

DIVISION 1. GOVERNMENT

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CHAPTER 78 PUBLIC SERVICE

Section

78-65. County mayors; outside employment and emoluments prohibited.

§ 78-65. County mayors; outside employment and emoluments prohibited.

(a) Beginning November 1, 2022, as of the sixty-first calendar day after election or appointment to office, it shall be unlawful for each county mayor, while holding that office, to maintain any other employment, maintain a controlling interest in a business, or receive any emolument.

(b) Where a mayor has a controlling interest in a business, in order to comply with this section, the mayor may transfer the interest to a blind trust within sixty-one days of election or appointment.

(c) As used in this section:

“Blind trust” means a trust agreement where neither the trustor nor the beneficiaries have any control or influence over, or knowledge of, the assets in the trust, and which complies with the definition of “qualified blind trust” in the Ethics in Government Act of 1978, 5 U.S.C. App. 4 section 101 et seq., as amended.

“Emolument” means any salary, fee, payment, wage, earning, allowance, stipend, honorarium, or reward; provided that “emolument” does not include the salary or benefits for service as a county mayor or any pension income; retirement income; social security payment; non-controlling ownership of stocks, mutual funds, or real estate; rental income; or other form of passive income.

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HISTORY:

L 2020, c 75, § 2, effective July 1, 2020.

“Any mayor in office on November 1, 2022, shall comply with section 2 of this Act within sixty-one days.”

Editor’s Notes

2020 Haw. Sess. Laws, Act 75, § 4, provides:

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STANDARDS OF CONDUCT

Part II. Code of Ethics

Section

84-13. Fair treatment.

84-14.5. Governor; outside employment and emoluments prohibited.

84-17. Requirements of disclosure.

PART II.

CODE OF ETHICS

§ 84-10. University of Hawaii; technology transfer activities; exemption. [Repealed June 30, 2022]

Editor’s Notes

2017 Haw. Sess. Laws, Act 38, § 5, provides:

“This Act shall be repealed on June 30, 2022.”

§ 84-13. Fair treatment.

(a) No legislator or employee shall use or attempt to use the legislator’s or employee’s official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

(1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator’s or employee’s office or position;

(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator’s or employee’s official duties or responsibilities except as provided by law;

(3) Using state time, equipment or other facilities for private business purposes; or

(4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator’s or employee’s official capacity.

(b) Nothing in this section shall be construed to prohibit a legislator from introducing bills and resolutions, from serving on a committee, or from making statements or taking official action as a legislator. Every legislator shall publicly disclose the nature and extent of the interest or transaction that the legislator believes may be affected by the legislator’s official action in accordance with section 84-17 and the rules of each house of the legislature.

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(c) Nothing in this section shall be construed to prevent a person from:

(1) Serving on a task force; or

(2) Making statements or taking official action as a task force member or a task force member's designee or representative;

provided that every task force member or designee or representative of a task force member shall publicly disclose the nature and extent of any interest or transaction that the task force member or task force member's designee or representative believes may be affected by the task force member's official action.

(d) The state ethics commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section, except that each house of the legislature shall adopt rules regarding the disclosure of the nature and extent of any interest or transaction that the legislator believes may be affected by the legislator's official action. Rules adopted by the state ethics commission shall apply only until such time that each house of the legislature adopts its own rules. Upon the passage of rules pursuant to this section by either house of the legislature, the rules adopted by the state ethics commission shall be preempted by the rules of each respective house of the legislature.

HISTORY:

L 1972, c 163, pt of § 1; am imp L 1984, c 90, § 1; am L 2012, c 208, § 4, effective July 1, 2012; am L 2019, c 119, § 2, effective June 21, 2019; am L 2020, c 29, § 1, effective September 15, 2020.

with section 84-17 and the rules of each house of the legislature" in the second sentence of (b); and in (d), added "except that each house of the legislature shall adopt rules regarding the disclosure of the nature and extent of any interest or transaction that the legislator believes may be affected by the legislator's official action" in the first sentence, and added the second and third sentences.

Amendment Notes.

The 2020 amendment added "in accordance

§ 84-14.5. Governor; outside employment and emoluments prohibited.

(a) Beginning November 1, 2022, as of the sixty-first calendar day after election or appointment to office, it shall be unlawful for the governor, while holding that office, to maintain any other employment, maintain a controlling interest in a business, or receive any emolument.

(b) Where a governor has a controlling interest in a business, in order to comply with this section, the governor may transfer the interest to a blind trust within sixty-one days of election or appointment.

(c) As used in this section:

"Blind trust" means a trust agreement where neither the trustor nor the beneficiaries have any control or influence over, or knowledge of, the assets in the trust, and which complies with the definition of "qualified blind trust" in the Ethics in Government Act of 1978, 5 U.S.C. App. 4 section 101 et seq., as amended.

"Emolument" means any salary, fee, payment, wage, earning, allowance, stipend, honorarium, or reward; provided that "emolument" does not include the salary or benefits for service as the governor or any pension income; retirement income; social security payment; non-controlling ownership of

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stocks, mutual funds, or real estate; rental income; or other form of passive income.

HISTORY:

L 2020, c 75, § 3, effective July 1, 2020.

§ 84-17. Requirements of disclosure.

(a) For the purposes of this section, “disclosure period” refers to the period from January 1 of the preceding calendar year to the time of the filing of the employee’s or legislator’s disclosure of financial interests.

(b) The disclosure of financial interest required by this section shall be filed:

(1) By any person enumerated in subsection (c), except a member of the legislature, between January 1 and May 31 of each year;

(2) By a member of the legislature between January 1 and January 31 of each year;

(3) Within thirty days of a person’s election or appointment to a state position enumerated in subsection (c); or

(4) Within thirty days of separation from a state position if a prior financial disclosure statement for the position was not filed within the one hundred eighty days preceding the date of separation;

provided that candidates for state elective offices or the constitutional convention shall file the required statements no later than twenty days prior to the date of the primary election for state offices or the election of delegates to the constitutional convention.

