

DIVISION 1.

GOVERNMENT

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TITLE 7

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CHAPTER 76

CIVIL SERVICE LAW

Part I. General Civil Service Provisions

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- 76-16. Civil service and exemptions.
- 76-16. Civil service and exemptions.

PART I.

GENERAL CIVIL SERVICE PROVISIONS

§ 76-16. Civil service and exemptions.

(a) The state constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(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

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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;

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(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

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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;

(31) The Alzheimer's disease and related dementia services coordinator in the executive office on aging; and

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(32) In the Hawaii emergency management agency, the executive officer, public information officer, civil defense administrative officer, branch chiefs, and emergency operations center state warning point personnel; provided that, for state warning point personnel, the director shall determine that recruitment through normal civil service recruitment procedures would result in delay or noncompliance.

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.

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

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

(e) It is also the public policy of the State that all civil service positions be covered under the classification systems of the jurisdictions, unless the position was exempted from the classification systems by law prior to July 1, 2002, or based on reasons set forth in rules. The rules may include reasons for a temporary exemption of a position, such as the establishment of a new class is pending, or for a permanent exemption when the establishment of a class is impracticable.

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

(g) Each director shall be responsible for ensuring that all exemptions from civil service recruitment procedures or from the classification systems are consistent with this section. With respect to positions exempted under this section prior to July 1, 2002, by any other law, the director shall review these positions to determine whether the positions should continue to be exempt and if so, whether from civil service recruitment procedures or the classification

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systems, or both. If the director determines that a position should no longer be exempt from either or both based on the intent of this section, the director shall consult with the appropriate appointing authority and its chief executive on removing the exemptions. With the approval of the chief executive, the director shall take whatever action is necessary to remove the exemptions, including submittal of proposed legislation to remove the exemptions.

(h) The director shall establish rules to implement this section that shall be in accordance with the following:

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

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

(i) Employees in positions subject to civil service recruitment procedures shall be entitled to become and remain members of the civil service for the duration of their appointments as provided in section 76-27. Employees in positions exempted from civil service recruitment procedures shall not be entitled to membership in the civil service.

(j) Employees in positions that are exempted from the classification plan, whether temporarily or permanently, may be entitled to membership in the civil service as provided in subsection (i).

HISTORY:

L 1955, c 274, pt of § 1; RL 1955, § 3-20; am L 1957, c 110, § 1, c 156, § 1(1) and c 207, § 1(b), (d); am L Sp 1959 2d, c 1, §§ 7, 11; am L 1963, c 54, § 2; am L 1965, c 175, § 3 and c 274, §§ 1 to 4; am L 1967, c 160, § 2 and c 303, § 1; HRS § 76-16; am L 1969, c 127, § 38 and c 172, § 1; am L 1970, c 18, § 1; am L 1971, c 41, § 1, c 81, § 1 and c 199, § 1; am L 1974, c 140, § 2; am L 1975, c 175, § 1; am L 1976, c 9, § 1, c 65, § 1, c 79, § 1, c 170, § 1 and c 182, § 1; am L 1977, c 84, § 1, c 143, § 1 and c 199, § 1; am L 1979, c 31, § 2, c 111, § 7 and c 187, § 2; am L 1980, c 111, § 2; am L 1981, c 197, § 1; am L 1982, c 68, § 3 and c 129, § 22; am L 1984, c 198, § 1 and c 272, § 1; am L 1987, c 37, § 1, c 213, § 2, c 336, § 7, c 339, § 4 and c 379, § 1; am L 1988, c 71, § 2, c 303, § 1 and c 348, § 2; am L 1989, c 105, § 1; am L 1989, c 106, § 1; am L 1989, c 112, § 1; am L 1989, c 134, § 2; am L 1989, c 211, pt of § 10; am L 1989, c 256, § 1; am L 1990, c 79, § 1; am L

1990, c 219, § 2; am L 1990, c 233, § 1; am L 1990, c 281, § 3, pt of § 11; am L 1990, c 293, § 4; am L 1991, c 130, § 1; am L 1992, c 319, § 1; am L 1993, c 65, § 1; am L 1994, c 56, pt of § 21; am L 1994, c 93, § 1; am L 1994, c 223, § 1; am L 1995, c 145, § 1; am L 1995, c 162, § 2; am L 1998, c 87, § 1; am L 2000, c 253, § 14; am L 2002, c 65, § 3; am L 2002, c 66, § 1; am L 2002, c 148, § 4; am L 2003, c 187, § 3; am L 2004, c 128, §§ 1, 5; am L 2005, c 22, §§ 3, 55(2) and c 196, § 26; am L 2009, c 43, § 1, effective May 6, 2009; am L 2011, c 5, § 9; am L 2011, c 216, § 1, effective January 1, 2012; am L 2012, c 159, § 2, effective July 1, 2012; am L 2013, c 30, § 1, effective April 22, 2013; am L 2014, c 181, § 3, effective July 1, 2014; am L 2016, c 79, § 1, effective July 1, 2016; am L 2018, c 71, § 2, effective July 1, 2018; am L 2019, c 81, § 3, effective June 29, 2019; am L 2019, c 127, § 3, effective July 1, 2019; am L 2021, c 25, § 2, effective May 28, 2021.

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Amendment Notes.

The 2021 amendment added (32); and made related and stylistic changes. **The 2021 amendment** added (b)(32); and made related and stylistic changes.

§ 76-16. Civil service and exemptions.

(a) The state constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(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

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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

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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;

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(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;

(31) The Alzheimer's disease and related dementia services coordinator in the executive office on aging; and

(32) The executive director and seven full-time administrative positions of the school facilities authority.

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.

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

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

(e) It is also the public policy of the State that all civil service positions be covered under the classification systems of the jurisdictions, unless the position was exempted from the classification systems by law prior to July 1, 2002, or based on reasons set forth in rules. The rules may include reasons for

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a temporary exemption of a position, such as the establishment of a new class is pending, or for a permanent exemption when the establishment of a class is impracticable.

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

(g) Each director shall be responsible for ensuring that all exemptions from civil service recruitment procedures or from the classification systems are consistent with this section. With respect to positions exempted under this section prior to July 1, 2002, by any other law, the director shall review these positions to determine whether the positions should continue to be exempt and if so, whether from civil service recruitment procedures or the classification systems, or both. If the director determines that a position should no longer be exempt from either or both based on the intent of this section, the director shall consult with the appropriate appointing authority and its chief executive on removing the exemptions. With the approval of the chief executive, the director shall take whatever action is necessary to remove the exemptions, including submittal of proposed legislation to remove the exemptions.

