

**REPORT TO THE 2006 LEGISLATURE ON  
POSITIONS EXEMPTED FROM THE CIVIL SERVICE  
AS REQUIRED BY H.C.R. NO. 270. H.D. 1,  
REGULAR SESSION OF 2005**

Prepared by the Department of Human Resources Development, December 29, 2005

**BRIEF SUMMARY OF REPORT**

The 2003 Legislature passed House Concurrent Resolution (H.C.R.) No. 94, House Draft (H.D.) 1, reiterating the Legislature's request for a review of exempt positions as required by Act 253, Session Laws of Hawaii (SLH) 2000. The Department of Human Resources Development (HRD) complied by submitting two reports (an initial and a supplemental) to the 2004 Legislature. The 2004 report and supplement focused on exemptions under subsection 76-16(b)(17), Hawaii Revised Statutes (HRS), which authorizes exemptions for positions that are exempted by any other law.

The 2004 Legislature passed Act 128, directing HRD to complete the study of exempt positions. HRD again complied and submitted a report to the 2005 Legislature. The 2005 Legislature acknowledged all of the reports submitted by HRD in 2004 and 2005. However, the Legislature noted that they did not have information on exempt employees from other State jurisdictions. Consequently, the Legislature passed H.C.R. No. 270. H.D. 1, requesting that HRD, the Judiciary, the Department of Education, the University of Hawaii, and the Hawaii Health Systems Corporation submit reports on their exempt positions to the 2006 Legislature.

In conducting the current study, HRD reviewed 149 exempt positions that were established after the cutoff dates used in the 2004 and 2005 reports (Attachment 1). There is a recommendation that three of the positions be replaced with civil service positions (Exhibit 2). The low number of positions recommended for replacement was anticipated because the positions reviewed are exempted by other laws, or are assigned to projects that must be approved by HRD on behalf of the Governor. In doing this report, HRD also reviewed new input from departments regarding some of the positions recommended for replacement in the 2004 reports. HRD identified changes to 31 positions (Attachment 9). These changes include positions that: (1) are exempted from the civil service by more than one provision within Section 76-16, HRS; (2) have been abolished; (3) have already been replaced with civil service positions; (4) have been legislatively moved to another department; or (5) have simply changed position titles.

In addition, the 2004 report and supplement contained proposed criteria for statutory exemptions. One of the 28 criteria was modified slightly in the 2005 report. The criteria

contained in the 2005 report (Attachment 8) were utilized as the basis for the review of the positions mentioned above. HRD continues to believe that while the statutory preference for civil service positions is appropriate, there are legitimate reasons for exempting positions from the civil service. Twenty-seven (27) of the proposed criteria represent typical valid reasons for exempting positions from the civil service. However, because it is impossible to anticipate all valid reasons for exemptions, HRD proposed a criterion that grants the Director of Human Resources Development the authority to exempt positions from the civil service for other valid reasons. Supplemental comments on selected proposed criteria are also contained in this report.

## **PART I INTRODUCTION**

The Civil Service Law (HRS Chapter 76) indicates that it is the policy of the State that State and county positions should be part of the civil service system unless there is a basis for exempting them from the civil service. Section 76-16, HRS, (Attachment 2) says:

“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.” (Emphases added.)

(Note: References to Sections 46-33 and 76-77 relate to additional civil service statutes governing exemptions for the counties.)

Recent legislative review of positions exempted from the civil service was initiated by Act 253, SLH 2000, which directed HRD to submit reports on positions permanently exempted from the civil service prior to the effective date of the Act. The 2003 Legislature followed up on the subject by passing H.C.R. No. 94, H.D. 1, which requested that HRD conduct a study of exempt positions and submit a report to the 2004 Legislature. In light of the magnitude of the undertaking, HRD was only able to review and report on those positions exempted from the civil service under subsection 76-16(b)(17), HRS, which are positions exempted by “any other law.”

The 2004 supplement indicated that there were 2,150 positions exempted from the civil service under subsection 76-16(b)(17), HRS. As of July 5, 2005, there were 2,167 positions exempted from the civil service under that subsection (Attachment 3). The 2004 report and its supplement also provided information regarding the general composition of exempt positions within the Executive Branch of State government, as

well as the difference between the civil service and the exempt service. That information has not been replicated in this report.

The 2004 Legislature then passed Act 128, SLH 2004. One of the provisions of that Act directed HRD to complete the review of exempt positions and to submit a report to the 2005 Legislature. HRD reviewed all of the remaining exempt positions, but focused primarily on positions exempted from the civil service under subsection 76-16(b)(12), HRS. These are exempt positions that are assigned to projects approved by the Governor. The study was completed and a report was submitted to the 2005 Legislature.

The 2005 report indicated that there were 392 positions exempted from the civil service under subsection 76-16(b)(12), HRS. As of July 5, 2005, there were 416 positions exempted from the civil service under that subsection. The 2005 report also provided information regarding the replacement of exempt positions with civil service positions. It explained the steps that HRD has taken to facilitate such actions. That information has not been replicated in this report, other than to note that the draft policy and procedures and the draft executive order mentioned in Part V of the 2005 report have been approved and are currently in effect (see Attachments 4 and 5). Also mentioned in the 2005 report were the supplemental agreements for BU 03, 04 and 13 (Attachment 6), which have expired. However, HRD is currently seeking union approval to extend them.

The 2005 Legislature noted that HRD reports did not include information regarding exempt positions and employees under the jurisdiction of other State public agencies. In light of this, the 2005 Legislature passed H.C.R. No. 270, H.D. 1 (Attachment 7), which requested that HRD, the Judiciary, the Department of Education, the University of Hawaii, and the Hawaii Health Systems Corporation report on exempt positions within their respective jurisdictions. The reports are to include:

1. when the position was established;
2. the purpose of the position;
3. the reason for the exemption from civil service;
4. findings and recommendations on whether the positions should remain exempt or be converted to civil service; and
5. the timetable by which the specified exempt positions will be converted to civil service.

The resolution also requests that, for positions which should remain exempt, the reports shall indicate whether the exemption should be temporary or permanent. If necessary, proposed legislation should be submitted.

HRD respectfully submits this written report to the 2006 Legislature in accordance with H.C.R. No. 270, H.D. 1, 2005 Legislative Session.

## **PART II SCOPE AND METHODOLOGY OF THE REVIEW**

This report updates the 2004 and 2005 reports to the Legislature. It covers positions exempted from civil service under subsections 76-16 (b)(12) and (17), HRS, that were established after the cutoff dates of the previous reports. While all exempt positions under the jurisdiction of HRD were reviewed for the 2004 and 2005 reports, only those exempted under subsections (12) and (17) are reported in detail. This is because little or no discretion is utilized in the determination of exemptions under any of the other subsections.

A cutoff date of September 16, 2005, was utilized for this report. It is also noted that, as a result of Act 51, SLH 2004, HRD no longer has jurisdiction over Department of Education exempt positions (except for public libraries), including those that were covered by the 2004 and 2005 reports.

As with the 2004 and 2005 reports, HRD worked collaboratively with other departments in preparing this report. Positions established after the previous cutoff dates were identified through the Human Resources Management System (HRMS) and lists of the positions, by department, were created. The departments were instructed to: review their lists; correct any erroneous information; add positions that were missing; and determine which, if any, of the exemption criterion proposed in the previous reports (Attachment 8) is applicable to each position. Departments were also given the opportunity to provide additional information regarding positions which were recommended for replacement with civil service positions in the 2004 report. All of the information and input from the departments were then reviewed and analyzed by staff within the Employee Classification and Compensation Division of HRD.

## **PART III COMMENTS REGARDING SELECTED PROPOSED EXEMPTION CRITERIA**

In the 2004 report and supplement, HRD proposed 28 criteria for exemption. In the 2005 report, HRD proposed an amendment to criterion 14, "Temporary positions required for special, demonstration or research projects."

Furthermore, as a result of extensive studies of exempt positions for three successive years, it has become clear that whether authorized by legislation, or through the application of exemption provisions by HRD, exemptions from civil service should be determined on a rational, systematic basis. The basic question to be asked is, "Why shouldn't or why can't the position(s) in question be established and filled on a civil service rather than on an exempt basis?" In the vast majority of cases where it is found

that exemption from civil service is appropriate, the reason relates to one of the proposed criteria.

The following comments provide additional insights regarding exemptions from the civil service.

#### Immediate Services Required to Avoid Court Ordered Penalties or Actions

The Felix Consent Decree ended in 2005. HRD and affected departments are determining what actions are necessary for positions exempted from civil service under the Felix Consent Decree.

Subsection 76-16(b)(3), HRS, provides an exemption from civil service for “Positions that must be filled without delay to comply with a court order or decree.” This exemption is consistent with a criterion proposed in the 2004 and 2005 reports. Court orders or consent decrees are issued because services that the programs are obligated to provide are not being adequately addressed. When a court order or consent decree is issued, there is normally an immediate and compelling need for programs to respond. In some cases, the programs may not be able to respond because the establishment and filling of civil service positions to provide required services may not be feasible. To the extent that the needs are likely to be ongoing or possibly permanent, programs should have an underlying understanding that it will eventually be necessary to abolish the exempt positions and replace them with civil service positions. Therefore, programs should proceed to establish and fill replacement civil service positions as soon as it becomes feasible. Waiting for the court order or consent decree to be lifted may create a workload crisis for HRD and the applicable departmental personnel office.

When the court order or consent decree is lifted, the basis for the exemptions from civil service ceases to exist. Notwithstanding, services must continue to be provided without interruption.

Because it takes time to establish and fill replacement civil service positions, exempt positions and appointments cannot be terminated immediately. Where there are existing classes of work and the ability to fill the positions quickly, it should be possible to establish and fill replacement civil service positions within months. Where the organizational structure of the program is unstable, and the duties of positions are subject to change, it is not practical to establish and fill replacement civil service positions until the permanent structure of the program is determined. In addition, it may be necessary to establish new civil service classes in order to accommodate the replacement of exempt positions with civil service positions. Even after the classes and positions are established, it will be necessary to recruit in order to fill the new positions. In view of the foregoing prerequisites, the exempt positions may need to be extended and utilized, sometimes well beyond the date the court order or consent decree was lifted.

As indicated in PART V of the 2005 report, when replacing exempt positions with civil service positions, it is often necessary or desirable to appoint the incumbent of the exempt position (as the most qualified applicant) into the replacement civil service position. To facilitate this action, the administration has negotiated or administratively established applicable compensation provisions. These provisions allow exempt employees appointed to replacement civil service positions to be compensated at rates comparable to what the employees would be paid if initially appointed to civil service positions.

There are generally no legal or formal constraints regarding the initial compensation for exempt employees. Accordingly, programs may compensate exempt employees at rates that are, at times, higher than comparable civil service employees. If the higher rate is justified due to recruitment difficulty, the employee can be appointed to the replacement civil service position and be compensated at a higher rate by conducting an open-competitive recruitment above the minimum. If the requirements for a position are so unique that qualified individuals cannot be hired utilizing civil service pay scales, then this would be a valid reason for statutorily exempting the position from the civil service.

#### Temporary Positions

This exemption criterion is similar to an exemption provision that existed previously but has since been repealed. Prior to July 1, 2002, subsection 76-16(3), HRS, exempted "Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year . . . and . . . recruitment through the civil service procedures is not practicable." However, rather than repealing the provision, a better course of action might have been to retain the provision and install controls, such as requiring that the establishment and filling of replacement civil service positions be actively pursued as soon as feasible. This would be consistent with the preference for civil service positions stated in subsection 76-16(a), HRS.

### **PART IV UPDATED INFORMATION**

The 2004 report recommended that some positions exempted from the civil service under subsection 76-16(b)(17), HRS, be replaced with civil service positions. Attachment 9 updates information from the 2004 report. The information includes:

1. positions that have been abolished;
2. positions whose titles have changed;
3. positions transferred to another department; and

4. positions that are exempted from the civil service under more than one subsection of Section 76-16, HRS.

## **PART V RECOMMENDATIONS, PROPOSED LEGISLATION AND TIMETABLE**

As indicated in Part II, recommendations in this report are limited to positions exempted from the civil service under subsection 76-16(b)(17), HRS, “by other law” and subsection 76-16(b)(12), HRS, “project exemptions,” that were established after the cutoff dates for the 2004 and 2005 reports. This is, in part, due to the fact that little or no discretion is utilized in the determination of exemptions under any of the other subsections.

The additional positions established under subsection 76-16(b)(12), HRS, are listed in Exhibit 1. None of those positions are recommended for replacement with civil service positions. This is consistent with the proposed exemption criterion 14, “Temporary Positions Required for a Special, Demonstration or Research Project.” Although statutorily assigned to the Governor, the authority to approve projects was delegated to the Director of Human Resources Development since March 29, 1999.

Initial project requests are reviewed by HRD staff. Only projects meeting the criteria specified in the 2005 report are recommended for approval. Project approvals are granted for limited durations and requests for extensions must be submitted to HRD if there is a need for the project to continue beyond the specified end date.

In reviewing requests for project extensions, HRD determines whether there is sufficient justification for the extension and also whether the specified activities are now an actual function of the program. If it appears that the project is no longer justified or has become an ongoing function of the program, HRD staff recommends disapproval of the extension. If it appears that the activities may have become an ongoing function of the program, a limited extension is granted (normally one year), and the department is requested to submit additional justification within six months. In light of the process utilized by HRD, there is no need for any exempt “project” positions to be replaced by civil service positions. It should also be noted that HRD encourages departments to voluntarily replace exempt project positions with civil service positions and some departments have done so. Inasmuch as all projects are temporary by definition, the continued exemptions from civil service should remain temporary.

The additional positions established under subsection 76-16(b)(17), HRS, are listed in Exhibits 2 and 3. These are positions exempted from civil service through legislation. Eleven (one position in the Department of Business, Economic Development and Tourism and ten positions in the Department of Budget and Finance) of the positions relate to criterion 27. This criterion involves the discretion of the Director of Human Resources Development and the specific reasons for the exemption are appended to Exhibit 3. HRD recognizes the right and authority of the Legislature to make such

decisions. Accordingly, HRD makes no recommendation to change any of these legislative determinations.

The Department of Budget and Finance has recommended that an exempt Account Clerk position within the Office of the Public Defender be replaced with a civil service position. HRD supports this recommendation.

The “other laws” that provide for exemption from civil service are either mandatory (shall) or discretionary (may). The specific citations of law for the updated positions are shown in Attachment 10. For positions exempted from civil service by mandatory statutes, the exemptions are permanent. For positions exempted from civil service by discretionary provisions, the exemptions should be permanent unless the program or department determines that the positions should be replaced with civil service positions.