(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

(1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;

(2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;

(3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;

(4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;

(5) The hearings officers of every state agency and department;

(6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;

(7) The superintendent, the deputy superintendent, the assistant superintendents, the complex area superintendents, the state librarian, and the deputy state librarian of the department of education;

(8) The administrative director and the deputy director of the courts;

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(9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory;

(10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures;

(11) The administrator and assistant administrator of the office of Hawaiian affairs;

(12) The Hawaii unmanned aerial systems test site chief operating officer and

(13) The members of the school facilities board appointed by the governor.

(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication:

(1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, the trustees of the office of Hawaiian affairs, and candidates for state elective offices;

(2) The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;

(3) The administrative director of the State;

(4) The president, the vice presidents, the assistant vice presidents, the chancellors, members of the board of regents, and the provosts of the University of Hawaii;

(5) The members of the board of education and the superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;

(6) The administrative director and the deputy director of the courts;

(7) The administrator and the assistant administrator of the office of Hawaiian affairs; and

(8) The members of the following state boards, commissions, and agencies:

(A) The board of directors of the agribusiness development corporation established under section 163D-3;

(B) The board of agriculture established under section 26-16;

(C) The state ethics commission established under section 84-21;

(D) The Hawaii community development authority established under section 206E-3;

(E) The Hawaiian homes commission established under the Hawaiian Homes Commission Act of 1920, as amended, and section 26-17;

(F) The board of directors of the Hawaii housing finance and development corporation established under section 201H-3;

(G) The board of land and natural resources established under section 171-4;

(H) The state land use commission established under section 205-1;

(I) The legacy land conservation commission established under section 173A-2.4;

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(J) The natural area reserves system commission established under section 195-6;

(K) The board of directors of the natural energy laboratory of Hawaii authority established under section 227D-2;

(L) The board of directors of the Hawaii public housing authority established under section 356D-3;

(M) The public utilities commission established under section 269-2; and

(N) The commission on water resource management established under section 174C-7.

(e) The information on the financial disclosure statements shall be confidential, except as provided in subsection (d). The commission shall not release the contents of the disclosures except as may be permitted pursuant to this chapter. Any person who releases any confidential information shall be subject to section 84-31(c).

(f) Candidates for state elective offices, including candidates for election to the constitutional convention, shall only be required to disclose their own financial interests. The disclosures of financial interests of all other persons designated in subsection (c) shall state, in addition to the financial interests of the person disclosing, the financial interests of the person's spouse and dependent children. All disclosures shall include:

(1) The source and amount of all income of \$1,000 or more received, for services rendered, by the person in the person's own name or by any other person for the person's use or benefit during the preceding calendar year and the nature of the services rendered; provided that required disclosure under this paragraph for the income source of the spouse or dependent child of a person subject to subsection (d) shall be limited to the name of the business or other qualifying source of income, and need not include the income source's address; provided further that other information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed;

(2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business having a value of \$5,000 or more or equal to ten per cent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed;

(3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation;

(4) The name of each creditor to whom the value of \$3,000 or more was owed during the disclosure period and the original amount and amount

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outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed;

(5) The street address and, if available, the tax map key number, and the value of any real property in which the person holds an interest whose value is \$10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration; provided that disclosure shall not be required of the street address and tax map key number of the person's residence;

(6) The names of clients assisted or represented before state agencies, except in ministerial matters, for a fee or compensation during the disclosure period and the names of the state agencies involved; and

(7) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of \$5,000 or more.

(g) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least \$1,000 but less than \$10,000; at least \$10,000 but less than \$25,000; at least \$25,000 but less than \$50,000; at least \$50,000 but less than \$100,000; at least \$100,000 but less than \$150,000; at least \$150,000 but less than \$250,000; at least \$250,000 but less than \$500,000; at least \$500,000 but less than \$750,000; at least \$750,000 but less than \$1,000,000; or \$1,000,000 or more. An amount of stock may be reported by number of shares.

(h) The state ethics commission shall provide a method for filing financial disclosure statements. The commission may require that financial disclosure statements be filed electronically.

(i) Failure of a legislator, a delegate to the constitutional convention, or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter. Any legislator, delegate to a constitutional convention, or employee who fails to file a disclosure of financial interests when due shall be assessed an administrative fine of \$75. The state ethics commission, upon the expiration of the time allowed for filing, may post on its website for public inspection a list of all persons who have failed to file financial disclosure statements. The state ethics commission shall notify a person, by in-person service, electronic mail to the person's state electronic mail address, or first class mail, of the failure to file, and the disclosure of financial interests shall be submitted to the state ethics commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a disclosure of financial interests has not been filed within ten days of the due date, an additional administrative fine of \$10 for each day a disclosure remains unfiled shall be added to the administrative fine. All administrative fines collected under this section shall be deposited in the State's general fund. Any administrative fine for late filing shall be in addition to any other action the state ethics commission may take under this chapter for violations of the state ethics code. The state ethics commission may waive any administrative fines assessed under this subsection for good cause shown.

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(j) The chief election officer, upon receipt of the nomination paper of any person seeking a state elective office, including the office of delegate to the constitutional convention, shall notify the state ethics commission of the name of the candidate for state office and the date on which the person filed the nomination paper. The state ethics commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements and shall immediately assess a late filing penalty fee against those candidates of \$50, which shall be collected by the state ethics commission and deposited into the general fund. The state ethics commission may investigate, initiate, or receive charges as to whether a candidate's financial disclosure statement discloses the financial interests required to be disclosed. After proceeding in conformance with section 84-31, the state ethics commission may issue a decision as to whether a candidate has complied with section 84-17(f) and this decision shall be a matter of public record.