(h) The director shall establish rules to implement this section that shall be in accordance with the following:

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

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

(i) Employees in positions subject to civil service recruitment procedures shall be entitled to become and remain members of the civil service for the duration of their appointments as provided in section 76-27. Employees in positions exempted from civil service recruitment procedures shall not be entitled to membership in the civil service.

(j) Employees in positions that are exempted from the classification plan, whether temporarily or permanently, may be entitled to membership in the civil service as provided in subsection (i).

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HISTORY:

L 1955, c 274, pt of § 1; RL 1955, § 3-20; am L 1957, c 110, § 1, c 156, § 1(1) and c 207, § 1(b), (d); am L Sp 1959 2d, c 1, §§ 7, 11; am L 1963, c 54, § 2; am L 1965, c 175, § 3 and c 274, §§ 1 to 4; am L 1967, c 160, § 2 and c 303, § 1; HRS § 76-16; am L 1969, c 127, § 38 and c 172, § 1; am L 1970, c 18, § 1; am L 1971, c 41, § 1, c 81, § 1 and c 199, § 1; am L 1974, c 140, § 2; am L 1975, c 175, § 1; am L 1976, c 9, § 1, c 65, § 1, c 79, § 1, c 170, § 1 and c 182, § 1; am L 1977, c 84, § 1, c 143, § 1 and c 199, § 1; am L 1979, c 31, § 2, c 111, § 7 and c 187, § 2; am L 1980, c 111, § 2; am L 1981, c 197, § 1; am L 1982, c 68, § 3 and c 129, § 22; am L 1984, c 198, § 1 and c 272, § 1; am L 1987, c 37, § 1, c 213, § 2, c 336, § 7, c 339, § 4 and c 379, § 1; am L 1988, c 71, § 2, c 303, § 1 and c 348, § 2; am L 1989, c 105, § 1; am L 1989, c 106, § 1; am L 1989, c 112, § 1; am L 1989, c 134, § 2; am L 1989, c 211, pt of § 10; am L 1989, c 256, § 1; am L 1990, c 79, § 1; am L

1990, c 219, § 2; am L 1990, c 233, § 1; am L 1990, c 281, § 3, pt of § 11; am L 1990, c 293, § 4; am L 1991, c 130, § 1; am L 1992, c 319, § 1; am L 1993, c 65, § 1; am L 1994, c 56, pt of § 21; am L 1994, c 93, § 1; am L 1994, c 223, § 1; am L 1995, c 145, § 1; am L 1995, c 162, § 2; am L 1998, c 87, § 1; am L 2000, c 253, § 14; am L 2002, c 65, § 3; am L 2002, c 66, § 1; am L 2002, c 148, § 4; am L 2003, c 187, § 3; am L 2004, c 128, §§ 1, 5; am L 2005, c 22, §§ 3, 55(2) and c 196, § 26; am L 2009, c 43, § 1, effective May 6, 2009; am L 2011, c 5, § 9; am L 2011, c 216, § 1, effective January 1, 2012; am L 2012, c 159, § 2, effective July 1, 2012; am L 2013, c 30, § 1, effective April 22, 2013; am L 2014, c 181, § 3, effective July 1, 2014; am L 2016, c 79, § 1, effective July 1, 2016; am L 2018, c 71, § 2, effective July 1, 2018; am L 2019, c 81, § 3, effective June 29, 2019; am L 2019, c 127, § 3, effective July 1, 2019; am L 2021, c 217, § 6, effective July 1, 2021.

CHAPTER 78

PUBLIC SERVICE

Section

78-1. Citizenship and residence; exceptions. [Effective January 1, 2022]

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

§ 78-1. Citizenship and residence; exceptions. [Effective January 1, 2022]

(a) All elective officers in the service of the government of the State or any county shall be citizens of the United States and residents of the State for at least three years immediately preceding assumption of office.

(b) All appointive officers in the service of the government of the State or any county who are employed as department heads and deputies or assistants to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding their appointment; provided that the foregoing one year residency requirement may be waived by the appointing authority when the appointive officer is:

(1) Required to have highly specialized or scientific knowledge and training and a qualified applicant who is a resident for at least one year is not available to fill the position; or

(2) Employed as the head of a county police department.

All others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be residents of the State at the time of their appointment and:

(1) Citizens, nationals, or permanent resident aliens of the United States; or

(2) Eligible under federal law for unrestricted employment in the United States.

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A national or permanent resident alien appointee shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

(c) All persons seeking employment with the government of the State or in the service of any county shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and shall become residents of the State within thirty days after beginning their employment and as a condition of eligibility for continued employment; provided that bona fide military service members' dependents shall be exempt from the requirement to become residents if the dependents are in the State by virtue of the military service members' orders.

For purposes of this subsection:

"Dependent", with respect to a service member, means the service member's spouse, child who is under the age of eighteen years, or an individual for whom the service member provided more than one-half of the individual's financial support for one hundred eighty days immediately preceding an application for an exemption under this section.

"Resident" means a person who is physically present in the State at the time the person claims to have established the person's domicile in the State and shows the person's intent is to make Hawaii the person's primary residence.

(d) The appointing authority may approve the appointment of persons without consideration of the requirements under subsection (c) when services essential to the public interest require highly specialized technical and scientific skills or knowledge for critical-to-fill and labor shortage positions.

(e) For the positions involved in the performance of services in planning and executing measures for the security of Hawaii and the United States, the employees shall be citizens of the United States in addition to meeting the requirement of residency in subsection (c).

(f) This section shall not apply to persons recruited by the University of Hawaii under the authority of section [304A-1001].

HISTORY:

L 1909, c 32, § 1; am L 1923, c 19, § 1; RL 1935, § 86; am L 1935, c 211, § 1; am L 1939, c 216, §§ 1, 2; RL 1945, § 451; am L 1949, c 190, §§ 1, 2; am L 1951, c 319, § 3; RL 1955, § 5-1; am L 1961, c 82, § 1; am L 1965, c 170, § 1 and c 175, § 1; am L 1967, c 5, § 1 and c 220, § 1; HRS § 78-1; am L 1969, c 206, § 1; am L 1970, c 36, § 1; am L 1976, c 162, § 1; am L 1977, c 211, § 1; am L 1978, c 101, § 1; am L 1980, c 250, § 1; am imp L 1984, c 90, § 1; am L 1987, c 295, § 2; am L 1994, c 56, § 21; am L 1998, c 2, § 25; am L 1998, c 115, § 11; am L 2000, c 253, §§ 75, 79; am L 2002, c 90, § 2; am L 2006, c 75, § 5; am L

2007, c 52, § 1; am L 2012, c 115, § 1, effective June 15, 2012; am L 2017, c 36, § 1, effective June 19, 2017; am L 2021, c 18, § 2, effective January 1, 2022.