It is recommended that the mandatory provision in the law for the above-mentioned position in the Office of the Public Defender be modified to be discretionary. If legislation is passed to make the statutory provision discretionary, it should be possible for the Department of Budget and Finance to establish and fill a replacement civil service position within six months since there is an existing civil service class that the position can be allocated to.

The Department of Accounting and General Services has similarly recommended that an Election Information Specialist and Election Specialist also be replaced with civil service positions. HRD also supports this recommendation. However, the law supporting the exemptions is already discretionary. Therefore, no changes are needed to establish the replacement of civil service positions.

H.C.R. No. 270, H.D.1, requests that the report indicate whether the exempt positions “should be exempted permanently and, if so, whether from civil service recruitment or [from] the classification systems, or both.” HRD does not utilize the provisions relating to “exemption from civil service recruitments” for positions that are classified on a civil service basis. Exemptions from the civil service are only utilized if based on provisions contained in subsection 76-16(b), HRS.

## **PART VI CONCLUSION**

This report is an update of the reports to the 2004 and 2005 Legislatures. HRD’s focus was on positions exempted from the civil service under the provisions of subsection 76-16 (b)(17), HRS, exemptions based on “any other law” and subsection 76-16(b)(12), HRS, “project exemptions.” As in the previous studies, HRD has found that:

1. The preference for civil service positions is appropriate because it provides for selection and retention of employees based on merit, a career service in government, and impartial service to the public at all times.

2. There are legitimate needs for exempt positions and employees. The common bases for exemption from civil service are contained in the exemption criteria proposed in the 2004 report and refined in the 2005 report. Limitations on the use of exempt positions should be based on need, rather than a numerical limitation.
3. In certain instances, it is desirable and appropriate for exempt positions to be replaced with civil service positions. Changes have been made to facilitate the appointment of exempt employees to replacement civil service positions without having to be compensated at entry level rates.
4. HRD continues to believe that the automatic “grandfathering” of exempt employees into the civil service, without the opportunity for qualified civil service applicants to be considered, is inappropriate.

As a result of the current study, HRD offers the following additional findings:

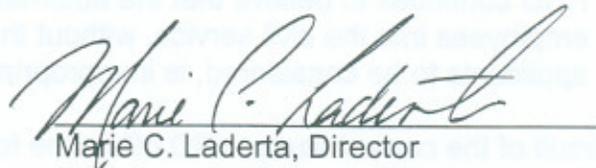
1. Although at times it is desirable and appropriate for exempt positions to be replaced with civil service positions, HRD may not have the statutory authority to require such action. An example is when the positions are exempted from the civil service due to a court order or consent decree.
2. Although there is a statutory basis for exempting positions from the civil service, sometimes the positions can and should be established and filled on a civil service basis.
3. The compensation of exempt employees entering civil service should be consistent with the compensation of comparable civil service employees.
4. Whether determined by legislation or through the application of exemption provisions by HRD, exemptions from civil service should be determined on a rational, systematic basis.
5. The administration should be given flexibility to establish and fill exempt positions, especially when the positions are required by a court order or consent decree or when the positions are needed to serve a compelling public interest. However, the administration should be judicious in the use of exempt positions in light of the preference for civil service positions expressed in Section 76-16, HRS.

The studies of exempt positions conducted by the staff of the Employees Classification and Compensation Division during the past three years have been worthwhile. The benefits have been in the development of functional criteria for determining position exemptions, increasing exemption awareness and accountability, defining and documenting exemption terms/parameters, reviewing exempt statutes/positions in

collaboration with departments, and providing recommendations and the methodology to replace exempt positions with civil service positions as necessary. However, the exempt studies have constituted a significant workload factor for the Division's limited staff. Consequently, HRD hopes that these reports have successfully provided the Legislature with all of the information necessary for their consideration on positions exempted from civil service coverage.

DATED: Honolulu, Hawaii, December 29, 2005

Respectfully submitted,



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Development

Attachments

**Summary of Recommendations (updated as of 9/16/2005)**

	DAGS	DOA	AG	B&F	BEDT	DCCA	DOD	DOE	DOH	HHL	HMS	Gov	DLIR	DLNR	Lib	LG	PSD	TAX	DOT	Totals
<b>Positions - Subsection (17)</b>	2			11	15	6			1	11	2			18		1	3	2		<b>72</b>
Replace with Civil Service	2			1																3
Remain Exempt				10	15	6			1	11	2			18		1	3	2		69
<b>Positions - Subsection (12)</b>	1		1	6	2		13		22		24						6		2	<b>77</b>
* Remain Exempt	1		1	6	2		13		22		24						6		2	77
<b>Total Recommendations (updated)</b>	<b>3</b>		<b>1</b>	<b>17</b>	<b>17</b>	<b>6</b>	<b>13</b>		<b>23</b>	<b>11</b>	<b>26</b>			<b>18</b>		<b>1</b>	<b>9</b>	<b>2</b>	<b>2</b>	<b>149</b>

\* Note: We have determined that all positions in the study exempted from civil service coverage pursuant to HRS 76-16(b)(12) will remain exempt. The projects are reviewed individually upon their expiration date and a determination will be made at that time whether the exemptions should be continued or replaced with civil service positions.

## Hawaii Revised Statutes, Governing Exemptions from the Civil Service

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

(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 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 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 housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation 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 severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff;
- (26) A gender and other fairness coordinator hired by the judiciary; and
- (27) Positions in the Hawaii national guard youth challenge academy.

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 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). [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, c 106, §1, c 112, §1, c 134, §2, c 211, §10, and c 256, §1; am L 1990, c 79, §1, c 219, §2, c 233, §1, c 281, §§3, 11, and 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, §21 and c 93, §1, as superseded by c 223, §1; am L 1995, c 145, §1 and c 162, §2; am L 1997, c 350, §14; am L 1998, c 87, §1; am L 2000, c 253, §14; am L 2002, c 65, §3, c 66, §1, and c 148, §4; am L 2003, c 187, §3]

Summary of Exempt Positions by Subsections

Subsection	AGR	AGS	ATG	BED	BUF	CCA	DEF	GOV	HHL	HMS	HRD	HTH	LBR	LIB	LNR	LTG	PSD	TAX	TRN	UOH	Total	
1							13															13
2													1									1
3										28		374										402
5								70		7		1	2			8	1					89
6								1								1						2
7	1	2	1	1	1	1	1		1	1	1	2	7				4	1	1			27
9	2	2	1	2	2	2	2		2	2	2	4	2	1	3		4	2	4	19		58
10			211																			211
12	1	20	9	27	8	1	37			116	1	159	1		5		18	4	9		416	
13		21	31	52	56	35	6			64	1	19	13	1703	210	65	5	1		258	2540	
14																1						1
15							1					10									240	251
16	1	1		1	1	1	1		1	1	1	5	1	1	1			1	4		22	
17	22	1070	12	99	172	208	4	2	113	109		82	66	3	99	24	62	11	9		2167	
18										61												61
19																					1	1
21										40												40
22																					15	15
23												1								3	3	7
25																	1					1
27							68															68
Total	27	1116	265	182	240	248	133	73	181	366	24	652	1782	215	175	38	91	19	288	278	6393	

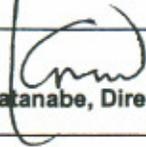
Summary of Exempt Employees by Subsections

Subsection	AGR	AGS	ATG	BED	BUF	CCA	DEF	GOV	HHL	HMS	HRD	HTH	LBR	LIB	LNR	LTG	PSD	TAX	TRN	UOH	Total	
1							5															5
2													1									1
3													5									5
5																5	1					6
6																1						1
7	1	2		1		1							1		1		2		1			10
9	2	2					2							1	3		2	1	3	4		20
10			6																			6
12	1	20		15	1	1	13					4			5		9	3	7		79	
13		18	8	36	30	24	1					4	431	77	47	4			186		866	
14															1							1
15							1														127	128
16	1	1		1		1												1	2		7	
17	21	650		21	67	82			1			4	7		62	16	47	6	5		989	
18																						
19																						
21																						
22																					11	11
23												1								2	1	4
25																	1					1
27							24															24
Grand Total	26	693	14	74	98	111	44		1			19	439	78	119	26	62	11	206	143	2164	

Notes: HRMS data as of 7/5/05.

Effective 7/1/05, DOE (except LIB (public libraries)) is not included in this study pursuant to Act 51, SLH 2004.

Subsections (4), (8), (11), and (26) are being maintained by other jurisdictions or personnel systems, therefore not included in this study.

 <p style="text-align: center;"><b>STATE OF HAWAII</b> DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT <b>POLICIES AND PROCEDURES</b></p>	<b>POLICY NO.</b> 1000.002 ECCD	<b>NO. of PAGES</b>  10
	<b>EFF. DATE</b>  02/03/05	<b>REV. NO./Date</b>
<b>TITLE:</b> <b>APPOINTMENT OF EXEMPT EMPLOYEES TO CIVIL SERVICE POSITIONS</b>		<b>APPROVED:</b>  Kathleen N. A. Watanabe, Director

## I. POLICY

The compensation and conditions of employment of exempt employees who are appointed to civil service positions must be fair and comparable relative to the compensation and conditions of employment of other civil service employees. The exempt employees' service to the State should also be recognized

NOTE: Portions of this policy and procedures facilitates the implementation of Act 128, Session Laws of Hawaii (SLH) 2004, which has a sunset date of June 30, 2006. Therefore, those portions of the policy and procedures shall sunset on June 30, 2006, unless the applicable provisions are extended or made permanent.

## II. RATIONALE

Pursuant to Section 76-1, Hawaii Revised Statutes (HRS), all employees within the civil service, whether they initially entered State service as a civil service employee or as an exempt employee, should be treated fairly and equitably.

## III. DEFINITIONS

"Cross bargaining unit," for purposes of this policy and procedures, means the movement of an employee from a position assigned to one BU to a position in another BU, and/or between positions which are included and excluded from collective bargaining or vice versa.

"Internal vacancy announcement" (IVA) means a recruitment notice conducted by an appointing authority announcing the receipt of applications from employees with civil service membership, employees in Temporary Appointment Outside the List (TAOL) appointments, and exempt employees, as defined in Section V of this policy or the *Internal Recruitment for Civil Service Positions* Policy Number 300.002, of a particular State agency in the Executive Branch.

"Probation period" means a period of not less than six months and not more than one year which serves as the final test of an employee's qualifications for the position in which employed.

"Replacement position" means a civil service position established with substantially the same functions of an existing exempt position, and the exempt

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position is to be abolished upon the filling of the civil service position. The department may reallocate the position downward from the authorized level for recruitment purposes.

**IV. SCOPE**

Provisions covering the compensation of included exempt employees appointed to civil service positions within the same bargaining unit (BU) are covered by provisions negotiated with the exclusive representative for the BU. The compensation of excluded exempt employees appointed to civil service positions that are excluded from collective bargaining are covered by executive order provisions. The compensation of exempt employees appointed to civil service positions on a cross bargaining unit basis are covered by this policy and procedures.

This policy and all non-compensation procedures contained herein apply to all exempt employees who receive civil service appointments, unless otherwise specified. The compensation procedures contained herein pertain solely to cross bargaining unit appointments of exempt employees to civil service positions arising from the provisions of Act 128, SLH 2004, and cross bargaining unit appointments of exempt employees to civil service positions that replace the exempt positions that they occupy.

**V. ELIGIBILITY OF EXEMPT EMPLOYEES TO APPLY IN RESPONSE TO  
INTERNAL VACANCY ANNOUNCEMENT FOR REPLACEMENT POSITIONS**

- A. The incumbent of an exempt position that is being replaced by a civil service position shall be allowed to apply for the replacement position through an IVA, if the department chooses to conduct an IVA to fill the position, provided that the incumbent occupied the exempt position for a minimum of one year performing substantially similar functions immediately preceding the filling of the replacement position.
- B. Periods of unpaid absences such as leaves without pay and suspensions shall not be credited toward calculation of the "one year requirement." Such absences shall not constitute a break in service.
- C. In the event that an exempt employee meets the aforementioned "one year requirement," the department shall inform the employee, in writing, no later than the date of the IVA, that the employee is entitled to apply in response to the IVA.
- D. If the IVA is for more than one position, the exempt employee shall be informed of the applicable position number.

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E. The exempt employee must meet all applicable requirements (e.g., minimum qualification requirements and public employment requirements) to be considered a qualified candidate.

**VI. SEVERANCE OF EXEMPT EMPLOYMENT**

Upon appointment to the civil service position, the employee's exempt appointment shall be simultaneously terminated.

**VII. PUBLIC EMPLOYMENT AND SUITABILITY REQUIREMENTS**

Exempt employees appointed to civil service positions must meet the same public employment and suitability requirements as individuals who are initially appointed to civil service positions, unless they have already fulfilled those requirements as a result of their exempt employment.

**VIII. INITIAL COMPENSATION**

**A. Exempt Employees Subject to Act 128 [Section 76-16(j), HRS]**

Section 76-16(j), HRS, authorizes certain appointed officials and exempt employees to apply for appointment to civil service positions through intra- and inter-departmental competitive recruitments and in response to IVAs. The Director of Human Resources Development has determined which employees are covered by the provisions and has issued instructions and guidance regarding this matter. The following provisions shall continue in effect as long as the provisions of Section 76-16(j), HRS, remain applicable. Upon appointment to a civil service position, the initial compensation of a previously covered appointed official or exempt employee shall be determined as follows:

**1. Appointments to Positions Included in or Excluded from BU 01**

- a. Determine continuous State Executive Branch service within BU 01 or as an employee excluded from BU 01.
- b. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements.
- c. Deduct from the employee's qualifying State service the minimum amount of experience required.

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- d. If the employee has one year or more of excess qualifying State service, compensate the employee at the Step A rate. If not, compensate the employee at the minus one percent (-1%) rate.
2. Appointments to Positions Included in or Excluded from BU 02
    - a. Determine continuous State Executive Branch service within BU 02 or as an employee excluded from BU 02.
    - b. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements.
    - c. Deduct from the employee's qualifying State service the minimum amount of experience required.
    - d. If the employee has less than 10 years of excess qualifying State service, compensate the employee at the Step A rate. If the employee has at least 10 years, but less than 15 years of excess qualifying State service, compensate the employee at the L1 rate. If the employee has 15 or more years of excess qualifying State service, compensate the employee at the L2 rate.
  3. Appointments to Positions Included in or Excluded from BUs 03, 04, and 13

Appointed officials and exempt employees subject to the provisions of Section 76-16 (j), HRS, who are appointed to civil service positions in or excluded from BUs 03, 04 and 13 shall be initially compensated according to the supplemental agreements negotiated for those BUs.

