of public safety[\*] or the director's
designee;

(C) Director of transportation or the director's
designee;

(D) Chairperson of the board of land and natural
resources or chairperson's designee;

(E) Director of taxation or the director's designee;

and

(F) Chiefs of police of the four counties[\*] or the
designee of each of the chiefs of police;

(2) The five law enforcement officers shall be from
each of the four counties and one from the State,
shall each have at least ten years of experience as a
law enforcement officer [and], shall be appointed by
the governor[\*] and, notwithstanding section 26-34,
shall not be subject to senatorial confirmation; and

(3) The four members of the public shall consist of one
member of the public from each of the four counties
and shall be appointed by the governor[\*] and,
notwithstanding section 26-34, shall not be subject to
senatorial confirmation. At least two of the four
members of the public holding a position on the board
at any given time shall:
(A) Possess a master's or doctorate degree related to criminal justice;

(B) Possess a law degree and have experience:

(i) Practicing in Hawaii as a deputy attorney general, a deputy prosecutor, a deputy public defender, or a private criminal defense attorney; or

(ii) Litigating constitutional law issues in Hawaii;

(C) Be a recognized expert in the field of criminal justice, policing, or security; or

(D) Have work experience in a law enforcement capacity[, provided that experience in a county police department shall not itself be sufficient to qualify under this paragraph].

(b) The law enforcement officers and the members of the public on the board shall serve for a term of [three] four years, provided that the initial terms shall be staggered, as determined by the governor."

SECTION 4. Section 139-3, Hawaii Revised Statutes, is amended to read as follows:

"[§]§139-3[] Powers and duties of the board. The board shall:
(1) Adopt rules in accordance with chapter 91 to implement this chapter;

(2) Establish minimum standards for employment as a law enforcement officer and to certify persons to be qualified as law enforcement officers;

(3) Establish criteria and standards in which a person who has been denied certification, whose certification has been revoked by the board, or whose certification has lapsed may reapply for certification;

(4) Establish minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for schools operated by or for the State or a county for the specific purpose of training law enforcement officers;

(5) Consult and cooperate with the counties, agencies of the State, other governmental agencies, universities, colleges, and other institutions concerning the development of law enforcement officer training schools and programs of criminal justice instruction;

(6) Employ[, subject to chapter 76,] an administrator without regard to chapter 76, and other persons necessary to carry out its duties under this chapter;
(7) Investigate when there is reason to believe that a law enforcement officer does not meet the minimum standards for employment, and in so doing, may:

(A) Subpoena persons, books, records, or documents;

(B) Require answers in writing under oath to questions asked by the board; and

(C) Take or cause to be taken depositions as needed in investigations, hearings, and other proceedings, related to the investigation;

(8) Establish and require participation in continuing education programs for law enforcement officers;

(9) Have the authority to charge and collect fees for applications for certification as a law enforcement officer; [and]

(10) Establish procedures and criteria for the revocation of certification issued by the board;

(11) Consider studies relevant to the board's objectives, including but not limited to the study that examines consolidating the law enforcement activities and responsibilities of various state divisions and agencies under a single, centralized state enforcement
division or agency, conducted pursuant to Act 124,
Session Laws of Hawaii 2018; and

(12) Conduct its own study to evaluate how to efficiently
and effectively satisfy its duties in accordance with
the law."

SECTION 5. Act 220, Session Laws of Hawaii 2018, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect on July 1, 2018;
provided that [the law enforcement standards board established
under this Act shall finalize its standards and certification
process by July 1, 2019.] sections -6 and -7 of the new
chapter in section 2 of this Act shall take effect on July 1,
2023."

SECTION 6. There is appropriated out of the general
revenues of the State of Hawaii the sum of $483,000 or so much
thereof as may be necessary for fiscal year 2020-2021 for
deposit into the law enforcement standards board special fund.

SECTION 7. There is appropriated out of the law
enforcement standards board special fund the sum of $483,000 or
so much thereof as may be necessary for the fiscal year
2020-2021 for:

(1) One permanent administrator position (1.0 FTE) exempt
from chapter 76, Hawaii Revised Statutes, and one
permanent clerical position (1.0 FTE) subject to chapter 76, Hawaii Revised Statutes; and

(2) Administration, travel, and operating costs of the law enforcement standards board.

The sum appropriated shall be expended by the law enforcement standards board.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

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

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

INTRODUCED BY: ______________________________

BY REQUEST

JAN 21 2020
Report Title:
Law Enforcement Standards Board

Description:
Clarifies membership and certain powers and duties of the Law Enforcement Standards Board, establishes new deadlines for the completion of board responsibilities, and provides appropriate funds and resources to enable the board to accomplish its mission.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO LAW ENFORCEMENT.

PURPOSE: To clarify board membership requirements, to enable the board to research the impact of standards, certification and training requirements on existing legal requirements, to establish new deadlines for the completion of the board’s responsibilities, to provide the necessary funds and resources for the board’s mission, and to exempt the board administrator position from chapter 76.

MEANS: Amend sections 76-16(b), 139-2, and 139-3, Hawaii Revised Statutes, and section 6 of Act 220, Session Laws of Hawaii 2018 ("Act 220").

JUSTIFICATION: The board is responsible for establishing minimum standards for employment as a law enforcement officer and certifying persons qualified as law enforcement officers. It is also responsible for establishing minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for the training of law enforcement officers. It must consult and cooperate with the counties, state agencies, other governmental agencies, universities and colleges, and other institutions, concerning the development of law enforcement officer training schools and programs. The board is also responsible for regulating and enforcing the certification requirements of law enforcement officers.

Increasing the size of the board and allowing ex-officio members to use designees will expand the perspective of the board.

ATG-10(20)
while increasing its operational flexibility.

Collective bargaining and employment laws and rules dictate various aspects of a law enforcement officer's career from start to finish. Explicitly authorizing the board to study and evaluate these laws, rules, and agreements will allow the board to establish standards, certifications and training requirements in a purposeful and intentional manner.

A proper study and evaluation takes time and resources; therefore, certain aspects of the new chapter established by Act 220 should take effect on July 1, 2023, and an increased amount should be appropriated to fund dedicated staff.

The board administrator position is being made exempt from civil service because the new board requires flexibility to meet its broad duties and responsibilities and tight deadlines. The board's role, and that of the administrator, are unique and not within the traditional civil service classification system. The board needs the discretion to hire or terminate without the burden of complying with civil service requirements.

**Impact on the public:** The public will benefit from careful consideration of the existing laws, rules and agreements by a better-resourced, larger, and more operationally flexible board. This should result in better standards, certification, and training requirements and thereby increase public confidence in law enforcement and improve public safety generally.

**Impact on the department and other agencies:** Approval of this bill will have a direct positive effect on the board's ability to execute its responsibilities.
Additionally, county police officers, state public safety officers, and employees with police powers at the departments of Transportation, of Land and Natural Resources, of the Attorney General, and Taxation will all benefit from better standards, certification, and training requirements.

GENERAL FUND: $375,000.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: None.
OTHER AFFECTED AGENCIES: Departments of Transportation, of Land and Natural Resources, and of Taxation.
EFFECTIVE DATE: Upon approval.