Amendment Notes.

The 2021 amendment added "provided that bona fide military service members' dependents shall be exempt from the requirement to become residents if the dependents are in the State by virtue of the military service members' orders" in (c); added "For purposes of this subsection" in the introductory language of the definition of "Dependent"; added the definition of "Dependent"; and made a stylistic change.

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[§ 78-27.] Temporary inter- and intra-governmental assignments and exchanges.

NOTES TO DECISIONS

Utilization of police officers from another county.

Police chief of a county was able to utilize police officers from another county to enforce the law in the police chief's county and to support the operations of the county's police department related to a protest demonstration, at the request and under the supervision of the

police chief pursuant to interdepartmental assignment agreements between county police departments, because the presence of police officers from other counties in the police chief's county was a valid exercise of police power. *Flores v. Ballard*, 149 Haw. 81, 482 P.3d 544, 2021 Haw. App. LEXIS 19 (Haw. Ct. App. 2021).

§ 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.

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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Part II. Code of Ethics

Section

84-10. University of Hawaii; technology transfer activities; exemption.

84-13. Fair treatment.

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Section

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

84-17. Requirements of disclosure.

84-18. Restrictions on post employment. [Effective January 1, 2022]

PART II.

CODE OF ETHICS

§ 84-10. University of Hawaii; technology transfer activities; exemption.

(a) Sections 84-12, 84-13, 84-14 to 84-16, and 84-18 shall not apply to technology transfer activities sponsored by the University of Hawaii; provided that the technology transfer activities comply with the regulatory framework and research compliance program and policies approved by the board of regents of the University of Hawaii.

(b) Notwithstanding subsection (a), the University of Hawaii shall not sponsor, enter into, or continue to engage in technology transfer activities with a private person in which an employee of the University of Hawaii has a conflict of interest as provided in section 84-14, including a financial interest, irrespective of whether the State benefits from the technology transfer activities; provided that the prohibition under this subsection shall not apply if:

(1) The technology transfer activities with the private person promote the timely and efficient commercialization of intellectual property created by basic and applied research at the University of Hawaii;

(2) The State stands to benefit from the technology transfer activities with the private person;

(3) The technology transfer activities with the private person comply with the regulatory framework and research compliance program and policies approved by the board of regents of the University of Hawaii;

(4) The employee's conflict of interest is disclosed at the time of the proposal, and the proposals and binding agreements for each of the technology transfer activities with the private person are reviewed by the state ethics commission to assure compliance with ethics laws;

(5) Any changes to the terms and conditions of the technology transfer activities are reported to the state ethics commission;

(6) The employee with the conflict of interest does not:

(A) Take official action affecting the technology transfer activities with the private person; or

(B) Directly or indirectly supervise an employee when that employee takes official action affecting the technology transfer activities with the private person; and

(7) During the term of the technology transfer activities with the private person, the following employees file annually with the state ethics commission a disclosure of financial interests pursuant to section 84-17:

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(A) Employees who have a conflict of interest as provided in section 84-14, including a financial interest, in the private person;

(B) Employees who take official action affecting the technology transfer activities with the private person; and

(C) Employees who directly or indirectly supervise an employee who takes official action affecting the technology transfer activities with the private person.

(c) Notwithstanding subsection (a), any technology transfer activities sponsored by, entered into, or engaged in by the University of Hawaii in violation of subsection (b) is voidable under section 84-16; provided that this subsection shall not apply to contracts for technology transfer activities entered into or extended by the University of Hawaii prior to January 1, 2022.

(d) The University of Hawaii shall file annually with the state ethics commission a disclosure, including its conflict of interest management plan, of any conflict of interest of any employee relating to its technology transfer activities.

(e) As used in this section:

“Person” means any individual, firm, association, organization, sole proprietorship, partnership, company, corporation, joint venture, trust, or any other form of business or legal entity or group of individuals.

“Technology transfer activities” means the process of transferring scientific findings from the public sector to the private sector for the purpose of commercial development and application for personal or financial gain. “Technology transfer activities” may include creating joint ventures, limited partnerships, or other corporate forms; allocating equity shares, partnership interests, or other forms of participation; identifying new technologies; protecting technologies through patents and copyrights; forming development and commercialization strategies, arrangements, or projects; and other related activities.

HISTORY:

L 2017, c 38, § 2, effective June 19, 2017; am L 2021, 1st Sp. Sess. c 8, § 6, effective July 20, 2021.

§ 8, provides: “This Act shall take effect upon its approval; provided that this Act shall be repealed on June 30, 2024.”

Editor’s Notes

2021 Haw. Sess. Laws, Special Session, Act 8,

§ 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;

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(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.

(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.

Amendment Notes.

The 2020 amendment added "in accordance

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.

§ 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

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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 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;

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(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;

(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;

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- (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;
- (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;
- (N) The commission on water resource management established under section 174C-7; and
- (O) The stadium authority established under section 109-1.

(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

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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 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

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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.

(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; am L 2021, c 146, § 15, effective July 1, 2021.

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.

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The 2021 amendment added (d)(8)(O); and made a related change.

§ 84-18. Restrictions on post employment. [Effective January 1, 2022]

(a) No former legislator or employee shall disclose any information that by law or practice is not available to the public and that the former legislator or employee acquired in the course of the former legislator's or employee's official duties or use the information for the former legislator's or employee's personal gain or the benefit of anyone.

(b) No former legislator, within twelve months after termination of the former legislator's employment, shall represent any person or business for a fee or other consideration on:

- (1) Matters in which the former legislator participated as a legislator;
- (2) Matters involving official action by the legislature; or
- (3) Any administrative action, as defined in section 97-1.

(c) No former employee, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration, on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served. This section shall not apply to a former task force member who, but for service as a task force member, would not be considered an employee.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent that legislator or employee from appearing before any agency in relation to that employment.