4. Appointments to Positions Included in or Excluded from BU 09
  - a. Determine continuous State Executive Branch service within BU 09 or as an employee excluded from BU 09.
  - b. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements.
  - c. Deduct from the employee's qualifying State service the minimum amount of experience required.
  - d. Employees appointed at the SR-18 level will be compensated at Step B.

**APPOINTMENT OF EXEMPT EMPLOYEES TO CIVIL  
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- e. Employees appointed at SR-20 and above shall be compensated as follows:

<u>Years of Service As a Registered Prof. Nurse</u>	<u>Step</u>
12 months within the preceding 5 years	C
18 months within the preceding 5 years	D
*5 years within the preceding 5 years	E
*10 years, of which 5 must have been within the preceding 5 years	L1
*20 years, of which 5 must have been within the preceding 5 years	L2

\*These years must have been excess qualifying experience gained within the above-mentioned continuous State service.

5. Appointments to Positions Included in or Excluded from BU 10

- a. Determine continuous State Executive Branch service within BU 10 or as an employee excluded from BU 10 prior to July 1, 1992\*\*.
- b. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements.
- c. Deduct from the employee's qualifying State service the minimum amount of experience required.
- d. Determine the amount of excess qualifying State service\* the employee has, and compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
1	0 < 1
2	1 < 6
3	6 < 11
4	11 or more

\*The BU 10 collective bargaining agreement does not and has not had provisions for step movement based upon service and the mass adjustments since July 1, 1992, have not involved step movements. Therefore, experience since that date is being excluded when determining qualifying State service.

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\*\*For Correctional Officer classes, only excess qualifying State  
Correctional Officer experience is creditable.

6. Appointments to Positions Included in or Excluded from BU 11

- a. Determine continuous State Executive Branch service within BU 11 or as an employee excluded from BU 11.
- b. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements.
- c. Deduct from the employee's qualifying State service the minimum amount of experience required.
- d. Determine the amount of excess qualifying State service which qualifies as "Airfield Firefighting Experience" that the employee has and compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
E	0 < 4
F	4 < 7
G	7 < 10
H	10 < 13
L1	13 < 16
L2	16 < 19
L3	19 < 22
L4	22 or more

7. Appointments to EMCP Positions

- a. Determine the employee's continuous State Executive Branch service, irrespective of BU or inclusion or exclusion from collective bargaining.
- b. Identify all experience within the continuous period that can be utilized to meet the minimum qualification and/or selective certification experience requirements.
- c. Deduct from the employee's qualifying State service the minimum amount of experience required.

**APPOINTMENT OF EXEMPT EMPLOYEES TO CIVIL  
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- d. Determine the amount of excess qualifying State service that the employee has and round down to the nearest whole year.
- e. Multiply the number of whole years from "d" by 4%.
- f. Determine the difference between the minimum and maximum rates of the applicable salary range.
- g. Multiply the difference identified in "f" by the product of "e."
- h. Add the product of "g," rounded to the nearest whole number, to the minimum rate of the salary range and that sum is the employee's monthly salary, provided that the salary shall not exceed the individual's existing salary by more than 12%.

**B. Exempt Employees Whose Positions are Replaced by Civil Service Positions**

At times, positions which are exempt from the civil service are replaced by civil service positions. If a former exempt employee is appointed to a replacement civil service position on a cross bargaining unit basis, his/her initial compensation, provided he/she has occupied the previous exempt position for a minimum of one year, shall be determined as follows:

1. Appointments to Positions Included in or Excluded from BU 01
  - a. Determine continuous State Executive Branch service within BU 01 or as an employee excluded from BU 01.
  - b. If the employee has one year or more years of service, compensate at the Step A rate. If not, compensate the employee at the minus one percent (-1%) rate.
2. Appointments to Positions Included in or Excluded from BU 02
  - a. Determine continuous State Executive Branch service within BU 02 or as an employee excluded from BU 02.
  - b. If the employee has less than 10 years of service, compensate the employee at the Step A rate. If the employee has at least 10 years, but less than 15 years of service, compensate the employee at the L1 rate. If the employee has 15 or more years of service, compensate the employee at the L2 rate.
3. Appointments to Positions Included in or Excluded from BUs 03, 04, and 13

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Appointed officials and exempt employees who are appointed to civil service positions included in or excluded from BUs 03, 04 and 13 shall be initially compensated according to supplemental agreements negotiated for those BUs.

4. Appointments to Positions Included in or Excluded from BU 09
  - a. Determine continuous State Executive Branch service within BU 09 or as an employee excluded from BU 09.
  - b. Employees appointed at the SR-18 level will be compensated at Step B.
  - c. Employees appointed at SR-20 and above shall be compensated as follows:

<u>Years of Service As a Registered Prof. Nurse</u>	<u>Step</u>
12 months within the preceding 5 years	C
18 months within the preceding 5 years	D
*5 years within the preceding 5 years	E
*10 years, of which 5 must have been within the preceding 5 years	L1
*20 years, of which 5 must have been within the preceding 5 years	L2

\*These years must have been qualifying experience gained within the above-mentioned continuous State service.

5. Appointments to Positions Included in or Excluded from BU 10

Determine continuous State Executive Branch service within BU 10 or as an employee excluded from BU 10 prior to July 1, 1992, and compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
1	0 < 1
2	1 < 6
3	6 < 11
4	11 or more

6. Appointments to Positions Included in or Excluded from BU 11

**APPOINTMENT OF EXEMPT EMPLOYEES TO CIVIL  
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- a. Determine continuous State Executive Branch service within BU 11 or as an employee excluded from BU 11.
- b. Determine the amount of service which the employee has and compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
E	0 < 4
F	4 < 7
G	7 < 10
H	10 < 13
L1	13 < 16
L2	16 < 19
L3	19 < 22
L4	22 or more

**7. Appointments to EMCP Positions**

- a. Determine the employee's continuous State Executive Branch service, irrespective of BU or inclusion or exclusion from collective bargaining, and round down to the nearest whole year.
- b. Multiply the number of whole years from "a" by 4%.
- c. Determine the difference between the minimum and maximum rates of the applicable salary range.
- d. Multiply the difference identified in "c" by the product of "b."
- e. Add the product of "d," rounded to the nearest whole number, to the minimum rate of the salary range and the sum is the employee's monthly salary, provided that the salary shall not exceed the individual's existing salary by more than 12%.

**IX. INITIAL PROBATION PERIOD**

Pursuant to Section 14-3.05-3 of the State of Hawaii Human Resources Rules, and Section 76-27, HRS, exempt employees who receive civil service appointments, other than by action of the Legislature, must serve an initial probation period.

**APPOINTMENT OF EXEMPT EMPLOYEES TO CIVIL  
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**X. BACKGROUND**

Act 128, SLH 2004, allows exempt employees with six consecutive years of satisfactory service to apply for civil service positions through internal recruitments.

The State's hiring policy, as articulated in the *Hiring Rates – Recruitment and Appointment Above the Minimum Pay Rate for Civil Service Positions Policy* Number 201.002 states, "All initial appointments shall be made at the minimum rate of the appropriate salary range." Inasmuch as exempt appointments are not civil service appointments, appointments of exempt employees to civil service positions, other than by action of the Legislature, are initial appointments. However, in some situations the initial compensation may be above the minimum rate of the applicable salary range pursuant to supplemental agreement or executive order provisions, or pursuant to this policy and procedure.

**XI. AUTHORITIES AND REFERENCES**

§14-1-3(G), Subchapter 1, Title 14, Chapter 1, State of Hawaii Human Resources Rules

§14-1-15, Subchapter 2, Title 14, Chapter 1, State of Hawaii Human Resources Rules

§14-3.05-3, Subchapter 2, Title 14, Chapter 3.05, State of Hawaii Human Resources Rules

Act 128, SLH 2004

§76-27, Hawaii Revised Statutes, *Probationary service and other requirements for membership in civil service*

Implementation of Act 128, Memorandum from Director of Human Resources Development to Department Heads dated June 30, 2004.

**EXECUTIVE ORDER NO. 05- 02**

WHEREAS, section 89C-2 of the Hawaii Revised Statutes (HRS) authorizes the Governor to make adjustments to the wages, hours, benefits, and terms and conditions of employment for appointed officials and public officers and employees within the state government executive branch who are excluded from collective bargaining;

WHEREAS, section 89C-2 (5), HRS, requires that adjustments for excluded employees, other than non-managerial civil service employees, shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, but does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions;

WHEREAS, section 76-16(j), HRS, provides that exempt employees with six consecutive years of satisfactory service shall be allowed to apply for intra and inter-departmental transfers and promotional exams for which they meet the minimum qualifications as prescribed by the class specifications;

WHEREAS, supplemental agreements have been negotiated with the Hawaii Government Employees Association (HGEA) as the exclusive representative for Bargaining Units (BUs) 03, 04, and 13 amending the compensation adjustment articles of the respective collective bargaining agreements for included exempt employees;

WHEREAS, the Director of the Department of Human Resources Development (DHRD) has recommended to the Governor the adjustments specified in this executive order;

NOW, THEREFORE, I, Linda Lingle, Governor of Hawaii, pursuant to the provisions of chapter 89C, HRS, do hereby grant to appointed officials and employees in the state government executive branch who are exempt from the civil service and excluded from collective bargaining the following adjustments effective as of July 1, 2004. The compensation adjustments shall be implemented as follows:

I. EXEMPT EXCLUDED EMPLOYEES SUBJECT TO SECTION 76-16(j), HRS

Pursuant to instructions and guidance by the Director of DHRD, all Departmental Personnel Officers (DPOs) in the Executive Branch shall implement the current provisions of section 76-16(j) as follows:

A. Appointments of Appointed Officials and Exempt Excluded Employees to Civil Service Positions Excluded from BU 01

1. Determine the amount of continuous State executive branch service the employee has within BU 01, or as an employee excluded from BU 01;
2. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements;
3. Deduct from the qualifying State service the amount of experience required; and
4. If the employee has one year or more of excess qualifying State service, the employee shall be compensated at the Step A rate of the BU 01 salary schedule for the applicable pay range. If not, the employee shall be compensated at the minus one percent (-1%) rate of the BU 01 salary schedule for the applicable salary range.

B. Appointments of Appointed Officials and Exempt Excluded Employees to Civil Service Positions Excluded from BU 02

1. Determine the amount of continuous State executive branch service the employee has within BU 02, or as an employee excluded from BU 02;
2. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements;
3. Deduct from the qualifying State service the amount of experience required; and

4. If the employee has less than 10 years of excess qualifying State service, the employee shall be compensated at the Step A rate of the BU 02 salary schedule for the applicable salary range. If the employee has at least 10 years, but less than 15 years of excess qualifying State service, the employee shall be compensated at the L1 rate of the BU 02 salary schedule for the applicable salary range. If the employee has 15 or more years of excess qualifying State service, the employee shall be compensated at the L2 rate of the BU 02 salary schedule for the applicable salary range.

C. Appointments of Appointed Officials and Exempt Excluded Employees to Civil Service Positions Excluded from BUs 03, 04, and 13

Appointed officials and exempt excluded employees subject to the provisions of subsection 76-16 (j), HRS, who are appointed to civil service positions excluded from BUs 03, 04 and 13 shall be initially compensated according to the supplemental agreements negotiated for those bargaining units.

D. Appointments of Appointed Officials and Exempt Excluded Employees to Civil Service Positions Excluded from BU 09

1. Determine the amount of continuous State executive branch service the employee has within BU 09, or as an employee excluded from BU 09;
2. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements;
3. Deduct from the qualifying State service the amount of experience required;
4. Employees appointed at the SR-18 level shall be compensated at Step B of the BU 09 salary schedule; and
5. Employees appointed at SR-20 and above shall be compensated as follows:

<u>Years of Service As a Registered Prof. Nurse</u>	<u>Step</u>
12 months within the preceding 5 years	C
18 months within the preceding 5 years	D
**5 years within the preceding 5 years	E
**10 years, of which 5 must have been within the preceding 5 years	L-1
**20 years, of which 5 must have been within the preceding 5 years	L-2

*\*\*These years must have been excess qualifying experience gained within the*

*above-mentioned continuous period.*

E. Appointments of Appointed Officials and Exempt Excluded Employees to Civil Service Positions Excluded from BU 10

1. Determine the amount of continuous State executive branch service the employee has within BU 10, or as an employee excluded from BU 10 prior to July 1, 1992;\*\*
2. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements;
3. Deduct from the qualifying State service the amount of experience required; and
4. Determine the amount of excess qualifying State service\* the employee has and compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
1	0 < 1
2	1 < 6
3	6 < 11
4	11 or more

*\*For Correctional Officer classes, only excess qualifying State Correctional Officer experience is creditable.*

*\*\*The BU 10 collective bargaining agreement does not and has not had provisions for step movement based upon service, and the mass pay adjustments since July 1, 1992 have not involved step movements. Therefore, work experience since that date is being excluded for determining qualifying State service.*

F. Appointments of Appointed Officials and Exempt Excluded Employees to Civil Service Positions Excluded from BU 11

1. Determine the amount of continuous State executive branch service the employee has within BU 11, or as an employee excluded from BU 11;
2. Identify all experience within the continuous period that can be used to meet the minimum experience and/or selective certification experience requirements;

3. Deduct from the qualifying State service the amount of experience required; and
4. Determine the amount of excess qualifying State service which qualifies as "Airfield Firefighting Experience" that the employee has and compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
E	0 < 4
F	4 < 7
G	7 < 10
H	10 < 13
L1	13 < 16
L2	16 < 19
L3	19 < 22
L4	22 or more

G. Appointments of Appointed Officials and Exempt Excluded Employees to Excluded Managerial Compensation Plan Positions

1. Determine the amount of continuous State executive branch service the employee has, irrespective of bargaining unit or inclusion or exclusion from collective bargaining;
2. Identify all experience within the continuous period that can be utilized to meet the minimum qualification and/or selective certification experience requirements;
3. Deduct from the qualifying State service the amount of experience required;
4. Determine the amount of excess qualifying State service that the employee has and round down to the nearest whole year;
5. Multiply the number of whole years from No. 4 by .04;
6. Determine the difference between the minimum and maximum rates of the applicable salary range;
7. Multiply the difference identified in No. 6 by the product of No. 5; and
8. Add the product of No. 7, rounded to the nearest whole number, to the minimum rate of the salary range and that sum is the employee's monthly salary, provided that the salary shall not exceed the individual's existing salary by more than 12%.