HISTORY:

L 1972, c 163, pt of § 1; am L 1978, c 245, § 4; am L 1979, c 91, § 6; am L 1980, c 87, §§ 1, 2; am imp L 1984, c 90, § 1; am L 1985, c 152, § 1; am L 1989, c 113, §§ 1, 2; am L 1991, c 150, § 1; am L 1993, c 26, § 1; am L 1995, c 49, § 1; am L 1995, c 230, § 1; am L 1997, c 50, § 1; am L 2000, c 297, § 18; am L 2003, c 187, § 4; am L 2005, c 135, § 1; am L 2006, c 207, § 2; am L 2007, c 9, § 4; am L 2011, c 5, § 10; am L 2013, c 125, § 1, effective June 14, 2013; am L 2014, c 230, § 2(1), 2(2), effective July 8, 2014; am L 2015, c 208, § 3, effective July 1, 2015; am L 2017, c 52, § 1, effective June 22, 2017; am L 2020, c 39, § 1, effective September 15, 2020; am L 2020, c 72, § 3, effective September 15, 2020.

Amendment Notes.

The 2020 amendments.

2020 Haw. Sess. Laws, Act 39 § 1, rewrote (a), which formerly read: "For the purposes of this section, the terms: 'Disclosure period' refers to the period from January 1 of the preceding

calendar year to the time of the filing of the employee's or legislator's disclosure of financial interests. 'Substantially the same' refers to no more than ten amendments or changes to the information reported for the preceding disclosure period"; substituted "assisted or" for "personally" in (f)(6); and substituted "method for filing financial disclosure statements. The commission may require that financial disclosure statements be filed electronically" for "long form of disclosure on all even-numbered years and a short form of disclosure for subsequent annual filings on all odd-numbered years in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period."

2020 Haw. Sess. Laws, Act 27 § 3, deleted "and" following "affairs;" at the end of (c)(11); added (c)(13); and made a related and stylistic change.

As no substantive conflict exists between the two acts, the section has been set out above to reflect amendments made by both acts.

CHAPTER 87A

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Part IV. Trust Fund

Section

87A-40. Employee-beneficiary contributions; health benefit plans.

87A-42. Other post-employment benefits trust.

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PART IV. TRUST FUND

§ 87A-40. Employee-beneficiary contributions; health benefit plans.

(a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the contribution made by the State or county for the employee-beneficiary to the fund. Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under Title 26 United States Code section 125, Internal Revenue Code of 1986, as amended, and section 78-30.

(b) Except as provided in subsection (c), during the period the health benefits plan selected by an employee-beneficiary is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution directly to the fund by the first day of each month.

(c) Each employee-beneficiary who retires after June 30, 2020, and each surviving spouse or surviving child who enrolls in a health plan offered by the fund as an employee-beneficiary after June 30, 2020, shall authorize their contribution to the fund to be electronically withheld or deducted and transmitted to the fund monthly by the employees' retirement system or the financial institution of the retirant or retirant's surviving beneficiary. This method may be waived by the fund if another method is determined to be more appropriate. If the contribution by the retirant or the retirant's surviving beneficiary is not electronically withheld, deducted, or transmitted to the fund, the retirant or the retirant's surviving beneficiary shall pay their monthly contribution directly to the fund by the first day of each month.

(d) Notwithstanding subsection (a), an employee-beneficiary's monthly contribution to the fund shall include the amount that would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan.

HISTORY:

L 2001, c 88, § 1; am L 2020, c 62, § 2, effective September 15, 2020.

Amendment Notes

The 2020 amendment, in (b), added "Except as provided in subsection (c)" in the first sentence and "directly to the fund by the first day of each month" in the second sentence; deleted former (b)(1) and (b)(2), which read: "(1) In the case of an employee-beneficiary who

normally receives the employee-beneficiary's compensation from the comptroller or employees' retirement system, directly to the fund by the first day of each month; or (2) In the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the first day of each month"; added (c); redesignated former (c) as (d); and made related and stylistic changes.

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§ 87A-42. Other post-employment benefits trust.

(a) Notwithstanding sections 87A-31 and 87A-31.5, the board, upon terms and conditions set by the board, shall establish and administer a separate trust fund for the purpose of receiving employer contributions that will prefund other post-employment health and other benefit plan costs for retirees and their beneficiaries. The separate trust fund shall meet the requirements of the Governmental Accounting Standards Board regarding other post-employment benefits trusts. The board shall establish and maintain a separate account for each public employer within the separate trust fund to accept and account for each public employer's contributions. Employer contributions to the separate trust fund shall be irrevocable, all assets of the fund shall be dedicated exclusively to providing health and other benefits to retirees and their beneficiaries, and assets of the fund shall not be subject to appropriation for any other purpose and shall not be subject to claims by creditors of the employers or the board or plan administrator. The board's powers under section 87A-24 shall also apply to the fund established pursuant to this section.

(b) Public employer contributions shall be paid into the fund in each fiscal year, and commencing with the 2018-2019 fiscal year, the amount of the annual public employer contribution shall be equal to the amount of the annual required contribution, as determined by an actuary retained by the board.

(c) In any fiscal year subsequent to the 2017-2018 fiscal year in which the state public employer's contributions into the fund are less than the amount of the annual required contribution, the amount that represents the excess of the annual required contribution over the state public employer's contributions shall be deposited into the appropriate account of the separate trust fund from a portion of all general excise tax revenues collected by the department of taxation under section 237-31.

If any general excise tax revenues are deposited into the separate trust fund in any fiscal year as a result of this subsection, the director of finance shall notify the legislature and governor whether the general fund expenditure ceiling for that fiscal year would have been exceeded if those revenues had been legislatively appropriated instead of deposited without appropriation into the trust fund. The notification shall be submitted within thirty days following the end of the applicable fiscal year.

(d) In any fiscal year subsequent to the 2017-2018 fiscal year in which a county public employer's contributions into the fund are less than the amount of the annual required contribution, the amount that represents the excess of the annual required contribution over the county public employer's contributions shall be deposited into the fund from a portion of all transient accommodations tax revenues collected by the department of taxation under section 237D-6.5(b)(4). The director of finance shall deduct the amount necessary to meet the county public employer's annual required contribution from the revenues derived under section 237D-6.5(b)(4) and transfer the amount to the board for deposit into the appropriate account of the separate trust fund.