(e) Subject to the restrictions imposed in subsections (a) through (d), the following individuals shall not represent any person or business for a fee or other consideration regarding any legislative action or administrative action, as defined in section 97-1, for twelve months after termination from their respective positions:

- (1) The governor;
- (2) The lieutenant governor;
- (3) The administrative director of the State;
- (4) The attorney general;
- (5) The comptroller;
- (6) The chairperson of the board of agriculture;
- (7) The director of finance;
- (8) The director of business, economic development, and tourism;
- (9) The director of commerce and consumer affairs;
- (10) The adjutant general;
- (11) The superintendent of education;
- (12) The chairperson of the Hawaiian homes commission;
- (13) The director of health;
- (14) The director of human resources development;

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- (15) The director of human services;
- (16) The director of labor and industrial relations;
- (17) The chairperson of the board of land and natural resources;
- (18) The director of public safety;
- (19) The director of taxation;
- (20) The director of transportation;
- (21) The president of the University of Hawaii;
- (22) The executive administrator of the board of regents of the University of Hawaii;
- (23) The administrator of the office of Hawaiian affairs;
- (24) The chief information officer;
- (25) The executive director of the agribusiness development corporation;
- (26) The executive director of the campaign spending commission;
- (27) The executive director of the Hawaii community development authority;
- (28) The executive director of the Hawaii housing finance and development corporation;
- (29) The president and chief executive officer of the Hawaii tourism authority;
- (30) The executive officer of the public utilities commission;
- (31) The state auditor;
- (32) The director of the legislative reference bureau;
- (33) The ombudsman;
- (34) The permanent employees of the legislature, other than persons employed in clerical, secretarial, or similar positions;
- (35) The administrative director of the courts;
- (36) The executive director of the state ethics commission;
- (37) The executive officer of the state land use commission;
- (38) The executive director of the natural energy laboratory of Hawaii authority;
- (39) The executive director of the Hawaii public housing authority; and
- (40) The first deputy to the chairperson of the commission on water resource management;

provided that this subsection shall not apply to any person who has held one of the positions listed above only on an interim or acting basis and for a period of less than one hundred eighty- one days.

(f) Subsections (b) through (e) shall not apply to any person who is employed by the State for a period of less than one hundred and eighty-one days.

(g) For the purposes of this section, “represent” means to engage in direct communication on behalf of any person or business with a legislator, a legislative employee, a particular state agency or subdivision thereof, or their employees.

HISTORY:

L 1972, c 163, pt of § 1; am imp L 1984, c 90,

§ 1; am L 1995, c 239, § 1; am L 2012, c 208, §

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7, effective July 1, 2012; am L 2021, c 189, § 2, effective January 1, 2022.

Amendment Notes.

The 2021 amendment rewrote (b), which formerly read: “No former legislator, within twelve months after termination of the former legislator’s employment, shall represent any

person or business for a fee or other consideration, on matters in which the former legislator participated as a legislator or on matters involving official action by the legislature”; added (e); redesignated former (e) and (f) as (f) and (g); substituted “Subsections (b) through (e)” for “This section” in (f); and made stylistic changes.

CHAPTER 87A

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Part III. Board Powers and Duties

Section

87A-24. Other powers.

Part IV. Trust Fund

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

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

87A-43. Payment of public employer contributions to the other post-employment benefits trust.
[Repealed]

PART III.

BOARD POWERS AND DUTIES

§ 87A-24. Other powers.

In addition to the power to administer the fund, the board may:

- (1) Collect, receive, deposit, and withdraw money on behalf of the fund;
- (2) Invest moneys in the same manner specified in section 88-119;
- (3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as well as the proceeds of those investments and any money belonging to the fund;

(4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator shall be exempt from chapter 76. Other fund staff may be exempt from chapter 76 as determined by the board. The administrator and staff who are exempt from chapter 76 shall serve under and at the pleasure of the board; provided that civil service exempt positions under this section that are created after July 1, 2014, shall be exempt from section 76-16(b)(17)(A);

(5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;

(6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;

(7) Retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;

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(8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and

(9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this chapter.

HISTORY:

L 2001, c 88, § 1; am L 2004, c 216, § 15; am L 2013, c 268, § 7, effective July 1, 2013; am L 2016, c 30, § 2, effective April 28, 2016; am L 2017, c 145, § 2, effective July 1, 2017; am L 2021, c 229, § 2, effective July 1, 2021.

Amendment Notes.

The 2021 amendment deleted “including the retaining of an actuary to determine the annual required public employer contribution for the separate trust fund established under section 87A-42” following “this chapter” in (7).

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

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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.

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

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.

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; am L 2021, c 229, § 3, effective July 1, 2021; repealed by L 2021, 1st Sp. Sess. c 1, § 8, effective July 1, 2021.

Amendment Notes.

The 2020 amendment substituted "Govern-

mental" for "Government" in the second sentence of (a).

The 2021 amendments.

2021 Haw. Sess. Laws, Act 1 § 8, rewrote the section.

2021 Haw. Sess. Laws, Act 229 § 3, deleted (a) designation; and deleted former (b) through (f).

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

[§ 87A-43.] Payment of public employer contributions to the other post-employment benefits trust. [Repealed]

HISTORY:

L 2013, c 268, § 6, effective July 1, 2013;

repealed by L 2021, c 229, § 7, effective July 1, 2021.

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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

88-93.5. Distribution of property in a divorce action.

88-95. Withholding of dues and insurance premiums.

D. Administration; Financing

88-103.5. Disclosure of information.

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,

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

§ 88-93.5. Distribution of property in a divorce action.

(a) As used in this section:

"Alternate payee" means a spouse or former spouse of a member, a former member who has vested benefit status, or retirant who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to that member, former member with vested benefit status, or retirant.

"Benefits payable with respect to a member, a former member with vested benefit status, or retirant" means any payment required to be made to a member, a former member with vested benefit status, or retirant.

"Domestic relations order" means a judgment, decree, or order, including approval of a property settlement agreement, that:

(1) Relates to the provision of marital property rights to a spouse or former spouse of a member, a former member with vested benefit status, or retirant; and

(2) Is made pursuant to a domestic relations law of this State or another state.

"Hawaii domestic relations order" means a domestic relations order that:

(1) Creates or recognizes the right of an alternate payee, or assigns to an alternate payee, the right to receive all or a portion of the benefits payable

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with respect to a member, a former member with vested benefit status, or retirant under the system;

(2) Directs the system to disburse benefits to the alternate payee; and

(3) Meets the requirements of this section.

(b) A Hawaii domestic relations order shall clearly specify:

(1) The name and last known mailing address, if any, of the member, former member with vested benefit status, or retirant;

(2) The name and mailing address of the alternate payee covered by the order;

(3) The amount or percentage of the member's, former member's with vested benefit status, or retirant's benefits to be paid by the system to the alternate payee, or the manner in which the amount or percentage is to be determined; and

(4) That the order applies to the system.

(c) If, pursuant to a Hawaii domestic relations order, an alternate payee is receiving all or a portion of a retirant's pension, annuity, or retirement allowance, the alternate payee shall be entitled to receive a post retirement allowance as provided by section 88-90.