II. EXEMPT EXCLUDED EMPLOYEES WHOSE POSITIONS ARE REPLACED BY CIVIL SERVICE POSITIONS

At times, positions which are exempt from civil service are replaced by civil service positions. The following provisions specify how the initial compensation of an exempt employee who is excluded from collective bargaining is to be determined if the employee is appointed to a replacement excluded civil service position. The DPOs shall implement compensation adjustments as follows:

A. Appointments of Exempt Excluded Employees to Civil Service Positions Excluded from BU 01

1. Determine the amount of continuous State executive branch service the employee has within BU 01, or as an employee excluded from BU 01; and
2. If the employee has one year or more years of service, the employee shall be compensated at the Step A rate of the BU 01 salary schedule for the applicable salary range. If not, the employee shall be compensated at the minus one percent (-1%) rate of the BU 02 salary schedule for the applicable salary range.

B. Appointments of Exempt Excluded Employees to Civil Service Positions Excluded from BU 02

1. Determine the amount of continuous State executive branch service the employee has within BU 02, or as an employee excluded from BU 02; and
2. If the employee has less than 10 years of service, the employee shall be compensated at the Step A rate of the BU 02 salary schedule for the applicable salary range. If the employee has at least 10 years, but less than 15 years of service, the employee shall be compensated at the L1 rate of the BU 02 salary schedule for the applicable salary range. If the employee has 15 or more years of service, the employee shall be compensated at the L2 rate of the BU 02 salary schedule for the applicable salary range.

C. Appointments of Exempt Excluded Employees to Civil Service Positions Excluded from BUs 03, 04, and 13

Appointed officials and exempt excluded employees who are appointed to civil service positions excluded from BUs 03, 04 and 13 shall be initially compensated according to supplemental agreements negotiated for those bargaining units.

D. Appointments of Exempt Excluded Employees to Civil Service Positions Excluded from BU 09

1. Determine the amount of continuous State executive branch service the employee has within BU 09, or as an employee excluded from BU 09;
2. Employees appointed at the SR-18 level shall be compensated at Step B of the BU 09 salary schedule; and
3. Employees appointed at SR-20 and above shall be compensated as follows:

<u>Years of Service As a Registered Prof. Nurse</u>	<u>Step</u>
12 months within the preceding 5 years	C
18 months within the preceding 5 years	D
**5 years within the preceding 5 years	E
**10 years, of which 5 must have been within the preceding 5 years	L-1
**20 years, of which 5 must have been within the preceding 5 years	L-2

*\*\*These years must have been qualifying experience gained within the above-mentioned continuous State service.*

E. Appointments of Exempt Excluded Employees to Civil Service Positions Excluded from BU 10

1. Determine the amount of continuous State executive branch service the employee has within BU 10, or as an employee excluded from BU 10 prior to July 1, 1992; and
2. Compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
1	0 < 1
2	1 < 6
3	6 < 11
4	11 or more

F. Appointments of Exempt Excluded Employees to Civil Service Positions Excluded from BU 11

1. Determine the amount of continuous State executive branch service the employee has within BU 11, or as an employee excluded from BU 11; and

2. Determine the amount of service which the employee has and compensate the employee pursuant to the following schedule:

<u>Step</u>	<u>Years</u>
E	0 < 4
F	4 < 7
G	7 < 10
H	10 < 13
L1	13 < 16
L2	16 < 19
L3	19 < 22
L4	22 or more

G. Appointments of Exempt Excluded Employees to Excluded Managerial Compensation Plan Positions

1. Determine the amount of continuous State executive branch service the employee has, irrespective of bargaining unit or inclusion or exclusion from collective bargaining, and round down to the nearest whole year;
2. Multiply the number of whole years from No. 1 by .04;
3. Determine the difference between the minimum and maximum rates of the applicable salary range;
4. Multiply the difference identified in No. 3 by the product of No. 2; and
5. Add the product of No. 4, rounded to the nearest whole number, to the minimum rate of the salary range and the sum is the employee's monthly salary, provided that the salary shall not exceed the individual's existing salary by more than 12%.

III. PROVISIONS RELATING TO TEMPORARY MEMBERS OF THE CIVIL SERVICE

The Supplemental Agreements for BUs 03, 04, and 13 contain a few modified and new provisions affecting employees who are temporarily appointed to civil service positions. Those provisions shall also be applied to employees temporarily appointed to civil service positions who are excluded from those bargaining units. The BU 13 provisions shall be applied to temporary Excluded Managerial Compensation Plan employees.

The Director of DHRD Development shall be responsible for the uniform administration of these adjustments as well as any interpretation concerning the

applicability of these adjustments to state officers and employees of the executive branch who are excluded from collective bargaining.

DONE at the State Capitol, Honolulu,  
State of Hawaii, this 25<sup>th</sup>  
day of April, 2005.

  
LINDA LINGLE  
Governor of Hawaii



APPROVED AS TO FORM:

  
MARK J. BENNETT  
Attorney General

**SUPPLEMENTAL AGREEMENT**

Compensation Adjustments for Exempt, Temporary and Initial Probationary Employees  
Bargaining Unit 03

This Supplemental Agreement is made this 7<sup>th</sup> day of October 2004, by and between the Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO, hereinafter referred to as the Union, and the State of Hawaii Executive Branch, not including the Hawaii Health Systems Corporation, hereinafter referred to as the Employer.

WHEREAS, some of the terms used in Article 14, COMPENSATION ADJUSTMENT, Section J., Compensation Adjustment for Non-Regular Employees, are no longer consistent with terms currently in use within the State Executive Branch; and

WHEREAS, Act 253, SLH 2000, required a review of exempt positions in the State and specifies that the "manner for setting the compensation of incumbents upon their inclusion in the classification system 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...shall be in accordance with the applicable collective bargaining agreement."; and

WHEREAS, Act 128, SLH 2004 specifies that "Employees in exempt positions who have performed work satisfactorily for six or more consecutive years shall be eligible to apply for: (1) Intra-departmental and interdepartmental transfers; and (2) Intra-departmental and inter-departmental promotional exams for which they meet the minimum qualification qualifications as prescribed by the class specification";

NOW, THEREFORE, THE Union and the Employer mutually agree that the provisions of ARTICLE 14 - COMPENSATION ADJUSTMENT, Section J. Compensation Adjustment for Non-Regular Employees and Section K. Compensation Adjustment for Exempt Employees Accepting Civil Service Appointments, or Whose Exempt Positions are Converted to Civil Service Positions, of the Unit 03 collective bargaining agreement shall be amended as follows:

J. Compensation Adjustment for ~~Non-Regular~~ Temporary or Initial Probationary Employees Occupying Civil Service Positions.

1. Movement of ~~non-regular~~ temporary or initial probationary Employees to other civil service positions shall not be classified as promotions, transfers, or demotions, but shall be considered as new appointments and compensation adjustments upon these new appointments shall be prescribed ~~in this paragraph below.~~

2. A ~~non-regular~~ initial probationary Employee who is moved from the position in which the Employee was serving a probational appointment to another position assigned to the same salary range shall continue at the same basic rate of pay.

3. A ~~Non-regular~~ temporary Employee who is moved from the position in which the Employee was serving a temporary appointment to another position in the same salary range and salary schedule and in the same department shall continue at the same basic rate of pay.

4. ~~Non-regular~~ Temporary Employees serving temporary appointments who are converted to initial probational or permanent appointments in the same positions that the Employees were serving temporary appointments will continue to receive the same basic rate of pay they were receiving while serving temporary appointment.

5. Temporary Employees with at least one (1) year of continuous State service who move to other civil service positions shall have their compensation adjusted as though they were promoted, demoted or transferred.

~~5. 6.~~ The compensation of ~~non-regular~~ temporary or initial probationary Employees after a personnel transaction other than as described in subparagraphs 2, 3, and 4, and 5 shall be at the initial step of the salary range.

K. Compensation Adjustment and Retention of Rights and Benefits for Exempt Employees Accepting Civil Service Appointments, or Whose Exempt Positions are Converted to Civil Service Positions.

1. Exempt Employees who move to civil service positions, ~~or who are~~ appointed to civil service positions, or are granted civil service status pursuant to legislation shall not have the transaction considered as promotions, transfers, or demotions. Such transactions shall be considered new appointments and pay adjustments upon these new appointments shall be as prescribed ~~in this paragraph below.~~

2. An exempt Employee who is:

- ~~a) granted civil service status pursuant to legislation shall retain the basic rate of pay the Employee was receiving immediately prior to being granted civil service status; provided: or~~
- ~~a) If the Employee's rate of pay falls between two (2) steps in the salary schedule, the Employee shall be compensated at the lower step.~~
- ~~b) If the Employee's rate of pay falls below the minimum step of the salary schedule, the Employee shall be compensated at the minimum step.~~
- ~~c) If the employee's rate of pay falls above the maximum step of the salary schedule, the Employee shall be compensated at the maximum step.~~
- b) appointed to a civil service position established to replace the employee's exempt position, because the basis for exemption has been eliminated by

legislative action or other reasons (e.g. consent decree lifted, project has become an ongoing program, etc.).

shall be compensated at a rate comparable to the pay rate of a civil service employee with the same length of creditable service in a position within the same bargaining unit, as determined in accordance with Attachment A, Part I.

~~3. Exempt Employees selected from an open competitive list to civil service positions other than as described in subparagraph 1 shall be compensated at the initial step of the salary range.~~

Exempt Employees selected from an open competitive list that have performed work satisfactorily for six or more continuous years on a 100% FTE basis who are appointed to civil service positions, other than as described in subparagraph 1, shall be compensated in accordance with Attachment A, Part II."

4. Exempt Employees selected from an internal vacancy announcement, intra-departmental promotional announcement, or inter-departmental promotional announcement that have performed work satisfactorily for six or more continuous years on a 100% FTE basis who are appointed to civil service positions shall be compensated at a rate based on their relevant qualifying State executive branch experience as provided in Attachment A, Part II."

5. Exempt Employees selected from an open competitive list who are appointed to civil service positions, other than as described in subparagraphs 2 and 3, shall be compensated at the initial step of the salary range.

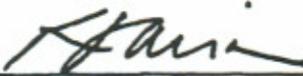
6. Exempt Employees appointed to a civil service position and whose compensation is subject to the provisions of K 2, 3, and 4 of this Article shall retain their existing benefits, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege to the extent that they do not conflict with bargaining unit provisions and are applicable to the type of appointment that they have accepted.

This Supplemental Agreement supercedes all prior Memoranda of Agreement and Supplemental Agreements adding to or amending the provisions of Sections J and K of Article 14.

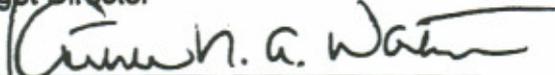
Compensation adjustment provisions contained herein shall take effect on July 1, 2004 and shall continue to and including June 30, 2005, unless modified or terminated by mutual consent of the parties. It is the intent of the parties that the compensation adjustment provisions be continued until the statutory provisions cited above are no longer applicable.

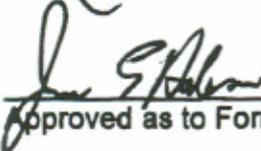
In witness whereof, the parties hereto, by their authorized representatives, have executed this Supplemental Agreement the day and year first written above

**FOR THE EMPLOYER:**

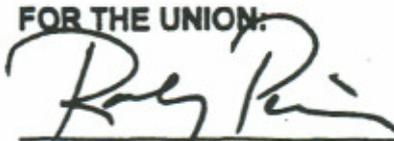
  
\_\_\_\_\_  
Chief Negotiator

  
\_\_\_\_\_  
Budget Director

  
\_\_\_\_\_  
HRD Director

  
\_\_\_\_\_  
Approved as to Form for Attorney General

**FOR THE UNION:**

  
\_\_\_\_\_  
Hawaii Government Employees  
Association

**COMPENSATION ADJUSTMENTS FOR EXEMPT  
EMPLOYEES APPOINTED TO CIVIL SERVICE POSITIONS**

**PART I**

**COMPENSATION OF EXEMPT EMPLOYEES APPOINTED TO  
REPLACEMENT CIVIL SERVICE POSITIONS IN BU 03**

Continuous Creditable Service

Employment with the State executive branch, beginning with the employee's most recent date of hire.

Break In Service

A "break in service" shall mean separation from service without a new appointment with the State executive branch the next working day following the date of separation. Absences without pay, other than sabbatical leaves, LWOP to recuperate from an injury for which workers' compensation weekly benefits are paid, or military leave without pay where the President of the United States or the Governor of Hawaii has called the employee to active duty, shall not be creditable.

BU 03 Conversion Schedule

Step	Years
A	0 < 1
B	1 < 2
C	2 < 4
D	4 < 7
E	7 < 10
F	10 < 13
G	13 < 16
H	16 < 19
I	19 < 22
J	22 < 25
K	25 < 28
L	28 or more

## PART II

### COMPENSATION OF EXEMPT EMPLOYEES APPOINTED TO CIVIL SERVICE POSITIONS IN BU 03 THROUGH INTERNAL RECRUITMENT

Exempt employees selected from an internal recruitment to fill civil service positions shall be compensated for their relevant qualifying State work experience. Relevant qualifying State work experience is defined as experience that:

1. is creditable toward meeting the minimum qualifications and/or any selective certification requirement(s) of the position the exempt employee is being appointed to,
2. was gained within the Executive Branch without a break in service of one or more working days, and
3. service irrespective of bargaining unit.

Employees shall be placed on the step in the applicable salary range which is appropriate for the amount of relevant qualifying State work experience which is in excess of the minimum experience requirement(s), including selective certification requirement(s), if any, of the class and/or position in accordance with the table shown below. It is further provided that the compensation of such employees shall not be increased by more than twelve percent (12%) of their existing compensation, unless such increase is below the minimum rate for the applicable salary range. In such case, the employee will be compensated at the minimum rate for the applicable salary range.

#### BU 03 Conversion Schedule

Step	Years
A	0 < 1
B	1 < 2
C	2 < 4
D	4 < 7
E	7 < 10
F	10 < 13
G	13 < 16
H	16 < 19
I	19 < 22
J	22 < 25
K	25 < 28
L	28 or more

The following procedure is to be used to determine the compensation of an exempt employee appointed to a civil service position through an internal recruitment, other than for situations where the exempt employee is appointed to a civil service position which replaced the employee's exempt position.