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(e) In any fiscal year subsequent to fiscal year 2017-2018 in which a public employer's contributions into the fund are less than the amount of the annual required contribution and the public employer is not entitled to transient accommodations tax revenues sufficient to satisfy the total amount of the annual required contribution, the public employer's contributions shall be deposited into the fund from portions of any other revenues collected on behalf of the public employer or held by the State. The director of finance shall deduct the amount necessary to meet the public employer's annual required contribution from any revenues collected on behalf of the public employer held by the State and transfer the amount to the board for deposit into the appropriate account of the separate trust fund.

(f) For the purposes of this section, "annual required contribution" means a public employer's required contribution to the trust fund established in this section that is sufficient to cover:

(1) The normal cost, which is the cost of other post-employment benefits attributable to the current year of service; and

(2) An amortization payment, which is a catch-up payment for past service costs to fund the unfunded actuarial accrued liability over the next thirty years.

HISTORY:

L 2012, c 304, § 1, effective July 9, 2012; am L 2013, c 268, § 8, effective July 1, 2013; am L 2015, c 121, § 4, effective June 12, 2015; am L 2020, c 70, § 2, effective September 15, 2020.

Amendment Notes.

The 2020 amendment substituted "Governmental" for "Government" in the second sentence of (a).

CHAPTER 88

PENSION AND RETIREMENT SYSTEMS

Part

II. Retirement for Public Officers and Employees

PART II.

RETIREMENT FOR PUBLIC OFFICERS AND EMPLOYEES

C. Benefits

Section

88-95. Withholding of dues and insurance premiums.

C. BENEFITS

§ 88-91. Exemption from taxation and execution.

Editor's Notes

2016 Haw. Sess. Laws, Act 263, § 5, as

amended by 2018 Haw. Sess. Laws, Act 30, § 1,

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provides: "This Act shall take effect on July 1, 2020."

§ 88-95. Withholding of dues and insurance premiums.

A retirant or the retirant's surviving beneficiary shall have withheld from the retirant's or the retirant's surviving beneficiary's pension, annuity, or retirement allowance, payments to the employer-union health benefits trust fund and employee organizations for dues and insurance premiums.

HISTORY:

L 1967, c 219, § 1; HRS § 88-86; am L 1969, c 110, pt of § 1; am imp L 1984, c 90, § 1; am L 1987, c 54, § 1; am L 2006, c 169, § 18; am L 2020, c 62, § 3, effective September 15, 2020.

or the retirant's surviving beneficiary shall" for "retired member, if the retired member requests in writing, may" and "retirant's or the retirant's surviving beneficiary's" for "retired member's."

Amendment Notes.

The 2020 amendment substituted "retirant

PART VIII.

RETIREMENT FOR CLASS H PUBLIC OFFICERS AND EMPLOYEES

D. ELIGIBILITY; BENEFITS

§ 88-333. Election of retirement allowance option.

NOTES TO DECISIONS

Notice of election.

Deceased employee's widow did not show she was not properly notified of the employee's retirement election and beneficiary designation because (1) no statute or rule required written

notice or stated a time by which notice had to be sent or received, and (2) testimony showed notice was sent. *Castro v. State*, 144 Haw. 137, 436 P.3d 1220, 2019 Haw. App. LEXIS 131 (Haw. Ct. App. 2019).

CHAPTER 89

COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT

Section

89-6. Appropriate bargaining units.

89-11. Resolution of disputes; impasses.

§ 89-6. Appropriate bargaining units.

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue collar positions;
- (2) Supervisory employees in blue collar positions;
- (3) Nonsupervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions;
- (5) Teachers and other personnel of the department of education under

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the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;

(6) Educational officers and other personnel of the department of education under the same pay schedule;

(7) Faculty of the University of Hawaii and the community college system;

(8) Personnel of the University of Hawaii and the community college system, other than faculty;

(9) Registered professional nurses;

(10) Institutional, health, and correctional workers;

(11) Firefighters;

(12) Police officers;

(13) Professional and scientific employees, who cannot be included in any of the other bargaining units;

(14) State law enforcement officers; and

(15) State and county ocean safety and water safety officers.

(b) Because of the nature of work involved and the essentiality of certain occupations that require specialized training, supervisory employees who are eligible for inclusion in units (9) through (15) shall be included in units (9) through (15), respectively, instead of unit (2) or (4).

(c) The classification systems of each jurisdiction shall be the bases for differentiating blue collar from white collar employees, professional from institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination. The nature of the work, including whether a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall be considered also.

(d) For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:

(1) For bargaining units (1), (2), (3), (4), (9), (10), (13), (14), and (15), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit;

(2) For bargaining units (11) and (12), the governor shall have four votes and the mayors shall each have one vote;

(3) For bargaining units (5) and (6), the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote; and

(4) For bargaining units (7) and (8), the governor shall have three votes, the board of regents of the University of Hawaii shall have two votes, and the president of the University of Hawaii shall have one vote.

Any decision to be reached by the applicable employer group shall be on the basis of simple majority, except when a bargaining unit includes county employees from more than one county. In that case, the simple majority shall include at least one county.

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(e) In addition to a collective bargaining agreement under subsection (d), each employer may negotiate, independently of one another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

(f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official;
- (2) Member of any board or commission; provided that nothing in this paragraph shall prohibit a member of a collective bargaining unit from serving on a governing board of a charter school, on the state public charter school commission, or as a charter school authorizer established under chapter 302D;
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
- (4) Secretary to top-level managerial and administrative personnel under paragraph (3);
- (5) Individual concerned with confidential matters affecting employee-employer relations;
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5);
- (7) Temporary employee of three months' duration or less;
- (8) Employee of the executive office of the governor or a household employee at Washington Place;
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor;
- (11) Staff of the legislative branch of the State;
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward, or student of a state institution;
- (15) Student help;
- (16) Staff of the Hawaii labor relations board;
- (17) Employees of the Hawaii national guard youth challenge academy; or
- (18) Employees of the office of elections.

(g) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific individuals, employees, or positions.