(d) A Hawaii domestic relations order shall not:

(1) Purport to require the designation by the member, former member with vested benefit status, or retirant of a particular person as the recipient of benefits upon the death of the member, former member with vested benefit status, or retirant;

(2) Purport to require the selection of a particular benefit payment plan or option or to limit the benefit payment plans or options from which the member or former member with vested benefit status may select;

(3) Require any action on the part of the system contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to an alternate payee;

(4) Make the award to the alternate payee an interest that is contingent on any condition other than those conditions resulting in the liability of the system for payment under its plan provisions;

(5) Purport to give to someone other than a member, former member with vested benefit status, or retirant the right to designate a beneficiary or to choose any retirement plan or option available from the system;

(6) Attach a lien to any part of amounts payable with respect to a member, former member with vested benefit status, or retirant;

(7) Award an alternate payee a portion of the benefits payable with respect to a member, former member with vested benefit status, or retirant under the system and purport to require the system to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum;

(8) Purport to require the system, without action by the member, to terminate a member from membership or employment, to refund contributions, or to retire a member or former member with vested benefit status;

(9) Provide any type or form of benefit, or any option, not otherwise provided by the system;

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(10) Provide increased benefits, determined on the basis of actuarial value; or

(11) Require the system to provide benefits or refunds to an alternate payee that are required to be paid to another alternate payee pursuant to an earlier Hawaii domestic relations order.

(e) Upon receipt of a copy of the complaint for divorce, certified by the clerk of the court in which the complaint was filed, or a copy of the divorce decree certified by the clerk of the court in which the divorce decree was filed, and a written request that identifies the member, former member with vested benefit status, or retirant by name and social security number and states the date of the marriage, the system shall provide the spouse or former spouse of a member, former member with vested benefit status, or retirant with the same information that would be provided to the member, former member with vested benefit status, or retirant on the member's, former member's with vested benefit status, or retirant's benefits that is relevant to the spouse's or former spouse's interest in the member's, former member's with vested benefit status, or retirant's benefits.

(f) A person who wishes to have the system review a domestic relations order or a proposed domestic relations order to establish whether the order or proposed order meets the requirements for a Hawaii domestic relations order shall submit to the system a written request for review and a copy of the order or proposed order. If the order has been entered by a court, the copy of the order shall be certified by the clerk of the court that entered the order. The order or proposed order shall be reviewed as provided by this section.

The filing fee in effect at the time that an order or proposed order is submitted shall be paid before the order or proposed order is processed or reviewed. In addition, the system shall charge for legal and actuarial services as provided by subsection (s).

Before any legal or actuarial services are performed, the system shall notify the person who requested the review of the order or proposed order that the services will be needed as part of the review. The notification shall include an estimate of the extent of the services and the estimated costs relating to those services. The charges for legal and actuarial services shall be paid before the system may issue notification of determination on an order or notification whether or not a proposed order meets the requirements for a Hawaii domestic relations order.

If a domestic relations order is submitted for review after it has been entered by the court and is thereafter amended with the intention that it shall be a Hawaii domestic relations order, the member, former member with vested benefit status, retirant, or the alternate payee shall submit a certified copy of the amended order to the system. The system shall review any amended order that it receives according to the same rules applicable to all other orders.

(g) The system shall review an order or proposed order for compliance with the requirements imposed by this section. Upon completion of the review:

(1) The system shall not issue a determination that a proposed order is or is not a Hawaii domestic relations order but shall notify the person who

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submitted the proposed order, in writing, whether the proposed order meets the requirements for a Hawaii domestic relations order, identifying any provisions of this section that the proposed order does not meet. The notification may also be provided to the member, former member with vested benefit status, retirant, or alternate payee. The system's notification is advisory, and shall not constitute a determination that a proposed domestic relations order is or is not a Hawaii domestic relations order; and

(2) If the order has been entered by the court, the system shall notify the member, former member with vested benefit status, or retirant and the alternate payee in writing of the determination that the domestic relations order is or is not a Hawaii domestic relations order, identifying any provisions of this section that the order does not meet.

(h) During any period not exceeding eighteen months, beginning on the date on which the first payment would be required to be made to the alternate payee under the domestic relations order, in which a domestic relations order is under review to determine whether it is a Hawaii domestic relations order, or in which a determination that an order is not qualified is on appeal to the board or to a court, the system shall limit the member's, former member's with vested benefit status, or retirant's rights in the member's, former member's with vested benefit status, or retirant's benefits to the extent the system deems appropriate to protect the largest amount that would be payable to the proposed alternate payee under the system's interpretation of the domestic relations order. Any amounts not paid to the member, former member with vested benefit status, or retirant during this eighteen-month period shall be separately accounted for. If the domestic relations order is determined to be a Hawaii domestic relations order before the end of the eighteen-month period, the system shall pay benefits to the member, former member with vested benefit status, or retirant and the alternate payee in accordance with the Hawaii domestic relations order and the terms of the plan, including any benefits separately accounted for during the period between the date on which the first payment was to be made under the Hawaii domestic relations order and the date the determination is made. If the domestic relations order is finally determined not to be a Hawaii domestic relations order, or if the eighteen-month period expires without a determination that the domestic relations order is a Hawaii domestic relations order, none of the amounts separately accounted for shall be paid to the alternate payee, and the member, former member with vested benefit status, or retirant shall be entitled to the member's, former member's with vested benefit status, or retirant's full benefits in accordance with the terms of this chapter, including any benefits that had been separately accounted for and withheld from the member, former member with vested benefit status, or retirant. If the domestic relations order is determined to be a Hawaii domestic relations order after the end of the eighteen-month period, or if the system later receives another domestic relations order that is determined to be a Hawaii domestic relations order, the Hawaii domestic relations order shall apply prospectively only and shall not affect benefits already paid to the member, former member with vested benefit status, or retirant.

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(i) Subject to the limitations of applicable statutes and this section, if a domestic relations order is determined to be a Hawaii domestic relations order, the system shall pay benefits in accordance with the order at the time benefits become payable to, or in the case of contributions or hypothetical account balances, are withdrawn by, the member, former member with vested benefit status, or retirant. Any determination that an order is a Hawaii domestic relations order is voidable or subject to modification if the system determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.

(j) If a member or former member with vested benefit status terminates membership in the system by withdrawal of contributions or hypothetical account balance, the system shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a Hawaii domestic relations order. Payment to any alternate payee pursuant to this subsection shall be in a lump sum. If after terminating membership in the system by withdrawal of contributions or hypothetical account balance, the former member later resumes membership in the system, the system shall pay to an alternate payee no portion of any benefits that result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during the marriage.

(k) In order to receive credit for all service represented by withdrawn or refunded contributions, a member, in reinstating service credit by repaying amounts previously withdrawn or refunded, shall repay the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to an alternate payee.