- Step 1:** Determine what periods of the employee's total service with the State executive branch can be utilized to meet the experience requirement(s), and selective certification requirement(s), if applicable, for the civil service position to which the exempt employee is being appointed to.
- Step 2:** Determine whether there was a break in service on one or more working days during the continuous period. If there was a break in service, only the service after the break in service is to be considered.
- Step 3:** From the qualifying State work experience, subtract the number of years needed to meet the minimum experience requirement, and selective certification requirements, if applicable, for the civil service position to which the exempt employee is being appointed.
- Step 4:** Determine the amount of relevant qualifying State experience remaining after the minimum experience requirement(s) and selective certification requirement(s) have been deducted. Then, using the appropriate table shown above, identify the step that the exempt employee should be placed on.
- Step 5:** The compensation of the exempt employee shall not exceed the employee's existing compensation by more than twelve percent (12%), (comparable to the three pay range limit on step-to-step placement for promotions of civil service employees for these bargaining units), provided that the employee shall not be paid less than the minimum step of the salary range or more than the maximum step of the salary range and must be placed on a step.

**(NOTE:** The above-mentioned procedure is to be used only for determining the compensation of the exempt employee. The exempt employee may meet the minimum qualification requirements and selective certification requirements, if any, through other than State service.)

## SUPPLEMENTAL AGREEMENT

Compensation Adjustments for Exempt, Temporary and Initial Probationary Employees  
Bargaining Unit 04

This Supplemental Agreement is made this 28<sup>th</sup> day of July 2004, by and between the Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO, hereinafter referred to as the Union, and the State of Hawaii, hereinafter referred to as the Employer.

WHEREAS, some of the terms used in Article 14, COMPENSATION ADJUSTMENT, Section J., Compensation Adjustment for Non-Regular Employees, are no longer consistent with terms currently in use within the State Executive Branch; and

WHEREAS, Act 253, SLH 2000, required a review of exempt positions in the State and specifies that the "manner for setting the compensation of incumbents upon their inclusion in the classification system shall be fair and equitable in comparison to the compensation of other incumbent with comparable experience in the same or essentially similar classes; provided that the compensation of incumbents who are in the same bargaining unit...shall be in accordance with the applicable collective bargaining agreement."; and

WHEREAS, Act 128, SLH 2004 specifies that "Employees in exempt positions who have performed work satisfactorily for six or more consecutive years shall be eligible to apply for: (1) Intra-departmental and interdepartmental transfers; and (2) Intra-departmental and inter-departmental promotional exams for which they meet the minimum qualification qualifications as prescribed by the class specification";

NOW, THEREFORE, THE Union and the Employer mutually agree that the provisions of ARTICLE 14 - COMPENSATION ADJUSTMENT, Section J. Compensation Adjustment for Non-Regular Employees and Section K. Compensation Adjustment for Exempt Employees Accepting Civil Service Appointments, or Whose Exempt Positions are Converted to Civil Service Positions, of the Unit 04 collective bargaining agreement shall be amended as follows:

### J. Compensation Adjustment for Non-Regular Temporary or Initial Probationary Employees Occupying Civil Service Positions.

1. Movement of ~~non-regular~~ temporary or initial probationary Employees to other civil service positions shall not be classified as promotions, transfers, or demotions, but shall be considered as new appointments and compensation adjustments upon these new appointments shall be prescribed ~~in this paragraph below.~~
2. A ~~non-regular~~ initial probationary Employee who is moved from the position in which the Employee was serving a probational appointment to another position assigned to the same salary range shall continue at the same basic rate of pay.

3. A Non-regular temporary Employee who is moved from the position in which the Employee was serving a temporary appointment to another position in the same salary range and salary schedule and in the same department shall continue at the same basic rate of pay.

4. Non-regular Temporary Employees serving temporary appointments who are converted to initial probational or permanent appointments in the same positions that the Employees were serving temporary appointments will continue to receive the same basic rate of pay they were receiving while serving temporary appointment.

5. Temporary Employees with at least one (1) year of continuous State service who move to other civil service positions shall have their compensation adjusted as though they were promoted, demoted or transferred.

5.6. The compensation of non-regular temporary or initial probational Employees after a personnel transaction other than as described in subparagraphs 2, 3, and 4, and 5 shall be at the initial step of the salary range.

K. Compensation Adjustment and Retention of Rights and Benefits for Exempt Employees Accepting Civil Service Appointments, or Whose Exempt Positions are Converted to Civil Service Positions.

1. Exempt Employees who move to civil service positions, ~~or who are appointed to civil service positions, or are granted civil service status pursuant to legislation shall not have the transaction considered as promotions, transfers, or demotions. Such transactions shall be considered new appointments and pay adjustments upon these new appointments shall be as prescribed in this paragraph below.~~

2. An exempt Employee who is;

- ~~a) granted civil service status pursuant to legislation shall retain the basic rate of pay the Employee was receiving immediately prior to being granted civil service status; provided: or~~
- ~~a) If the Employee's rate of pay falls between two (2) steps in the salary schedule, the Employee shall be compensated at the lower step.~~
- ~~b) If the Employee's rate of pay falls below the minimum step of the salary schedule, the Employee shall be compensated at the minimum step.~~
- ~~c) If the employee's rate of pay falls above the maximum step of the salary schedule, the Employee shall be compensated at the maximum step.~~
- b) appointed to a civil service position established to replace the employee's exempt position, because the basis for exemption has been eliminated by legislative action or other reasons (e.g. consent decree lifted, project has become an ongoing program, etc.).

shall be compensated at a rate comparable to the pay rate of a civil service employee with the same length of creditable service in a position within the same bargaining unit, as determined in accordance with Attachment A, Part I.

~~3. Exempt Employees selected from an open competitive list to civil service positions other than as described in subparagraph 1 shall be compensated at the initial step of the salary range.~~

Exempt Employees selected from an open competitive list that have performed work satisfactorily for six or more continuous years on a 100% FTE basis who are appointed to civil service positions, other than as described in subparagraph 1, shall be compensated in accordance with Attachment A, Part II."

4. Exempt Employees selected from an internal vacancy announcement, intra-departmental promotional announcement, or inter-departmental promotional announcement that have performed work satisfactorily for six or more continuous years on a 100% FTE basis who are appointed to civil service positions shall be compensated at a rate based on their relevant qualifying State executive branch experience as provided in Attachment A, Part II."

5. Exempt Employees selected from an open competitive list who are appointed to civil service positions, other than as described in subparagraphs 2 and 3, shall be compensated at the initial step of the salary range.

6. Exempt Employees appointed to a civil service position and whose compensation is subject to the provisions of L 2, 3, and 4 of this Article shall retain their existing benefits, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege to the extent that they do not conflict with bargaining unit provisions and are applicable to the type of appointment that they have accepted.

This Supplemental Agreement supercedes all prior Memoranda of Agreement and Supplemental Agreements adding to or amending the provisions of Sections L of Article 14.

Compensation adjustment provisions contained herein shall take effect on July 1, 2004 and shall continue to and including June 30, 2005, unless modified or terminated by mutual consent of the parties. It is the intent of the parties that the compensation adjustment provisions be continued until the statutory provisions cited above are no longer applicable.

In witness whereof, the parties hereto, by their authorized representatives, have executed this Supplemental Agreement the day and year first written above

**FOR THE EMPLOYER:**

*Harold De Costa (Deputy)*  
for Chief Negotiator

*George B. Rawson*  
Budget Director

*Kevin H. G. Wain*  
HRD Director

*Jan F. Salomon*  
Approved as to Form for Attorney General

**FOR THE UNION:**

*Ruby P. ...*  
Hawaii Government Employees  
Association

**COMPENSATION ADJUSTMENTS FOR EXEMPT  
EMPLOYEES APPOINTED TO CIVIL SERVICE POSITIONS**

**PART I**

**COMPENSATION OF EXEMPT EMPLOYEES APPOINTED TO  
REPLACEMENT CIVIL SERVICE POSITIONS IN BU 04**

Continuous Creditable Service

Employment with the State executive branch, beginning with the employee's most recent date of hire.

Break In Service

A "break in service" shall mean separation from service without a new appointment with the State executive branch the next working day following the date of separation. Absences without pay, other than sabbatical leaves, LWOP to recuperate from an injury for which workers' compensation weekly benefits are paid, or military leave without pay where the President of the United States or the Governor of Hawaii has called the employee to active duty, shall not be creditable.

BU 04 Conversion Schedule

Step	Years
A	0 < 1
B	1 < 2
C	2 < 4
D	4 < 7
E	7 < 10
F	10 < 13
G	13 < 16
H	16 < 19
I	19 < 22
J	22 < 25
K	25 < 28
L	28 or more

## PART II

### COMPENSATION OF EXEMPT EMPLOYEES APPOINTED TO CIVIL SERVICE POSITIONS IN BU 04 THROUGH INTERNAL RECRUITMENT

Exempt employees selected from an internal recruitment to fill civil service positions shall be compensated for their relevant qualifying State work experience. Relevant qualifying State work experience is defined as experience that:

1. is creditable toward meeting the minimum qualifications and/or any selective certification requirement(s) of the position the exempt employee is being appointed to,
2. was gained within the Executive Branch without a break in service of one or more working days, and
3. service irrespective of bargaining unit.

Employees shall be placed on the step in the applicable salary range which is appropriate for the amount of relevant qualifying State work experience which is in excess of the minimum experience requirement(s), including selective certification requirement(s), if any, of the class and/or position in accordance with the table shown below. It is further provided that the compensation of such employees shall not be increased by more than twelve percent (12%) of their existing compensation, unless such increase is below the minimum rate for the applicable salary range. In such case, the employee will be compensated at the minimum rate for the applicable salary range.

#### BU 04 Conversion Schedule

Step	Years
A	0 < 1
B	1 < 2
C	2 < 4
D	4 < 7
E	7 < 10
F	10 < 13
G	13 < 16
H	16 < 19
I	19 < 22
J	22 < 25
K	25 < 28
L	28 or more

The following procedure is to be used to determine the compensation of an exempt employee appointed to a civil service position through an internal recruitment, other than for situations where the exempt employee is appointed to a civil service position which replaced the employee's exempt position.

- Step 1:** Determine what periods of the employee's total service with the State executive branch can be utilized to meet the experience requirement(s), and selective certification requirement(s), if applicable, for the civil service position to which the exempt employee is being appointed to.
- Step 2:** Determine whether there was a break in service on one or more working days during the continuous period. If there was a break in service, only the service after the break in service is to be considered.
- Step 3:** From the qualifying State work experience, subtract the number of years needed to meet the minimum experience requirement, and selective certification requirements, if applicable, for the civil service position to which the exempt employee is being appointed.
- Step 4:** Determine the amount of relevant qualifying State experience remaining after the minimum experience requirement(s) and selective certification requirement(s) have been deducted. Then, using the appropriate table shown above, identify the step that the exempt employee should be placed on.
- Step 5:** The compensation of the exempt employee shall not exceed the employee's existing compensation by more than twelve percent (12%), (comparable to the three pay range limit on step-to-step placement for promotions of civil service employees for these bargaining units), provided that the employee shall not be paid less than the minimum step of the salary range or more than the maximum step of the salary range and must be placed on a step.

**(NOTE:** The above-mentioned procedure is to be used only for determining the compensation of the exempt employee. The exempt employee may meet the minimum qualification requirements and selective certification requirements, if any, through other than State service.)

## SUPPLEMENTAL AGREEMENT

Compensation Adjustments for Exempt, Temporary and Initial Probationary Employees  
Bargaining Unit 13

This Supplemental Agreement is made this 28<sup>th</sup> day of July 2004, by and between the Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO, hereinafter referred to as the Union, and the State of Hawaii, hereinafter referred to as the Employer.

WHEREAS, some of the terms used in Article 14, COMPENSATION ADJUSTMENT, Section K., Compensation Adjustment for Non-Regular Employees, are no longer consistent with terms currently in use within the State Executive Branch; and

WHEREAS, Act 253, SLH 2000, required a review of exempt positions in the State and specifies that the "manner for setting the compensation of incumbents upon their inclusion in the classification system shall be fair and equitable in comparison to the compensation of other incumbent with comparable experience in the same or essentially similar classes; provided that the compensation of incumbents who are in the same bargaining unit...shall be in accordance with the applicable collective bargaining agreement."; and

WHEREAS, Act 128, SLH 2004 specifies that "Employees in exempt positions who have performed work satisfactorily for six or more consecutive years shall be eligible to apply for: (1) Intra-departmental and interdepartmental transfers; and (2) Intra-departmental and inter-departmental promotional exams for which they meet the minimum qualification qualifications as prescribed by the class specification";

NOW, THEREFORE, THE Union and the Employer mutually agree that the provisions of ARTICLE 14 - COMPENSATION ADJUSTMENT, Section K. Compensation Adjustment for Non-Regular Employees and Section L. Compensation Adjustment for Exempt Employees Accepting Civil Service Appointments, or Whose Exempt Positions are Converted to Civil Service Positions, of the Unit 13 collective bargaining agreement shall be amended as follows:

### K. Compensation Adjustment for Non-Regular Temporary or Initial Probationary Employees Occupying Civil Service Positions.

1. Movement of ~~non-regular~~ temporary or initial probationary Employees to other civil service positions shall not be classified as promotions, transfers, or demotions, but shall be considered as new appointments and compensation adjustments upon these new appointments shall be as prescribed ~~in this paragraph~~ below.

2. A ~~non-regular~~ initial probationary Employee who is moved from the position in which the Employee was serving a probational appointment to another position assigned to the same salary range shall continue at the same basic rate of pay.

3. A non-regular temporary Employee who is moved from the position in which the Employee was serving a temporary appointment to another position in the same salary range and salary schedule and in the same department shall continue at the same basic rate of pay.

4. Non-regular Temporary Employees serving temporary appointments who are converted to initial probational or permanent appointments in the same positions that the Employees were serving temporary appointments will continue to receive the same basic rate of pay they were receiving while serving temporary appointment.

5. Temporary Employees with at least one (1) year of continuous State service who move to other civil service positions shall have their compensation adjusted as though they were promoted, demoted or transferred.

6. The compensation of a non-regular temporary or initial probational Employee after a personnel transaction other than as described in subparagraphs 2, 3, and 4, and 5 shall be at the initial step of the salary range.

L. Compensation Adjustment and Retention of Rights and Benefits for Exempt Employees Accepting Civil Service Appointments, or Whose Exempt Positions are Converted to Civil Service Positions.