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HISTORY:

L 1970, c 171, pt of § 2; am L 1973, c 36, § 1; am L 1975, c 162, § 1; am L 1976, c 13, § 1; am L 1977, c 191, § 1; am L 1987, c 184, § 1 and c 311, § 1; am L 1988, c 394, § 1(1),(2) and c 399, § 2; gen ch 1993; am L 1996, c 89, § 5; am L 2000, c 253, § 96; am L 2002, c 65, § 4; am L 2005, c 202, § 3; am L 2006, c 298, § 7; am L 2007, c 115, § 3; am L 2012, c 130, § 5, effective June 19, 2012; am L 2013, c 137, § 2, effective

July 1, 2013; am L 2020, c 31, § 1, effective September 15, 2020.

Amendment Notes.

The 2020 amendment deleted “and state” following “officers” in (a)(14); added the (a)(15) designation; added “State” in (a)(15); substituted “(9) through (15)” for “(9) through (14)” twice in (b); substituted “(14), and (15)” for “and (14)” in (d)(1); and made a related change.

§ 89-11. Resolution of disputes; impasses.

(a) A public employer and an exclusive representative may enter, at any time, into a written agreement setting forth an alternate impasse procedure culminating in an arbitration decision pursuant to subsection (f), to be invoked in the event of an impasse over the terms of an initial or renewed agreement. The alternate impasse procedure shall specify whether the parties desire an arbitrator or arbitration panel, how the neutral arbitrator is to be selected or the name of the person whom the parties desire to be appointed as the neutral arbitrator, and other details regarding the issuance of an arbitration decision. When an impasse exists, the parties shall notify the board if they have agreed on an alternate impasse procedure. The board shall permit the parties to proceed with their procedure and assist at times and to the extent requested by the parties in their procedure. In the absence of an alternate impasse procedure, the board shall assist in the resolution of the impasse at times and in the manner prescribed in subsection (d) or (e), as the case may be. If the parties subsequently agree on an alternate impasse procedure, the parties shall notify the board. The board shall immediately discontinue the procedures initiated pursuant to subsection (d) or (e) and permit the parties to proceed with their procedure.

(b) An impasse during the term of a collective bargaining agreement on reopened items or items regarding a supplemental agreement shall not be subject to the impasse procedures in this section. The parties may mutually agree on an impasse procedure, but if the procedure culminates in an arbitration decision, the decision shall be pursuant to subsection (f).

(c) An impasse over the terms of an initial or renewed agreement and the date of impasse shall be as follows:

(1) More than ninety days after written notice by either party to initiate negotiations, either party may give written notice to the board that an impasse exists. The date on which the board receives notice shall be the date of impasse; and

(2) If neither party gives written notice of an impasse and there are unresolved issues on January 31 of a year in which the agreement is due to expire, the board shall declare on January 31 that an impasse exists and February 1 shall be the date of impasse.

(d) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (5), teachers and other personnel of the

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department of education; or bargaining unit (7), faculty of the University of Hawaii and the community college system, the board shall assist in the resolution of the impasse as follows:

(1) Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public from a list of qualified persons maintained by the board;

(2) Mediation. If the impasse continues more than twenty days, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. The board may compel the parties to attend mediation, reasonable in time and frequency, until the fiftieth day of impasse. Thereafter, mediation shall be elective with the parties, subject to the approval of the board;

(3) Report of the board. The board shall promptly report to the appropriate legislative body or bodies the following circumstances as each occurs:

(A) The date of a tentative agreement and whether the terms thereof are confidential between the parties;

(B) The ratification or failure of ratification of a tentative agreement;

(C) The signing of a tentative agreement;

(D) The terms of a tentative agreement; or

(E) On or about the fiftieth day of impasse, the failure of mediation.

The parties shall provide the board with the requisite information; and

(4) After the fiftieth day of impasse, the parties may resort to such other remedies that are not prohibited by any agreement pending between them, other provisions of this chapter, or any other law.

(e) If an impasse exists between a public employer and the exclusive representative of bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; bargaining unit (12), police officers; bargaining unit (13), professional and scientific employees; bargaining unit (14), state law enforcement officers; or bargaining unit (15), state and county ocean safety and water safety officers, the board shall assist in the resolution of the impasse as follows:

(1) Mediation. During the first twenty days after the date of impasse, the board shall immediately appoint a mediator, representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse.

(2) Arbitration. If the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

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(A) Arbitration panel. Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified and experienced interest arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of the list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chairperson of the arbitration panel.

(B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final position that shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions that each party is proposing for inclusion in the final agreement; provided that such further provisions shall be limited to those specific proposals that were submitted in writing to the other party and were the subject of collective bargaining between the parties up to the time of the impasse, including those specific proposals that the parties have decided to include through a written mutual agreement. The arbitration panel shall decide whether final positions are compliant with this provision and which proposals may be considered for inclusion in the final agreement.

(C) Arbitration hearing. Within one hundred twenty days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit, either in writing or through oral testimony, all information or data supporting their respective final positions. The arbitrator, or the chairperson of the arbitration panel together with the other two members, are encouraged to assist the parties in a voluntary resolution of the impasse through mediation, to the extent practicable throughout the entire arbitration period until the date the panel is required to issue its arbitration decision.

(D) Arbitration decision. Within thirty days after the conclusion of the hearing, a majority of the arbitration panel shall reach a decision pursuant to subsection (f) on all provisions that each party proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision.

(f) An arbitration panel in reaching its decision shall give weight to the

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following factors and shall include in its written report or decision an explanation of how the factors were taken into account:

(1) The lawful authority of the employer, including the ability of the employer to use special funds only for authorized purposes or under specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be;

(2) Stipulations of the parties;

(3) The interests and welfare of the public;

(4) The financial ability of the employer to meet these costs; provided that the employer's ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues;

(5) The present and future general economic condition of the counties and the State;

(6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services, and of other state and county employees in Hawaii;

(7) The average consumer prices for goods or services, commonly known as the cost of living;

(8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and

(10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public service or in private employment.

(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding

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agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund. The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

(h) Any time frame provided in an impasse procedure, whether an alternate procedure or the procedures in this section, may be modified by mutual agreement of the parties. In the absence of a mutual agreement to modify time frames, any delay, failure, or refusal by either party to participate in the impasse procedure shall not be permitted to halt or otherwise delay the process, unless the board so orders due to an unforeseeable emergency. The process shall commence or continue as though all parties were participating.