(l) When the system has not yet begun to make payment to an alternate payee under this section and is provided with proof of the death of the alternate payee, benefits payable with respect to the member, former member with vested benefit status, or retirant shall be paid without regard to the Hawaii domestic relations order.

(m) When the system receives a certified copy of a domestic relations order prior to a member's retirement, and if the domestic relations order is determined to be a Hawaii domestic relations order, the system, except as provided in subsection (j), shall pay the alternate payee a portion of the retirement benefit the member or former member with vested benefit status is expected to receive as follows:

(1) If the alternate payee will be named beneficiary under any option elected by the retirant at retirement, the benefit to which the retirant is entitled, without regard to the Hawaii domestic relations order, shall be apportioned between the retirant and the alternate payee according to the terms of the Hawaii domestic relations order. Upon the death of the retirant or the alternate payee, the benefit amount to be paid to the survivor shall be the amount required under the option elected by the retirant at retirement, as though no Hawaii domestic relations order had existed; or

(2) If the alternate payee will not be a named beneficiary under the option elected by the retirant at retirement, the benefit to which the retirant is

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entitled without regard to the Hawaii domestic relations order, shall be apportioned between the retirant and the alternate payee according to the terms of the Hawaii domestic relations order. If the retirant predeceases the alternate payee, payments to the alternate payee shall cease and payments to the retirant's named beneficiary or beneficiaries shall be made as required under the option elected by the retirant at retirement, as though no Hawaii domestic relations order had existed. If the alternate payee predeceases the retirant, the benefit then being paid to the retirant shall be increased by the amount of the benefit that was being paid to the alternate payee at time of death.

Payment of the alternate payee's interest under this subsection shall be effective as of the same date that benefit payments are effective for the member.

(n) When the system receives a certified copy of a domestic relations order subsequent to the member's or former member's with vested benefit status retirement, and if the domestic relations order is determined to be a Hawaii domestic relations order, the interest awarded to the alternate payee by the Hawaii domestic relations order shall be paid as a portion of the retirement benefit the retirant is receiving as follows:

(1) If the alternate payee is already a named beneficiary under any option elected by the retirant at retirement, the benefit to which the retirant is entitled, without regard to the Hawaii domestic relations order, shall be apportioned between the retirant and the alternate payee according to the terms of the Hawaii domestic relations order. Upon the death of the retirant or the alternate payee, the benefit amount to be paid to the survivor shall be the amount required under the option elected by the retirant at retirement, as though no Hawaii domestic relations order had existed; or

(2) If the alternate payee is not a named beneficiary under the option elected by the retirant at retirement, the benefit to which the retirant is entitled without regard to the Hawaii domestic relations order, shall be apportioned between the retirant and the alternate payee according to the terms of the Hawaii domestic relations order. If the retirant predeceases the alternate payee, payments to the alternate payee shall cease and payments to the retirant's named beneficiary or beneficiaries shall be made as required under the option elected by the retirant at retirement, as though no Hawaii domestic relations order had existed. If the alternate payee predeceases the retirant, the benefit then being paid to the retirant shall be increased by the amount of the benefit that was being paid to the alternate payee at time of death.

Payment according to the terms of the Hawaii domestic relations order under this subsection shall commence as of the first day of the month following the date upon which the order is determined to be qualified, unless the parties jointly direct that payment shall commence at a later date.

(o) If a retirant returns to employment requiring active membership in the system:

(1) Payments to an alternate payee pursuant to a Hawaii domestic relations order shall not be suspended; and

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(2) The system shall pay to an alternate payee no portion of any benefits payable to the retirant that result from the resumption of membership.

(p) For the purpose of calculating earnings limitations for retirants who have been restored to service, the retirant's maximum retirement allowance shall be considered to be the amount that would have been paid if there had not been any Hawaii domestic relations order applicable to the retirant.

(q) A court does not have jurisdiction over the system with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member, former member with vested benefit status, or retirant is created or established. A determination by the system that a domestic relations order is not a Hawaii domestic relations order shall be subject to review as provided in chapter 91 and the system's rules relating to contested cases. The system shall not be made party to any other judicial proceedings except as provided in this subsection. A party to any action who attempts to make the system a party to the action contrary to this subsection shall be liable to the system for the system's costs and attorney's fees in the action, including attorneys' fee and costs for obtaining a dismissal.

(r) If a member, former member with vested benefit status, or retirant, or the beneficiary or estate of any, receives the amount of any distribution that should have been paid by the system to the spouse or former spouse of the member, former member with vested benefit status, or retirant, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the person to whom the amount should have been paid. If a spouse or former spouse of a member, former member with vested benefit status, or retirant, or the estate, heirs, or legatees of the spouse or former spouse receive any amount of a distribution that should have been paid to a member, former member with vested benefit status, or retirant, or the estate, heirs, or legatees of any, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the member, former member with vested benefit status, or retirant or other person to whom the amount should have been paid. If a member, former member with vested benefit status, retirant, or the beneficiary, estate, heirs, or legatees of any, receives any amount that should not have been paid by the system, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the system. If an alternate payee or the estate, heirs, or legatee of the alternate payee, receives any amount that should not have been paid by the system, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the system.

(s) The board shall adopt rules in accordance with chapter 91, and adopt forms as it deems necessary to effectuate this section. The board, by motion at a duly noticed meeting of the board, may establish and revise from time to time:

(1) A filing fee for processing and review of domestic relations orders and proposed domestic relations orders for the purposes of this section;

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(2) A schedule of charges for legal and actuarial services incurred by the system in the review and processing of domestic relations orders and proposed Hawaii domestic relations orders for the purposes of this section; and

(3) A required form or forms for Hawaii domestic relations orders.

(t) Payments made to alternate payees according to the terms of Hawaii domestic relations orders are payments received by the retirant for purposes of sections 88-83(f) and 88-333(c), and the benefit that the retirant received for purposes of section 88-283(g).

(u) The priority of Hawaii domestic relations orders shall be determined by the order in which the certified copies of domestic relations orders are received by the system for qualification as a Hawaii domestic relations order, and not by the order in which domestic relations orders are determined to be Hawaii domestic relations orders, the order in which the domestic relations orders are entered by the court, the date the complaint for divorce is filed, the date upon which an order of divorce is entered, or the date of marriage.

HISTORY:

L 2016, c 263, § 2, effective July 1, 2018; am L 2018, c 30, § 1, effective July 1, 2020; am L 2021, c 70, § 1, effective June 24, 2021.

Amendment Notes.