1. Exempt Employees who move to civil service positions, ~~or who are appointed to civil service positions, or are granted civil service status pursuant to legislation shall not have the transaction considered as promotions, transfers, or demotions.~~ Such transactions shall be considered new appointments and pay adjustments upon these new appointments shall be as prescribed ~~in this paragraph below.~~

2. An exempt Employee who is;

- ~~a) granted civil service status pursuant to legislation shall retain the basic rate of pay the Employee was receiving immediately prior to being granted civil service status; provided; or~~
- ~~a) If the Employee's rate of pay falls between two (2) steps in the salary schedule, the Employee shall be compensated at the lower step.~~
- ~~b) If the Employee's rate of pay falls below the minimum step of the salary schedule, the Employee shall be compensated at the minimum step.~~
- ~~c) If the employee's rate of pay falls above the maximum step of the salary schedule, the Employee shall be compensated at the maximum step.~~
- b) appointed to a civil service position established to replace the employee's exempt position, because the basis for exemption has been eliminated by legislative action or other reason(s) (e.g. consent decree lifted, project has become an ongoing program, etc.)

shall be compensated at a rate comparable to the pay rate of a civil service employee with the same length of creditable service in a position within the same bargaining unit, as determined in accordance with Attachment A, Part I.

~~3. Exempt Employees selected from an open competitive list to civil service positions other than as described in subparagraph 1 shall be compensated at the initial step of the salary range.~~

Exempt Employees selected from an open competitive list that have performed work satisfactorily for six or more continuous years on a 100% FTE basis who are appointed to civil service positions, other than as described in subparagraph 2, shall be compensated in accordance with Attachment A, Part II."

4. Exempt Employees selected from an internal vacancy announcement, intra-departmental promotional announcement, or inter-departmental promotional announcement that have performed work satisfactorily for six or more continuous years on a 100% FTE basis who are appointed to civil service positions shall be compensated at a rate based on their relevant qualifying State executive branch experience as provided in Attachment A, Part II."

5. Exempt Employees selected from an open competitive list who are appointed to civil service positions, other than as described in subparagraphs 2 and 3, shall be compensated at the initial step of the salary range.

6. Exempt Employees appointed to a civil service position and whose compensation is subject to the provisions of L 2, 3, and 4 of this Article shall retain their existing benefits, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege to the extent that they do not conflict with bargaining unit provisions and are applicable to the type of appointment that they have accepted.

This Supplemental Agreement supercedes all prior Memoranda of Agreement and Supplemental Agreements adding to or amending the provisions of Sections L of Article 14.

Compensation adjustment provisions contained herein shall take effect on July 1, 2004 and shall continue to and including June 30, 2005, unless modified or terminated by mutual consent of the parties. It is the intent of the parties that the compensation adjustment provisions be continued until the statutory provisions cited above are no longer applicable.

In witness whereof, the parties hereto, by their authorized representatives, have executed this Supplemental Agreement the day and year first written above.

FOR THE EMPLOYER:

Harold De Luca (Deputy)  
Chief Negotiator

Harriet K. Kawano  
Budget Director

Kevin M. A. White  
HRD Director

John E. Johnson  
Approved as to Form for Attorney General

FOR THE UNION:

Roy R.  
Hawaii Government Employees  
Association

**COMPENSATION ADJUSTMENTS FOR EXEMPT  
EMPLOYEES APPOINTED TO CIVIL SERVICE POSITIONS**

**PART I**

**COMPENSATION OF EXEMPT EMPLOYEES APPOINTED TO  
REPLACEMENT CIVIL SERVICE POSITIONS IN BU 13**

Continuous Creditable Service

Employment with the State executive branch in BU 13, or as an excluded counterpart, beginning with the employee's most recent date of hire.

Break In Service

A "break in service" shall mean separation from service without a new appointment with the State executive branch the next working day following the date of separation. Absences without pay, other than sabbatical leaves, LWOP to recuperate from an injury for which workers' compensation weekly benefits are paid, or military leave without pay where the President of the United States or the Governor of Hawaii has called the employee to active duty, shall not be creditable.

BU 13 Conversion Schedule

Step	Years
C	0 < 2
D	2 < 4
E	4 < 6
F	6 < 9
G	9 < 12
H	12 < 15
I	15 < 18
J	18 < 21
K	21 < 24
L	24 or more

## PART II

### COMPENSATION OF EXEMPT EMPLOYEES APPOINTED TO CIVIL SERVICE POSITIONS IN BU 13 THROUGH INTERNAL RECRUITMENT

Exempt employees selected from an internal recruitment to fill civil service positions shall be compensated for their relevant qualifying State work experience. Relevant qualifying State work experience is defined as experience that:

1. is creditable toward meeting the minimum qualifications and/or any selective certification requirement(s) of the position the exempt employee is being appointed to,
2. was gained within the Executive Branch without a break in service of one or more working days, and
3. includes only service within the bargaining unit, or as an excluded counterpart.

Employees shall be placed on the step in the applicable salary range which is appropriate for the amount of relevant qualifying State work experience which is in excess of the minimum experience requirement(s), including selective certification requirement(s), if any, of the class and/or position in accordance with the table shown below. It is further provided that the compensation of such employees shall not be increased by more than twelve percent (12%) of their existing compensation, unless such increase is below the minimum rate for the applicable salary range. In such case, the employee will be compensated at the minimum rate for the applicable salary range.

#### BU 13 Conversion Schedule

Step	Years
C	0 < 2
D	2 < 4
E	4 < 6
F	6 < 9
G	9 < 12
H	12 < 15
I	15 < 18
J	18 < 21
K	21 < 24
L	24 or more

The following procedure is to be used to determine the compensation of an exempt employee appointed to a civil service position through an internal recruitment, other than for situations where the exempt employee is appointed to a civil service position which replaced the employee's exempt position.

- Step 1:** Determine what periods of the employee's total service with the State executive branch can be utilized to meet the experience requirement(s), and selective certification requirement(s), if applicable, for the civil service position to which the exempt employee is being appointed to.
- Step 2:** Determine whether there was a break in service on one or more working days during the continuous period. If there was a break in service, only the service after the break in service is to be considered.
- Step 3:** From the qualifying State work experience, subtract the number of years needed to meet the minimum experience requirement, and selective certification requirements, if applicable, for the civil service position to which the exempt employee is being appointed.
- Step 4:** Determine the amount of relevant qualifying State experience remaining after the minimum experience requirement(s) and selective certification requirement(s) have been deducted. Then, using the appropriate table shown above, identify the step that the exempt employee should be placed on.
- Step 5:** The compensation of the exempt employee shall not exceed the employee's existing compensation by more than twelve percent (12%), (comparable to the three pay range limit on step-to-step placement for promotions of civil service employees for these bargaining units), provided that the employee shall not be paid less than the minimum step of the salary range or more than the maximum step of the salary range and must be placed on a step.

**(NOTE:** The above-mentioned procedure is to be used only for determining the compensation of the exempt employee. The exempt employee may meet the minimum qualification requirements and selective certification requirements, if any, through other than State service.)

HOUSE OF REPRESENTATIVES  
 TWENTY-THIRD LEGISLATURE, 2005  
 STATE OF HAWAII

H.C.R. NO. 270  
 H.D. 1

## HOUSE CONCURRENT RESOLUTION

REQUESTING A REPORT ON CIVIL SERVICE EXEMPT POSITIONS IN EACH  
 EMPLOYING STATE JURISDICTION.

1 WHEREAS, chapter 76, Hawaii Revised Statutes, relating to  
 2 civil service, sets the State's policy for systems governing the  
 3 employment of state workers; and

4  
 5 WHEREAS, section 76-16, Hawaii Revised Statutes, states  
 6 that:

7  
 8 *[t]he legislature declares that the public*  
 9 *policy of the State is that all positions in the*  
 10 *civil service systems of the respective*  
 11 *jurisdictions shall be filled through civil*  
 12 *service recruitment procedures based on merit and*  
 13 *that the civil service system of the respective*  
 14 *jurisdictions shall comprise all positions,*  
 15 *whether permanent or temporary, in the*  
 16 *jurisdiction now existing or hereafter*  
 17 *established and embrace all personal services*  
 18 *performed for the jurisdiction, except employees*  
 19 *or positions exempted under this section, or*  
 20 *sections 46-33 or 76-77; and*

21  
 22 WHEREAS, the Legislature subsequently passed Act 253,  
 23 Session Laws of Hawaii 2000 (the Civil Service Modernization  
 24 Act), which reaffirmed the foregoing state policy that all  
 25 positions and personal services in the State should be covered  
 26 by the civil service, unless specifically exempted; and

27  
 28 WHEREAS, the Department of Human Resources Development  
 29 (DHRD) was directed to review and assess the numbers of, and  
 30 basis for, civil service and exempt positions; and

I do hereby certify that the within document  
 is a full, true and correct copy of the original  
 on file in this office.

  
 Chief Clerk  
 House of Representatives  
 State of Hawaii

HCR270 HD1 HMS 2005-3472



1 WHEREAS, DHRD commendably completed a 2004 "Exempt Study  
2 Report," a supplement to the 2004 "Study Report," and a 2005  
3 "Exempt Study Report" in response to that directive; and

4  
5 WHEREAS, although DHRD has submitted certain information  
6 regarding civil service exempt employees under its jurisdiction,  
7 the Legislature does not have any information on civil service  
8 exempt employees under the jurisdiction of other state public  
9 agencies; now, therefore,

10  
11 BE IT RESOLVED by the House of Representatives of the  
12 Twenty-third Legislature of the State of Hawaii, Regular Session  
13 of 2005, the Senate concurring, that DHRD, the Judiciary,  
14 Department of Education, University of Hawaii, and the Hawaii  
15 Health Systems Corporation are requested to report on all civil  
16 service exempt positions under their respective jurisdictions;  
17 and

18  
19 BE IT FURTHER RESOLVED that the report is requested to  
20 include, but not be limited to:

- 21  
22 (1) When the position was established;  
23  
24 (2) The purpose of the position;  
25  
26 (3) The reason for the exemption from civil service;  
27  
28 (4) Findings and recommendations on whether the position  
29 should remain exempt or be converted to a civil  
30 service position; and  
31  
32 (5) The timetable by which the specified exempt positions  
33 will convert to civil service positions;

34  
35 and

36  
37 BE IT FURTHER RESOLVED that with respect to positions that  
38 should remain exempt, each jurisdiction is requested to indicate  
39 whether the position should be exempted permanently and, if so,  
40 whether from civil service recruitment procedures or the  
41 classification systems, or both; and



1 BE IT FURTHER RESOLVED that with respect to positions  
2 recommended for inclusion into the civil service, each  
3 jurisdiction is requested to submit proposed legislation, if  
4 necessary, to convert exempt positions to civil service  
5 positions and address the impact of the conversion on the  
6 incumbents in these positions, if any; and

7  
8 BE IT FURTHER RESOLVED that each jurisdiction is requested  
9 to report its findings and recommendations on the information  
10 requested under this measure and any proposed legislation, as  
11 appropriate, to the Legislature no later than 20 days prior to  
12 the convening of the Regular Session of 2006; and

13  
14 BE IT FURTHER RESOLVED that certified copies of this  
15 Concurrent Resolution be transmitted to the Director of Human  
16 Resources Development, the Chief Justice, Superintendent of  
17 Education, Chairperson of the Board of Education, Chairperson of  
18 the University of Hawaii Board of Regents, and the Executive  
19 Director of the Hawaii Health Systems Corporation.

20



**Proposed Criteria  
for the Exemption of Positions from Civil Service  
In the State Executive Branch**

1. **Other Personnel System.** Positions, covered by another, formal, personnel system (i.e., qualifications, compensation, other terms and conditions of employment, etc., are legally set by others). As such, civil service recruitment, compensation, terms and conditions of employment cannot be applied. For example:
  - a. National Guard [§76-16(b)(1)]
  - b. BOR Systems (covering UH Faculty, APT, etc.) [§76-16(b)(11)]
  - c. BOE Systems (covering Teachers, Educational Officers, etc.) [§76-16(b)(11)]
2. **Elected Officials.** Positions which are filled by the Electorate which is empowered to select the individual who will serve. Compensation is determined by the legislature. For example:
  - a. Governor
  - b. Lieutenant Governor
  - c. Board of Education [§76-16(b)(6) and §76-16(b)(24)]
3. **Governor's and Lt. Governor's Staff.** Positions filled by the Governor and Lt. Governor to staff their Offices. Selection is done by the elected official, in conformance with their needs and because personal loyalty is paramount. The appointment should be "at will" because tenure is inappropriate. [§76-16(b)(5) and (17)]
  - a. Governor's Staff
  - b. Lt. Governor's Staff
4. **Personal Services.** Positions that provide direct personal services to elected or appointed officials during that officials' off duty hours in their residence, such as staff within the household of the Governor or President of the University of Hawaii. Selection is done by the elected or appointed officials because their comfort and the personal loyalty of the staff are paramount. The appointment should be "at will" because tenure is inappropriate. [§76-16(b)(5) and (19)]
5. **Gubernatorial Appointees.** Positions filled by the Governor with the advice and consent of the Senate (i.e., a separate branch of government). Frequently, such positions head an agency or attached agency and their responsibilities include policy setting which should reflect the policies of the current administration. Additionally, such individuals are high profile individuals, whose conduct and decisions will be scrutinized by the media. As such, the appointment should be "at will," except as otherwise provided by statute (e.g., removal of the Attorney General must be with the advice and consent of the Senate), to assure compliance with gubernatorial priorities and policies and the public image inherent in such a role. For example:
  - a. Department Heads, [§76-16(b)(7)]
  - b. Members of Board and Commissions, [§76-16(b)(7) and (17)]

- c. Executive Directors of Agencies that are administratively attached to a department [§76-16(b)(17)]
- 6. Assistant to a member of the Governor’s Cabinet, the Superintendent of Education or the State Librarian.** Persons who are employed to provide assistance to a cabinet member, the Superintendent of Education and the State Librarian, where the need is established by the individual official and his/her management style and/or personal preferences rather than the functions of the office. As such, Civil Service recruitment is impracticable and an alternative or special selection process is appropriate. Duties and qualification requirements cannot be set on an ongoing basis, open competitive recruitment and tenure is inappropriate, and “at will” employment is inherent. For example:
  - a. Deputy Directors of Departments;
  - b. Special Assistants to Department Heads;
  - c. Private Secretaries to Directors, Deputy Directors;
  - d. Private Secretaries for Special Assistants to Department Heads;
  - e. Private Secretaries for Agency Heads appointed by the Governor; and
  - f. Comparable positions at the UH and DOE.  
[§76-16(b)(9), (16) and new]
- 7. Administrative or Managerial Positions Reporting Directly to a Board or Commission.** Boards and commissions need to have the top-level position within the program filled by an exempt “at will” employee who is loyal and accountable to them to insure that their directions or instructions are effectuated. Such positions must utilize substantial discretion and authority and are normally excluded from collective bargaining. In addition, these types of positions require specialized qualifications that are possessed by few and possession of such qualifications should be required. An example would be the Employer-Union Trust Fund (EUTF) Administrator. “Assistant Administrators” qualify if they have substantially the same discretion and authority as the “Administrator.” Comparable positions, that are accountable for a major function or area of expertise and provide advice directly to the board or commission, also qualify if they reflect the same characteristics. [§76-16(b)(17) and (new)]
- 8. Subsidized employment/Societal purpose.** Positions which exist primarily to provide subsidized employment to meet a social purpose rather than to perform work needed in the operation of government. The societal purpose must be paramount and the criteria for selection must limit the pool of persons eligible to the extent that open competitive recruitment is incompatible with the reasons for which funds were provided and/or the positions were established. For example:
  - a. Inmates who are provided with training in job skills and the constructive use of time through “employment” in the correctional industry program. [§76-16(b)(13)]
  - b. Enhance job readiness of unemployed persons by subsidizing their temporary employment with various employers (Work Experience Workers). [§76-16(b)(13)]