(i) Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues at any time prior to the issuance of an arbitration decision.

(j) The costs and expenses for mediation provided under subsection (d) or (e) shall be borne by the board. The costs and expenses for any other services performed by neutrals pursuant to mutual agreement of the parties and the costs for a neutral arbitrator shall be borne equally by the parties. All other costs incurred by either party in complying with this section, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them.

HISTORY:

L 1970, c 171, pt of § 2; am L 1978, c 108, § 1; am L 1984, c 75, § 1, c 219, § 1, and c 254, § 2; am imp L 1984, c 90, § 1; am L 1985, c 251, § 5; gen ch 1993; am L 1995, c 202, § 1; am L 1995, c 208, § 1; am L 2000, c 253, § 100; am L 2001, c 90, § 6; am L 2001, c 90, § 9; am L 2002, c 189, § 1; am L 2002, c 232, § 3; am L Sp 2003, c 6, § 1; am L 2004, c 10, § 5; am L 2013, c 137, § 4, effective July 1, 2013; am L 2014, c 75, § 1, effective July 1, 2014; am L 2019, c 231, § 2, effective July 2, 2019; am L 2020, c 31, § 2, effective September 15, 2020.

Amendment Notes.

The 2020 amendment, in (e), substituted "officers and" for "officers; or bargaining unit (15)" and deleted "or" preceding "bargaining unit"

The 2020 amendment substituted "state law enforcement officers; or bargaining unit (15)" for "state law enforcement officers and" in the introductory language of (e).

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§ 89-13. Prohibited practices; evidence of bad faith.

NOTES TO DECISIONS

Employer's duty to provide information.

Employer did not fail to give a union statutorily required information because (1) the union did not show how the information the union sought was relevant to the grievance proceedings in which the union represented two employees, (2) the employer had no duty to bargain with a union representative in those proceedings, (3) the employer's duty to bargain

in good faith was not implicated, and (4) the union's requests were not presumptively relevant, as the union sought no information about the union's own membership related to wages, contact information, or any other topic central to the parties' relationship. *Haw. State Teachers Ass'n v. Bd. of Educ.*, 144 Haw. 57, 434 P.3d 1252, 2019 Haw. App. LEXIS 44 (Haw. Ct. App. 2019).

TITLE 8

PUBLIC PROCEEDINGS AND RECORDS

Chapter

92F. Uniform Information Practices Act

CHAPTER 91

ADMINISTRATIVE PROCEDURE

§ 91-3. Procedure for adoption, amendment, or repeal of rules.

NOTES TO DECISIONS

Agency procedures constituted rules.

Hawai'i Labor Relations Board (Board) erred in holding *Haw. R. Civ. P. 52(c)* applied to proceedings before the Board pursuant to *Haw. R. Civ. P. 81(b)(12)* because the Board had not

properly adopted such a rule. *Los Banos v. Haw. Labor Rels. Bd.*, 145 Haw. 297, 452 P.3d 765, 2019 Haw. App. LEXIS 510 (Haw. Ct. App. 2019), cert. denied, 2020 Haw. LEXIS 63 (Haw. Apr. 1, 2020).

§ 91-9. Contested cases; notice; hearing; records.

NOTES TO UNPUBLISHED DECISIONS

Applicability of Rules of Civil Procedure.

Unpublished decision: Hawai'i Labor Relations Board (Board) erred in holding *Haw. R. Civ. P. 52(c)* applied to proceedings before the Board pursuant to *Haw. R. Civ. P. 81(b)(12)*

because the Board had not properly adopted such a rule. *Los Banos v. Haw. Labor Rels. Bd.*, 145 Haw. 297, 452 P.3d 765, 2019 Haw. App. LEXIS 510 (Haw. Ct. App. 2019), cert. denied, 2020 Haw. LEXIS 63 (Haw. Apr. 1, 2020).

§ 91-10. Rules of evidence; official notice.

Waiver.

Step-father waived a claim that an agency's decision confirming a child's allegation of sexual abuse violated due process when the step-father was not given a chance to cross-

examine non-testifying witnesses because the step-father failed to raise the issue below of a violation based on an alleged deficient notice. *Sato v. State*, 144 Haw. 336, 439 P.3d 288, 2019 Haw. App. LEXIS 207 (Haw. Ct. App. 2019).

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ADMINISTRATIVE PROCEDURE

§ 91-14

§ 91-12. Decisions and orders.

NOTES TO DECISIONS

Findings of fact and conclusions of law are required.

Hawai'i Labor Relations Board's (Board) findings and conclusions as to applicability of a memorandum of understanding (MOU) after the MOU's expiration date were inadequate because the Board did not address (1) the

MOU's effect when an employee was absent or (2) if an employer and a union agreed to extend the MOU. *Los Banos v. Haw. Labor Rels. Bd.*, 145 Haw. 297, 452 P.3d 765, 2019 Haw. App. LEXIS 510 (Haw. Ct. App. 2019), cert. denied, 2020 Haw. LEXIS 63 (Haw. Apr. 1, 2020).

§ 91-14. Judicial review of contested cases.

NOTES TO DECISIONS

Analysis

- I. General Consideration
- VI. Final Decision or Order
- B. Decision or Order Final
- C. Decision or Order Not Final
- VII. Clearly Erroneous Standard

I. GENERAL CONSIDERATION

Appeals from labor and industrial relations board.

Appellate court had no jurisdiction to hear an employee's request to review a decision of the Labor and Industrial Relations Appeals Board (LIRAB) because the employee's appeal was untimely, as the appeal was not filed within 30 days of the mailing of LIRAB's decision, and procedural rules generally adding two days to the time within which to appeal a mailed decision, did not apply. *Kim v. IBM*, 2020 Haw. App. LEXIS 34 (Haw. Ct. App. Feb. 6, 2020).

VI. FINAL DECISION OR ORDER

B. Decision or Order Final

Failure to except to proposed decision.