The 2021 amendment added “or a copy of the divorce decree certified by the clerk of the court in which the divorce decree was filed” in (e); in (g)(1), deleted “and may also notify the member, former member with vested benefit status, or alternate payee” following “in writ-

ing” in the first sentence and added the second and third sentences; substituted “that the domestic relations order” for “that the order” in (g)(2); in (j), added “or former member with vested benefit status” in the first sentence, and in the last sentence, added “after terminating membership in the system by withdrawal of contributions or hypothetical account balance” and deleted “payable to the member or retirant” following “any benefits”; added (t) and (u); and made related and stylistic changes.

§ 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.

Amendment Notes.

The 2020 amendment substituted “retirant

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.”

D. ADMINISTRATION; FINANCING

§ 88-103.5. Disclosure of information.

(a) The employees’ retirement system shall:

(1) Disclose to the Hawaii employer-union health benefits trust fund and employee organizations information related to the administration of pen-

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sion, annuity, or retirement allowance deductions, as follows: name, social security number, and amounts and dates of both voluntary and mandatory deductions remitted to the recipient; and

(2) Release the records of its retirants and beneficiaries to the Hawaii employer-union health benefits trust fund for the disbursement of payments authorized under section 87A-23.

(b) Any government agency or employee organization receiving government records pursuant to this section shall be subject to the same restrictions on disclosure of the records as the originating agency.

(c) The following documents relating to the system's alternative investments shall be exempt from disclosure under chapter 92F:

(1) Private placement memoranda;

(2) Fund agreements and related documents, including subscription agreements, management agreements, side letters, guarantees, credit facility agreements, participation agreements, and trust documents;

(3) Confidential presentations or recommendations made to the system;

(4) Due diligence memoranda and other due diligence materials, including due diligence questionnaires;

(5) Documents containing information on any portfolio company, real property, or any other assets held by an alternative investment vehicle;

(6) Financial statements and other documents containing financial information of a fund or its general partner or manager, whether audited or unaudited, including but not limited to statements or information related to:

(A) Income statements;

(B) Balance sheets;

(C) Cash flows;

(D) Capital accounts;

(E) Investment rate-of-returns, including internal rate of returns and time-weighted rate of returns;

(F) Cash or in-kind distributions;

(G) Carried interests;

(H) Management and other fees; and

(I) Return multiples;

(7) Confidential correspondences between an alternative investment vehicle or its general partner, manager, advisor, or limited partner advisory committee, and the system;

(8) Capital call and distribution notices;

(9) Limited partner advisory committee and limited partner meeting notices, minutes, and materials, including without limitation any materials distributed at those meetings;

(10) Investment management agreements; and

(11) Placement agent disclosures and similar documents.

(d) The exemptions from disclosure under chapter 92F set forth in subsection (c) are in addition to any other records that may be exempt from disclosure pursuant to chapter 92F or any other law.

(e) As used in this section:

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“Alternative investment” means an actual or proposed investment by the system in a private equity fund, venture fund, hedge fund, fund of funds, absolute return fund, real estate fund, infrastructure fund, private credit, or other similar private market investments.

“Alternative investment vehicle” means the limited partnership, limited liability company, collective investment trust, or other legal structure of the alternative investment.

“Investment management agreement” means a contract to manage assets of the system.

“Limited partner advisory committee” means any limited partner or other advisory committee of an alternative investment vehicle.

HISTORY:

L 1990, c 250, § 2; am L 1998, c 89, § 1; am L 2004, c 10, § 2; am L 2021, c 71, § 2, effective June 24, 2021.

Amendment Notes.

The 2021 amendment added (c) through (e).

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;

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(5) Teachers and other personnel of the department of education under 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

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employees from more than one county. In that case, the simple majority shall include at least one county.

(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

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

91. Administrative Procedure

92. Public Agency Meetings and Records

92F. Uniform Information Practices Act

97. Lobbyists

CHAPTER 91

ADMINISTRATIVE PROCEDURE

Section

91-9. Contested cases; notice; hearing; interactive conference technology; records.

§ 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; interactive conference technology; records.

(a) Subject to section 91-8.5, in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;

(4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided that if the agency is unable to state the issues and facts in detail at the time the notice is served,

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the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished; and

(5) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

(c) The hearing may be held by interactive conference technology that allows interaction by the agency, any party, and counsel if retained by the party, and the notice identifies electronic contact information for each agency, party, and counsel if retained by the party. A contested case hearing held by interactive conference technology shall be recessed for up to one hour when audio communication cannot be maintained; provided that the hearing may reconvene when only audio communication is reestablished. If audio-only communication is reestablished, then each speaker shall state the speaker's name prior to making remarks.

(d) Opportunities shall be afforded all parties to present evidence and argument on all issues involved; provided that, if the hearing is held by interactive conference technology evidence may be submitted and exchanged by electronic means.

(e) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) For the purpose of agency decisions, the record shall include:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) Report of the officer who presided at the hearing; and
- (6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

(g) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(h) No matters outside the record shall be considered by the agency in making its decision except as provided herein.

(i) For the purposes of this subsection, "interactive conference technology" means any form of audio or audio and visual conference technology, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the agency, any party, and counsel if retained by the party.

HISTORY:

L 1961, c 103, § 9; Supp, § 6C-9; HRS § 91-9; am L 1980, c 130, § 1; am imp L 1984, c 90, § 1; am L 2003, c 76, § 2; am L 2021, c 168, § 2, effective October 1, 2021.

Amendment Notes.

The 2021 amendment added "interactive conference technology" in the section heading; added "and" at the end of (b)(4); added (c); redesignated former (c) through (g) as (d)

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through (h); added “provided that, if the hearing is held by interactive conference technology evidence may be submitted and exchanged by

electronic means” in (d); added “and” in (f)(5); added (i); and made a stylistic change.

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).

§ 91-11. Examination of evidence by agency.

NOTES TO DECISIONS

Refusal to hear arguments and consider exceptions.

In a case in which the Employees’ Retirement System, State of Hawai‘i Board’s final decision erroneously determined injured former employee’s proposed decision did not conform to Haw.

Admin. R. § 6-23-19, the Board refused to consider the merits of his exceptions, consequently, it had not complied with Haw. Rev. Stat. § 91-11. *Watanabe v. Employees’ Ret. Sys.*, 148 Haw. 508, 479 P.3d 126, 2021 Haw. LEXIS 6 (Haw. 2021).

§ 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

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

Appeals from labor and industrial relations board.

Regardless of an employer’s characterization of its employee as a “lead man,” rather than a “supervisor,” the circuit court was correct in

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affirming the Labor Relations Board's determination that the employee acted in a supervisory capacity and his knowledge could be imputed to the employer to establish that the employer knew or should have known of a hazardous condition with the exercise of due diligence. *IES Residential, Inc. v. Dir., Dep't of Labor & Indus. Relations*, 148 Haw. 474, 478 P.3d 299, 2021 Haw. App. LEXIS 1 (Haw. Ct. App. 2021).