- c. Provide supplemental income to the elderly and assist the needy (Respite Companions). [§76-16(b)(18) and new]
  - d. Ameliorate social need by subsidizing independent living (e.g., severely handicapped persons). [§76-16(b)(23) and new]
  - e. Provide a sense of “ownership” and a supplemental source of income to low income tenant hires in housing projects. [§76-16(b)(21)]
  - f. Help troubled youth by providing constructive activities (e.g., DOD Youth Challenge Academy). [§76-16(b)(27)]
  - g. Students who are “employed” to provide them with a means to supplement the cost of their education and introduce them to government jobs to facilitate their subsequent recruitment. [§76-16(b)(13)]
- 9. Incidental Workers.** Persons employed by a program which requires services intermittently and irregularly where the limited amount of work required is such that it cannot serve as a primary employment for the individual and thus it is inappropriate to establish an ongoing employee-employer relationship with that individual or to include the position in the civil service. For example, event staff at the Stadium. [§76-16(b)(13), (17) and new]
- 10. Immediate Services Required to Avoid Court Ordered Penalties or Actions** (Positions in programs covered by Court Orders or Consent Decrees). Exemption is applicable only to those positions that must be filled without delay to comply with a court order or decree when normal civil service recruitment procedures would delay or prevent compliance. Circumstances must be reviewed periodically to assure that the factors, which would cause delay or non-compliance (e.g., extreme recruitment difficulty), continue. If the original factors continue to exist, the basis for exemption from civil service should continue. If not, and if the position is needed for an appreciable length of time, the position should be established on a civil service basis. Similarly, the exemption should terminate if the court order or consent decree is terminated. [§76-16(b)(3)]
- 11. Staff of Experimental Programs.** Positions in programs whose core mission is the antithesis of conventional government programs and operations when staffing flexibility is an integral part of that mission and the concept of tenured civil service employees (with recruitment based on set duties and requisite knowledge, skills and abilities) would conflict with the purposes for which the program was established. For example, Charter Schools which provide for external governance by the community. [new]
- 12. Workers Stationed Outside of Hawaii.** Employees in offices located outside the State of Hawaii (e.g., stationed in a foreign country). These positions require highly specialized expertise relative to the location and wages may need to be consistent with wage scales in that locale. [new]
- 13. Practicing Attorneys.** Positions established to provide legal services and advice and filled by qualified attorneys. The unique nature of their relationship with their clients (attorney-client privilege) and being subject to the canons of law and oversight by the Office of Disciplinary Counsel make it preferable that the incumbents of such positions be “at will” exempt employees rather than civil service

employees who are subject to due process requirements. In addition, the incumbents of such positions provide services under unconventional governance (e.g., not limited to eight hours per day, forty hours per week, Monday through Friday workweek), and their work, work output and its timing are inherently and regularly dictated by external factors (e.g., an attorney must be prepared for a court or other hearing scheduled at the discretion of a judge or arbitrator, irrespective of how much time is available prior to the hearing). [§76-16(b)(10), (17) and new]

**14. Temporary positions required for a special, demonstration or research projects.**

Temporary positions needed for a pre-determined, specified, period of time to carry out the work of a project, approved by the Governor (or Designee), where:

- Normal civil service recruitment procedures would delay the start up of the project and thus preclude full use of available funds, or
- The establishment and/or filling of a civil service position will result in an unnecessary expenditure of resources by the department and/or central human resources agency, or
- There is a specific reason(s) why the position cannot or should not be constrained by limitations imposed by the civil service system. [§76-16(b)(12)]

**15. Temporary Positions.**

Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the filling of the position through civil service recruitment procedures is not practicable; the establishment of a class is not practicable; or the establishment of a new class is pending. The director, for reasons given in writing by the department concerned, may extend the position for another year. However, the total duration of the position and appointment shall not exceed two years. Thereafter, there must be at least a six-month break in service before the incumbent can be appointed to another position exempted by this subsection. The central human resources agency shall develop policies and procedures covering the establishment, extension and filling of positions under this provision. [similar to §76-16(b)(3) abolished 6/30/02].

**16. Positions assigned to inter-jurisdictional programs.**

Positions assigned to an inter-jurisdictional program, administratively attached to a State department, that is directly involved in determining allocation of funds and/or choosing between proposals among the jurisdictions (e.g., State, City and County, Hawaii County, Maui County, Kauai County, etc.) involved. In such situations, there is a need for staff to be impartial, and to be perceived as impartial, in relation to the competing jurisdictions. There could be a perception of bias if the program is staffed solely by individuals who come from the civil service workforce of one of the jurisdictions (State). For example, staff of the Oahu Metropolitan Planning Organization (OMPO), which is administratively attached to the Department of Transportation, but funded by the federal, city and state governments. This exemption criteria does not cover positions exercising inter-jurisdictional regulatory functions or making the above-mentioned types of determinations between State programs and/or private entities which may involve other jurisdictions. [§76-16(b)(17) and new]

- 17. Positions for which the amount of compensation is specifically set by statute.** One key component of the civil service system is the establishment of job-related pay relationships. If compensation for a position is set by the legislature, the position should not be covered by the civil service because civil service compensation practices would not be applicable. [§76-16(b)(17) and new]
- 18. Staff of programs temporarily attached to government when the intention is to sever that relationship.** Occasionally, functions and programs may be assumed by the government as a start-up or interim measure, although the intent is not to establish a permanent governmental program. Coverage by the civil service, including tenure and other employment rights and benefits, are unwarranted inasmuch as alternative staffing may be appropriate upon severance from the government. This criteria is applicable only in those cases when the decision to separate the program from government is specified in an authoritative source (e.g., legislative action, contract, other binding agreement, etc.) as opposed to speculative. [new]
- 19. Individuals who are compensated on a fee for service or piecework basis or who are hired as independent contractors.** These temporary and/or intermittent services by individuals would usually be provided through the filling of positions. However, there are certain circumstances when services are provided through an agreement or contract between a State agency and an individual or a firm. The contractor's relationship with the State must be that of an independent contractor--not an employee. The contractor must perform duties concurrently with their private business and deliver the completed work/product by or during a specified time. Therefore, individuals providing intermittent services for a fee, on a piecework basis or as an independent contractor, should not be covered by the civil service. [§76-16(b)(2) and (15)]
- 20. Law Clerks.** Law Clerk positions are filled, on a short-term basis, by law school graduates who have not yet passed the bar. The positions provide the individual an opportunity to gain valuable experience and exposure to government prior to sitting for the bar. Individuals have already met the appropriate qualifications for the position by receiving a law degree. Consequently, the concept of long-term employment is inconsistent with their credentials, interim status and the type of position. Consequently, civil service coverage is not appropriate. In many instances, individuals hired as law clerks are converted to or appointed to attorney positions. [new]
- 21. Positions which serve as full-time Board or Commission Chairs and Members.** Such positions serve on, or head, a board or commission with a significant workload and substantial impact on the public. Their responsibilities include policy setting which should reflect the policies of the current administration. Additionally, such individuals are high profile individuals, whose conduct and decisions will be scrutinized by the media. As such, the appointment should be "at will" to assure compliance with gubernatorial priorities and policies and the public image inherent in such a role. [§76-16(b)(5) and new]
- 22. Positions in an Office that is administratively attached to a department, if the position is exempt from 26-35(4) and the person's salary is, by law, set by the**

**Board.** One key component of the civil service system is the establishment of job-related pay relationships. If there is a compelling reason to provide the Board with the authority to set the compensation for a position, the position should not be covered by the civil service because civil service compensation practices would not be applicable. [new]

- 23. Psychiatrists.** Prevailing wages for psychiatrists are higher than can be accommodated through the use of civil service salary ranges, and the State has experienced ongoing recruitment difficulties in filling many civil service psychiatrist positions. This difficulty is also sometimes exacerbated by the physical locations and clientele that apply to specific positions. This exemption allows departments to offer community or market salaries to qualified psychiatrists. [§76-16(b)(17) and new]
- 24. Executive Protection.** The Governor and Lt. Governor are provided with personal protection during their extended working hours and in their private lives. As such, Executive Protection personnel are privy to many confidential governmental matters and also to personal matters. The individuals providing this service must be skilled but must also be persons with whom the Executive is comfortable and in whom he/she has confidence. Such appointments must inherently be “at will” since the confidence and comfort of the Executive served is paramount. [new]
- 25. Staff to a board or commission.** Boards and commissions need to have certain staff positions within the program filled by an exempt “at will” employee who is loyal and accountable to them to insure that their direction or instructions are effectuated. Such positions must utilize substantial discretion and authority or provide services under unconventional employment governance, e.g., working out of class, hours of work not limited to conventional 8hour/40hour Monday-Friday work week, or work output is driven by external factors. In addition, these types of positions require specialized qualifications that are possessed by few and the appointee is subject to an employment contract with provisions that do not mirror or provide civil service tenure and benefits. [new]
- 26. Appointments that coincide with the term of appointment of the Administrator.** Appointees are selected by the Administrator based on: specific or specialized qualifications; compatibility with the Administrator and the organization; or appointees are subject to employment contract provisions that do not mirror or provide civil service tenure and benefits. [new]
- 27. Positions not appropriate for inclusion in the civil service as determined by the Director of Human Resources Development.** Positions needed in the public interest for which tenure and/or other terms and conditions of civil service employment are inappropriate; provided that the employing department shall provide for a full and adequate explanation of the aspects of the position preclude inclusion in the civil service, and the director shall certify that inclusion within the civil service is inappropriate. Any such exemption shall be granted for a duration determined by the director. [new]
- 28. Positions funded by sale of non-governmental services or products.** Authorized positions that are totally funded through the sale of non-governmental products or services, such as are found in the Correctional Industries program. Appointments to such positions are dependent upon the amount of sales and

revenue generated from the sales, thus necessitating flexibility not afforded by the civil service system. [new]

## DETAILS OF CHANGES

- Four exempt positions (#102006 - #102009) in the Department of Business and Economic Development that were identified to be replaced with civil service positions in the supplemental report to the 2004 Legislature have been transferred by Act 62, SLH 2005 to the Department of Commerce and Consumer Affairs and will remain exempt for now. However, three of the four positions will be replaced by civil service positions within one calendar year from the effective date of the Act-only the supervisor position (#102006) will remain exempt.
- All fourteen exempt positions in the Department of the Attorney General that were identified to be replaced with civil service positions in the supplemental report to the 2004 Legislature will remain exempt. The legal authority for the exemptions has been corrected from exemptions under §76-16(b)(17), HRS to §76-16(b)(10), HRS.
- Five exempt positions (#100556, #100626, #100698, #100815, and #101223) in the Department of Budget and Finance that were identified to be replaced with civil service positions in the supplemental report to the 2004 Legislature were abolished.
- One position (#102367) in the Department of Human Services that was identified to be replaced with a civil service position in the supplemental report to the 2004 Legislature has already been replaced.
- Four positions (#101829, #101852, #101986, and #101828) in the Department of Health that were identified to be replaced with civil service positions in the supplemental report to the 2004 Legislature are now recommended to remain exempt from civil service based on further information from the department.
- Three positions in the Department of Labor and Industrial Relations that were identified to be replaced with civil service positions in the supplemental report to the 2004 Legislature reported changes in titles for the following positions only:
  - #101015 – From “Accountant II” to “Sr. Accountant”
  - #104400 – From “\*Social Svc Related Prof” to “Prog. Specialist”
  - #101110 – From “Sr. Career Info Analyst” to “Sr. Career Info Analyst Supv”.