Although a state employee timely appealed from a final administrative decision denying an application for disability retirement on procedural grounds, the circuit court lacked jurisdiction to address the merits of the case because the employee's failure to file timely exceptions to the proposed decision, which became final and recommended denial on the merits, limited the circuit court's jurisdiction to addressing the

final decision's ruling that the employee had not timely filed exceptions. *Watanabe v. Employees' Ret. Sys.*, 144 Haw. 564, 445 P.3d 145, 2019 Haw. App. LEXIS 406 (Haw. Ct. App. 2019).

C. Decision or Order Not Final

Because there was no final order that was appealable, the court of appeals lacked appellate jurisdiction; relevant rights of the parties remained undetermined, and the Labor and Industrial Relations Appeals Board retained the matter for further action. *Suzuki v. Am. Healthways, Inc.*, 2019 Haw. App. LEXIS 451 (Haw. Ct. App. Sept. 26, 2019), cert. dismissed, 2019 Haw. LEXIS 355 (Haw. Dec. 30, 2019).

VII. CLEARLY ERRONEOUS STANDARD

Findings clearly erroneous.

ZBA's finding and conclusion of a transient vacation rental violation could not be based solely on an inspector's report of a conversation with an unidentified person encountered at the property. Petitioner did not clearly err in a second notice of order (NOO) in determining that a transient vacation unit use of the residential property without a nonconforming use certificate occurred at the property where, notwithstanding the existence of written rental agreements for periods of 30 or more days, respondent in fact provided a dwelling or lodging unit to transient occupants for less than 30 days, but because the issuance of the first NOO was clearly erroneous, the finding of a recurring violation in the second NOO was clearly erroneous. *Dao v. Zoning Bd. of Appeals*, 144 Haw. 28, 434 P.3d 1223, 2019 Haw. App. LEXIS 48 (Haw. Ct. App. 2019).

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CHAPTER 92

PUBLIC AGENCY MEETINGS AND RECORDS

PART I.

MEETINGS

§ 92-5. Exceptions.

NOTES TO DECISIONS

Personnel-privacy.

Personnel-privacy exception to the Sunshine Law did not require a government board to hold a closed meeting because (1) such a decision was discretionary, and (2) the only requirement was to hold an open meeting if a subject employee requested such. Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 144 Haw. 466, 445 P.3d 47, 2019 Haw. LEXIS 150 (Haw. 2019).

When interpreting the personnel-privacy exception to the Sunshine Law, “retirement” was not within the plain meaning of “hire, evaluation, dismissal, or discipline,” or “charges.” Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 2019 Haw. LEXIS 150 (June 27, 2019).

Government board members could not be criminally liable for holding an open meeting on a personnel matter because holding an open meeting did not violate the Sunshine Law. Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 144 Haw. 466, 445 P.3d 47, 2019 Haw. LEXIS 150 (Haw. 2019).

Personnel-privacy exception to the Sunshine Law did not contain a balancing test because the exception was not equivalent to the privacy balancing test in the Uniform Information Practices Act (UIPA), as the Sunshine Law and UIPA differed in both plain language and structure. Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 144 Haw. 466, 445 P.3d 47, 2019 Haw. LEXIS 150 (Haw. 2019).

Personnel-privacy exception to the Sunshine Law required the subject individual to have a

reasonable expectation of privacy in the information disclosed. Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 144 Haw. 466, 445 P.3d 47, 2019 Haw. LEXIS 150 (Haw. 2019).

It was error to dismiss claims of unlawful executive sessions because a violation of Haw. Rev. Stat. § 92-5(b) was sufficiently alleged. Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 144 Haw. 466, 445 P.3d 47, 2019 Haw. LEXIS 150 (Haw. 2019).

Attorney-client.

Attorney-client exception to the Sunshine Law was narrower in scope than the attorney-client privilege because, unlike the attorney-client privilege, the Sunshine Law’s attorney-client exception protected communications relating only to “questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities.” Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 2019 Haw. LEXIS 150 (June 27, 2019).

Violations.

Government board’s deliberations conducted in violation of Haw. Rev. Stat. § 92-5(b) also violate the open meetings requirement under Haw. Rev. Stat. § 92-3, so, where discussions and deliberations are not “directly related” to a permissible exception, the board’s final action is voidable. Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu, 144 Haw. 466, 445 P.3d 47, 2019 Haw. LEXIS 150 (Haw. 2019).

§ 92-12. Enforcement.

NOTES TO DECISIONS

Standing.

Pro se individual’s suit against the Hawai’i Office of Information Practices (OIP) was properly dismissed for failing to state a claim because Haw. Rev. Stat. § did not authorize indi-

viduals to appeal OIP opinions or to sue OIP for alleged agency sunshine law violations; the individual’s sole remedy was under the statute. In re Office of Info. Practices Opinion Letter No. F16-01, 144 Haw. 389, 442 P.3d 452, 2019 Haw.

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App. LEXIS 312 (Haw. Ct. App. 2019), vacated,
147 Haw. 286, 465 P.3d 733, 2020 Haw. LEXIS
147 (Haw. 2020).

CHAPTER 92F

UNIFORM INFORMATION PRACTICES ACT

Part II. Freedom of Information

Section

92F-14. Significant privacy interest; examples.

PART II.

FREEDOM OF INFORMATION

§ 92F-11. Affirmative agency disclosure responsibilities.

NOTES TO DECISIONS

Exemption of personal record from disclosure.

A city did not have to provide the addresses of arrestees since disclosure of the addresses would constitute a clearly unwarranted invasion of personal privacy, thus exempting the addresses from Haw. Rev. Stat. § 92F-11's general rule of disclosure, and the disclosure of the

addresses did not fall within the Office of Information Practices' definition of what was a legally cognizable, public interest was in the disclosure of official information. *Mott v. City & Cty. of Honolulu*, 146 Haw. 210, 458 P.3d 921, 2020 Haw. App. LEXIS 21 (Haw. Ct. App. 2020), cert. denied, 2020 Haw. LEXIS 314 (Haw. Oct. 7, 2020).

§ 92F-13. Government records; exceptions to general rule.

NOTES TO DECISIONS

Privacy.