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), vacated, 148 Haw. 508, 479 P.3d 126, 2021 Haw. LEXIS 6 (Haw. 2021).

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).

CHAPTER 92

PUBLIC AGENCY MEETINGS AND RECORDS

Part I. Meetings

Section

92-2. Definitions. [Effective January 1, 2022]

92-3.5. In-person meeting at multiple sites by interactive conference technology; notice; quorum.
[Effective January 1, 2022]

92-7. Notice. [Effective January 1, 2022]

PART I.

MEETINGS

§ 92-2. Definitions. [Effective January 1, 2022]

As used in this part:

“Board” means any agency, board, commission, authority, or committee of

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the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

“Chance meeting” means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

“Interactive conference technology” means any form of audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

“Meeting” means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

HISTORY:

L 1975, c 166, pt of § 1; am L 1976, c 212, § 1; am L 2012, c 202, § 1, effective July 1, 2012; am L 2021, c 220, § 3, effective January 1, 2022.

“Interactive conference technology”, deleted “audio or” following “any form of” and added “or audio conference technology where permitted under this part.”

Amendment Notes.

The 2021 amendment, in the definition of

§ 92-3.5. In-person meeting at multiple sites by interactive conference technology; notice; quorum. [Effective January 1, 2022]

(a) A board may hold an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) Any board member participating in a meeting by interactive conference technology under this section shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by interactive conference technology under this section shall be automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. The meeting may

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reconvene when either audio or audiovisual communication is restored. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

HISTORY:

L 1994, c 121, § 1; am L 2000, c 284, § 2; am L 2006, c 152, § 1; am L 2012, c 202, § 2, effective July 1, 2012; am L 2021, c 220, § 4, effective January 1, 2022.

Amendment Notes.

The 2021 amendment substituted “In-person meeting at multiple sites” for “Meeting” in the section heading; in (a), substituted “an in-person meeting at multiple meeting sites connected” for “a meeting,” added “audio or audiovisual,” and added the second and third sentences; added “under this section” in (b); rewrote (c), which formerly read: “A meeting held by interactive conference technology shall

be terminated when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.”

§ 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.*

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City & Cty. of Honolulu, 144 Haw. 466, 445 P.3d 47, 2019 Haw. LEXIS 150 (Haw. 2019).

Honolulu, 2019 Haw. LEXIS 150 (June 27, 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

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).

§ 92-7. Notice. [Effective January 1, 2022]

(a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board's electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting, the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

(b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall timely post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.

(c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be

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canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.

(d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b).

HISTORY:

L 1975, c 166, pt of § 1; am L 1976, c 212, § 2; am L 1984, c 271, § 1; am L 1985, c 278, § 4; am L 1995, c 13, § 2; am L 2012, c 177, § 2, effective July 1, 2012; am L 2014, c 68, § 1, effective April 30, 2014; am L 2018, c 63, § 1, effective July 1, 2018; am L 2017, c 64, § 2, effective July 1, 2018; am L 2019, c 244, § 2, effective July 2,

2019; am L 2021, c 220, § 5, effective January 1, 2022.

Amendment Notes.

The 2021 amendment added “the board’s electronic and postal contact information for submission of testimony before the meeting” in (a).

§ 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 individuals 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. 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.

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UNIFORM INFORMATION PRACTICES ACT

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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

In camera review.

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 because (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).

Attorney-client privilege.

Department of the Attorney General (Department) did not show a report the Department prepared at a legislator's request was exempt from disclosure because the Department showed no lawyer-client relationship, so the Department did not prove the evidentiary law-

yer-client privilege or the attorney conduct confidentiality rule covered the report, as nothing showed the legislature believed a lawyer-client relationship existed and that the report was communicated in confidence. *Honolulu Civil Beat Inc. v. Dep't of the AG*, 146 Haw. 285, 463 P.3d 942, 2020 Haw. LEXIS 54 (Haw. 2020).

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 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-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

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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-24.] Right to correct personal record; initial procedure.

NOTES TO DECISIONS

Right to alter birth certificate.

In an action by children against the Department of Health (DOH) under Haw. Rev. Stat. § 92F-27(a) seeking to change their birth certificates, because the trial court found that DOH had authority under Haw. Rev. Stat. §§ 92F-24 and 338-15 to make the changes, the children

prevailed and were entitled to fees and costs under § 92F-27(e). The DOH did not challenge the trial court's ruling on appeal and no exception to mootness applied; therefore, its appeal as to the substantive issues was moot. *Dasalia v. Onaka*, 148 Haw. 360, 476 P.3d 773, 2020 Haw. App. LEXIS 387 (Haw. Ct. App. 2020).

§ 92F-27. Civil actions and remedies.

§ 92F-43

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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).

ment of Health (DOH) under Haw. Rev. Stat. § 92F-27(a) seeking to change their birth certificates, because the trial court found that DOH had authority under Haw. Rev. Stat. §§ 92F-24 and 338-15 to make the changes, the children prevailed and were entitled to fees and costs under § 92F-27(e). The DOH did not challenge the trial court's ruling on appeal and no exception to mootness applied; therefore, its appeal as to the substantive issues was moot. *Dasalia v. Onaka*, 148 Haw. 360, 476 P.3d 773, 2020 Haw. App. LEXIS 387 (Haw. Ct. App. 2020).

Attorney's fees.

In an action by children against the Depart-

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).

CHAPTER 97

LOBBYISTS

Section

97-4. Manner of filing; public records.

§ 97-4. Manner of filing; public records.

All statements required by this chapter to be filed with the state ethics commission:

(1) Shall be deemed properly filed when delivered or deposited in an established post office within the prescribed time; duly stamped, registered, or certified; and directed to the state ethics commission; provided that in the event it is not received, a duplicate of the statement shall be promptly filed upon notice by the state ethics commission of its nonreceipt; and

(2) Shall be maintained by the state ethics commission for a period of six years from the date of filing; and shall constitute part of the public records of the state ethics commission.

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HISTORY:

L 1975, c 160, pt of § 1; am L 1979, c 91, § 12;
am L 1980, c 129, § 1(e); am L 1993, c 52, § 1;
am L 2021, c 190, § 1, effective July 6, 2021.

tuted “provided that” for “provided, however” in
(1); in (2), substituted “Shall be maintained” for
“Shall be preserved” and “six years” for “four
years”; and made stylistic changes.

Amendment Notes

2021 Haw. Sess. Laws, Act 190 § 1, substi-