A city did not have to provide the addresses of arrestees since disclosure of the addresses would constitute a clearly unwarranted invasion of personal privacy, thus exempting the addresses from Haw. Rev. Stat. § 92F-11's general rule of disclosure, and the disclosure of the addresses did not fall within the Office of Infor-

mation Practices' definition of what was a legally cognizable, public interest was in the disclosure of official information. *Mott v. City & Cty. of Honolulu*, 146 Haw. 210, 458 P.3d 921, 2020 Haw. App. LEXIS 21 (Haw. Ct. App. 2020), cert. denied, 2020 Haw. LEXIS 314 (Haw. Oct. 7, 2020).

§ 92F-14. Significant privacy interest; examples.

(a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.

(b) The following are examples of information in which the individual has a significant privacy interest:

(1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;

(2) Information identifiable as part of an investigation into a possible

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violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;

(4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:

(A) Information disclosed under section 92F-12(a)(14); and

(B) The following information related to employment misconduct that results in an employee's suspension or discharge:

(i) The name of the employee;

(ii) The nature of the employment related misconduct;

(iii) The agency's summary of the allegations of misconduct;

(iv) Findings of fact and conclusions of law; and

(v) The disciplinary action taken by the agency;

when the following has occurred: the highest nonjudicial grievance adjustment procedure timely invoked by the employee or the employee's representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision or, for decisions involving county police department officers, ninety days have elapsed following the issuance of the decision;

(5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;

(6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except:

(A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;

(B) Information on the current place of employment and required insurance coverages of licensees; and

(C) The record of complaints including all dispositions;

(8) Information comprising a personal recommendation or evaluation;

(9) Social security numbers; and

(10) Information that if disclosed would create a substantial and demonstrable risk of physical harm to an individual.

HISTORY:

L 1988, c 262, § 1; am L 1993, c 191, § 1; am L 1995, c 242, § 1; am L 2004, c 92, § 4; am L 2014, c 121, § 2, effective June 20, 2014; am L 2015, c 140, § 1, effective June 25, 2015; am L 2020, c 47, § 3, effective September 15, 2020.

that subparagraph (B) shall not apply to a county police department officer except in a case which results in the discharge of the officer" at the end of the concluding language of (b)(4).

Amendment Notes.

The 2020 amendment deleted "provided

§ 92F-15

UNIFORM INFORMATION PRACTICES ACT

§ 92F-27

NOTES TO DECISIONS

Arrestees' addresses.

A city did not have to provide the addresses of arrestees since disclosure of the addresses would constitute a clearly unwarranted invasion of personal privacy, thus exempting the addresses from Haw. Rev. Stat. § 92F-11's general rule of disclosure, and the disclosure of the addresses did not fall within the Office of Infor-

mation Practices' definition of what was a legally cognizable, public interest was in the disclosure of official information. *Mott v. City & Cty. of Honolulu*, 146 Haw. 210, 458 P.3d 921, 2020 Haw. App. LEXIS 21 (Haw. Ct. App. 2020), cert. denied, 2020 Haw. LEXIS 314 (Haw. Oct. 7, 2020).

§ 92F-15. Judicial enforcement.

NOTES TO DECISIONS

In camera inspection.

When finding if a report prepared by the Department of the Attorney General at a legislator's request were exempt from disclosure, it was not an abuse of discretion to review the report in camera without first requiring non-privileged information about the report be-

cause (1) the decision was reasonable and fit within the statutory purpose allowing such review, and (2) a media outlet seeking the report had enough information to argue the outlet's position. *Honolulu Civil Beat Inc. v. Dep't of the AG*, 146 Haw. 285, 463 P.3d 942, 2020 Haw. LEXIS 54 (Haw. 2020).

PART III.

DISCLOSURE OF PERSONAL RECORDS

§ 92F-22. Exemptions and limitations on individual access.

NOTES TO DECISIONS

Arrestees' addresses.

A city did not have to provide the addresses of arrestees since disclosure of the addresses would constitute a clearly unwarranted invasion of personal privacy, thus exempting the addresses from Haw. Rev. Stat. § 92F-11's general rule of disclosure, and the disclosure of the addresses did not fall within the Office of Infor-

mation Practices' definition of what was a legally cognizable, public interest was in the disclosure of official information. *Mott v. City & Cty. of Honolulu*, 146 Haw. 210, 458 P.3d 921, 2020 Haw. App. LEXIS 21 (Haw. Ct. App. 2020), cert. denied, 2020 Haw. LEXIS 314 (Haw. Oct. 7, 2020).

§ 92F-27. Civil actions and remedies.

NOTES TO DECISIONS

Standing.

Pro se individual's suit against the Hawai'i Office of Information Practices (OIP) was properly dismissed for failing to state a claim because the statute did not authorize individuals to appeal OIP opinions or to sue OIP for alleged agency sunshine law violations; the individual's

sole remedy was under Haw. Rev. Stat. § 92-12(c). In re Office of Info. Practices Opinion Letter No. F16-01, 144 Haw. 389, 442 P.3d 452, 2019 Haw. App. LEXIS 312 (Haw. Ct. App. 2019), vacated, 147 Haw. 286, 465 P.3d 733, 2020 Haw. LEXIS 147 (Haw. 2020).

§ 92F-43

PUBLIC PROCEEDINGS AND RECORDS

§ 92F-43

PART IV.

OFFICE OF INFORMATION PRACTICES; DUTIES

[§ 92F-43.] Agency appeal of a decision by the office of information practices.

NOTES TO DECISIONS

Standing.

Pro se individual's suit against the Hawai'i Office of Information Practices (OIP) was properly dismissed for failing to state a claim because under the statute only agencies were conferred standing to challenge OIP decisions

for alleged agency sunshine law violations, not individuals. In re Office of Info. Practices Opinion Letter No. F16-01, 144 Haw. 389, 442 P.3d 452, 2019 Haw. App. LEXIS 312 (Haw. Ct. App. 2019), vacated, 147 Haw. 286, 465 P.3d 733, 2020 Haw. LEXIS 147 (Haw. 2020).