### Other Statutes Exempting Positions

Dept	Citation	Mandatory or Discretionary Exemption
B&F	87A-24(4)	Mandatory
B&F	802-12	Mandatory
CCA	26-9(O)	Discretionary
CCA	431:2-215	Mandatory unless already civil service
DAGS	11-5	Mandatory
DBED&T	206M-3(6)	Mandatory
DBED&T	206J-5(A)(6)	Discretionary
DBED&T	206E-4(6)	Discretionary
DBED&T	206M-3(6)	Mandatory
DBED&T	201B-3(A)(7)	Discretionary
DHS	201G-2	Mandatory for Executive Director and Executive Assistant and discretionary for staff
DLNR	174C-5	Discretionary
DLNR	171-19(2)	Discretionary
DLNR	174C-6	Mandatory
DLNR	Act 161, SLH 1994	Discretionary
DLNR	6E	Mandatory
DOH	334-4	Mandatory
HHL	202(b) HHCA 1920	Mandatory for First Deputy and Secretary, and discretionary for temporary staff
LG	92F-41(D)	Discretionary
PSD	353C-3	Mandatory
TAX	232E-1	Discretionary

Department of Accounting and General Services - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - AGS Remain exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
AGS	00117287	Policy Analyst	2/1/2005	Statewide Policy & Program Analyses Management Project	S	State General Funds	2/1/2005	12/31/2006	5
	<b>1 position</b>								

Department of the Attorney General - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - ATG Remain exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
ATG	00107705	Interstate ID Index Clerk	1/19/1999	Redesign of the OBTS/CCH System (renamed CJIS-Hawaii)	S	Federal Funds	1/1/2002	6/30/2007	2
	<b>1 position</b>								

Department of Business and Economic Development - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - BED Remain exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
BED	00117452	DBEDT Projects Coordinator	7/1/2005	DBEDT Projects Coordinator	S	State General Funds	7/1/2005	12/4/2010	2
BED	00117334	*Energy Secretary II	5/27/2005	State Energy Program	S	Federal Funds	5/1/1976	6/30/2006	6
	<b>2 positions</b>								

Department of Budget and Finance - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - BUF Remain exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
BUF	00117322	UP Program Specialist	3/4/2005	Unclaimed Property Public Awareness and Outreach Project	S	Trust Funds	1/12/2005	12/31/2006	5
BUF	00117323	UP Program Specialist	3/4/2005	Unclaimed Property Public Awareness and Outreach Project	S	Trust Funds	1/12/2005	12/31/2006	5
BUF	00117327	UP Mobile Services Agent	3/10/2005	Unclaimed Property Public Awareness and Outreach Project	S	Trust Funds	1/12/2005	12/31/2006	5
BUF	00117328	UP Mobile Services Agent	3/10/2005	Unclaimed Property Public Awareness and Outreach Project	S	Trust Funds	1/12/2005	12/31/2006	5
BUF	00117329	UP Mobile Services Agent	3/10/2005	Unclaimed Property Public Awareness and Outreach Project	S	Trust Funds	1/12/2005	12/31/2006	5
BUF	00117558	Policy Analyst	8/15/2005	Statewide Budget Policy and Program Analyses Project	S	State General Funds	8/15/2005	6/30/2006	1
	<b>6 positions</b>								

Department of Defense - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - DEF Remain exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
DEF	00111666	Disaster Recovery Branch Chief	1/8/2001	November 2000 Flood Recovery	S	25% State General Funds and 75% Federal Funds	1/8/2001	6/30/2005	2
DEF	00111899	Disaster Recovery Accountant	4/11/2001	November 2000 Flood Recovery	S	25% State General Funds and 75% Federal Funds	1/8/2001	6/30/2005	2
DEF	00117368	Oct 04 Flood Br Chief	2/1/2005	October 2004 Flood, FEMA-1575-DR	S	25% State General Funds and 75% Federal Funds	2/1/2005	2/1/2008	6
DEF	00117369	Oct 04 Flood Planner	2/1/2005	October 2004 Flood, FEMA-1575-DR	S	25% State General Funds and 75% Federal Funds	2/1/2005	2/1/2008	6
DEF	00117370	Oct 04 Flood Civil Engineer	5/10/2005	October 2004 Flood, FEMA-1575-DR	S	25% State General Funds and 75% Federal Funds	2/1/2005	2/1/2008	6
DEF	00117371	Oct 04 Fld Bldg Inspector	4/22/2005	October 2004 Flood, FEMA-1575-DR	S	25% State General Funds and 75% Federal Funds	2/1/2005	2/1/2008	6
DEF	00117372	Oct 04 Flood Accountant	5/10/2005	October 2004 Flood, FEMA-1575-DR	S	25% State General Funds and 75% Federal Funds	2/1/2005	2/1/2008	6
DEF	00117373	Oct 04 Flood Clerk Typist	5/10/2005	October 2004 Flood, FEMA-1575-DR	S	25% State General Funds and 75% Federal Funds	2/1/2005	2/1/2008	6
DEF	00117593	CD/PDC Proj Coordinator	9/13/2005	Pacific Disaster Center Project Coordination	S	Federal Funds	9/1/2005	8/31/2006	1
DEF	00117071	Facilities Plnr Asst	9/3/2004	Real Property Development Plan (RPDP)	S	Federal Funds	11/26/1999	6/30/2006	2
DEF	00117333	Training Site Env'l Spclt-KMR	3/18/2005	U.S. Army Environmental Program Requirements	S	Federal Funds	10/1/1999	6/30/2006	13
DEF	00117484	MCA Account Clerk	8/24/2005	Master Cooperative Agreements Computerized Automation Program	S	Federal Funds	10/1/2005	9/30/2007	1
DEF	00117554	Reintegration Representative	8/15/2005	Military Members, including returning Hawaii National Guard members and Reservists Program	S	State General Funds	8/15/2005	5/30/2007	1
<b>13 positions</b>									
<b>Note: Positions # 00111666 and # 00111899 will be abolished effective October 1, 2005.</b>									

Department of Human Services - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - HMS Remain Exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
HMS	00116535	Administrative Assistant I	9/29/2003	Public Issues Planning Project	S	Federal Funds	7/1/2005	12/31/2006	3
HMS	00116541	ADMINISTRATIVE ASSISTANT I	10/3/2003	Public Issues Planning Project	S	Federal Funds	7/1/2005	12/31/2006	3
HMS	00116543	Executive Assistant II	10/3/2003	Public Issues Planning Project	S	Federal Funds	7/1/2005	12/31/2006	3
HMS	00117103	Clerk	9/20/2004	Search for Public and Private Grants	S	Federal Funds	1/1/2004	12/31/2005	2
HMS	00117232	Program Coordinator	12/20/2004	Kokua `Ohana Kokua (Families Helping Families) Project	D	Federal Funds	9/1/2004	8/31/2007	1
HMS	00117268	Administrative Assistant (PIP)	12/23/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117269	Complaints Liaison	12/23/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117313	Senior Policy Advisor	3/3/2005	Statewide Policy & Program Analyses Management Project	S	Federal Funds	2/1/2005	12/31/2006	5
HMS	00117481	Senior Policy Advisor	7/18/2005	Vocational Rehabilitation Assessment Project	S	Federal Funds	7/1/2005	6/30/2007	1
HMS	00117417	Intake Secretary	7/13/2005	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117418	Intake Worker	7/13/2005	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117200	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117201	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117202	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117203	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54

Department of Human Services - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - HMS Remain Exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
HMS	00117204	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117205	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117206	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117207	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117208	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117209	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117210	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117211	Voluntary Svcs Case Manager	12/7/2004	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
HMS	00117231	Quality Assurance Coord	1/11/2005	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal Funds	4/1/2004	6/30/2006	54
	<b>24 positions</b>								

Department of Health - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - HTH Remain Exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
HTH	00117360	CAMHD Restraint Seculsion Clerk Typist	04/22/2005	Hawaii Alternatives to Restraint and Seculsion	D	Federal Funds	03/15/2005	09/29/2007	3
HTH	00117380	CAMHD DATA INFR RES STAT	05/02/2005	Hawaii Data Infrastructure and Alternatives to Restraint and Seculsion	S	Federal Funds	10/01/2004	09/29/2007	1
HTH	00117434	Drug Control Spclt	07/01/2005	Public Issues Planning Project	S	State General Funds	07/01/2005	12/31/2006	7
HTH	00117152	AMHD EBP Project Clerk	10/27/2004	Introduction of Co-Occurring Disorders and Illness Management	R	Federal Funds	09/30/2003	09/29/2006	3
HTH	00117222	AMHD COSIG Mobile Team Psych	12/28/2004	Hawaii's State Initiative Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Health Disorders (COSIG)	R	Federal Funds	09/30/2003	09/29/2008	12
HTH	00117223	AMHD COSIG Co-Coord (AMHD)	12/28/2004	Hawaii's State Initiative Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Health Disorders (COSIG)	R	Federal Funds	09/30/2003	09/29/2008	12
HTH	00117224	AMHD COSIG Mobile Team SW/HSP	12/28/2004	Hawaii's State Initiative Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Health Disorders (COSIG)	R	Federal Funds	09/30/2003	09/29/2008	12
HTH	00117330	AMHD COSIG Mobile Team Peer Spclt	03/14/2005	Hawaii's State Initiative Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Health Disorders (COSIG)	R	Federal Funds	09/30/2003	09/29/2008	12
HTH	00117331	AMHD COSIG Mobile Team APRN	03/15/2005	Hawaii's State Initiative Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Health Disorders (COSIG)	R	Federal Funds	09/30/2003	09/29/2008	12
HTH	00117348	CAMHD Restraint Seculsion Spcl	04/22/2005	Hawaii Alternatives to Restraint and Seculsion	D	Federal Funds	03/15/2005	03/15/2008	3
HTH	00117359	CAMHD ResSeculsion Res Stat	04/22/2005	Hawaii Alternatives to Restraint and Seculsion	D	Federal Funds	03/15/2005	03/15/2008	3
HTH	00117435	Resource Assessment Spclt	07/01/2005	Public Issues Planning Project	S	State General Funds	07/01/2005	12/31/2006	7
HTH	00117436	Administrative Asst	07/01/2005	Public Issues Planning Project	S	State General Funds	07/01/2005	12/31/2006	7
HTH	00117148	EDR DPSA	10/27/2004	Electronic Death Registration	S	Federal Funds	09/30/2003	09/29/2006	2

Department of Health - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - HTH Remain Exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
HTH	00117149	EDR Project Manager	10/27/2004	Electronic Death Registration	S	Federal Funds	09/30/2003	09/29/2006	2
HTH	00116517	Administrative Assistant I	09/17/2003	Public Issues Planning Project	S	State General Funds	07/01/2005	12/31/2006	7
HTH	00117437	Policy&Program Analyst	07/01/2005	Statewide Policy and Program analyses Management Project	S	State General Funds	07/01/2005	12/31/2006	5
HTH	00117485	LTC Project Manager	07/27/2005	Governor's Initiative on Long Term Living and Strategic Planning to Address the State's Long Term Care Needs	S	State General Funds	08/01/2005	12/30/2006	1
HTH	00117028	Inf Dis Vector Control Insp	09/02/2004	Epidemiology & Laboratory Capacity for Infectious Disease (ELC); PHS Act, Sections 301 (A) & 317	S	Federal Funds	07/01/1999	06/30/2006	8
HTH	00117055	Arbovirus Information Spclt	09/02/2004	Epidemiology & Laboratory Capacity for Infectious Disease (ELC); PHS Act, Sections 301 (A) & 317	S	Federal Funds	07/01/1999	06/30/2006	8
HTH	00117214	Chronic Disease Epidemiologist	01/03/2005	Comprehensive Cancer Control Program	S	Federal Funds	09/30/2002	06/29/2007	1
HTH	00117364	ELC Data Procsgg Sysys Anal V	08/24/2005	Epidemiology & Laboratory Capacity for Infectious Disease (ELC); PHS Act, Sections 301 (A) & 317	S	Federal Funds	07/01/1999	06/30/2006	8
	<b>22 positions</b>								

Department of Public Safety - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - PSD Remain exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
PSD	00117279	Sex Offender Treat Prog Spec	1/16/2005	SEX OFFENDER TREATMENT IMPROVEMENT PROJECT	S	25% State Special Funds 75% Federal Funds	1/20/2005	7/31/2006	1
PSD	00117112	Prescription Monitoring Invest	10/1/2004	ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM	S	Federal Funds	10/4/2004	4/30/2006	1
PSD	00116922	Offender Mgmt Legal Assistant	7/1/2004	INMATE RELEASE PROJECT	S	State General Funds	7/1/2004	6/30/2006	5
PSD	00116923	OFFENDER MGMT LEGAL ASSISTANT	7/1/2004	INMATE RELEASE PROJECT	S	State General Funds	7/1/2004	6/30/2006	5
PSD	00116924	OFFENDER MGMT LEGAL ASSISTANT	7/1/2005	INMATE RELEASE PROJECT	S	State General Funds	7/1/2004	6/30/2006	5
PSD	00117115	Policy Analyst	9/24/2004	STATEWIDE POLICY AND PROGRAM ANALYSES MANAGEMENT PROJECT	S	State General Funds	9/30/2004	12/31/2006	5
	<b>6 positions</b>								

Department of Transportation - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - DOT Remain exempt

Dept	Position	Job Title	Establ'd	Project Title	Kind of Project R, D, S	Funds	Begin Date	End Date	# Exempt Positions
TRN	00116445	Special Asst to the Director	8/5/2003	Hawaii Superferry; WASHTO Annual Meeting 2006; DOT Public Service Videos/Commercials	S	State Special Funds	12/13/2004	1/31/2007	1
TRN	00117290	Policy Analyst	2/1/2005	Statewide Policy and Program Analyses Management Project	S	State Special Funds	2/1/2005	12/31/2006	5
	<b>2 positions</b>								

Department of Accounting and General Services - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 2 -AGS Replace with Civil Service

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose
00116489	Election Info Specialist	Sec 11-5, HRS	9/15/2003	Election Adm	T	Provide statewide technical assistance and program support for persons with various disabilities accessing polling places and the voting process statewide. Position will implement the provisions of the Help America Vote Act public education campaign for voters with various disabilities.
00117212	Election Specialist (VS)	Sec 11-5, HRS	11/18/2004	Election Adm	T	Implements, coordinates, and evaluates mass voter registration programs to maximize and equalize voter registration and participation statewide; controls in-house voter registration programs; assists with the production and procurement of voter registration materials; and provides administrative support to the section.
<b>2 Positions</b>						

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose
00117114	Public Defender Account Clerk	802-12, HRS	9/27/2004	OfcPublicDef	T	Provides account clerical services for the Office of the Public Defender.
<b>1 Positions</b>						

Department of Business and Economic Development - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - BED Remain Exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00116613	MEP Senior Project Manager	HRS 206M-3(6)	11/18/2003	HTDC	T	Provide support to private sector manufacturing and small businesses for economic development. Supervise Manufacturing Extension Partnership program employees, identify potential clients, market and promote program, assess, research, evaluate, and implement business improvements, manufacturing technology, and marketing strategies for private businesses; promote and conduct seminars, workshops, and entrepreneurship training classes	25
00116614	*MEP Project Manager	HRS 206M-3(6)	11/18/2003	HTDC	T	Provide support to private sector manufacturing and small businesses for economic development. Assess, research, evaluate, and implement business improvements, manufacturing technology, and marketing strategies for private businesses; promote and conduct seminars, workshops, and entrepreneurship training classes	25
00116615	*MEP Project Manager	HRS 206M-3(6)	11/18/2003	HTDC	T	Provide support to private sector manufacturing and small businesses for economic development. Assess, research, evaluate, and implement business improvements, manufacturing technology, and marketing strategies for private businesses; promote and conduct seminars, workshops, and entrepreneurship training classes	25
00116616	MEP Project Manager	HRS 206M-3(6)	11/18/2003	HTDC	T	Provide support to private sector manufacturing and small businesses for economic development. Assess, research, evaluate, and implement business improvements, manufacturing technology, and marketing strategies for private businesses; promote and conduct seminars, workshops, and entrepreneurship training classes	25
00116617	MEP Program Assistant	HRS 206M-3(6)	11/18/2003	HTDC	T	Provide support to private sector manufacturing and small businesses for economic development. Monitor program projects, federal compliance reporting, coordinate conference and workshops, marketing/promoting, administrative support	25
00116874	HCAAT Manager	206M-3(6)	5/6/2004	HTDC	T	Provides support to military and other federal government agencies by fulfilling the objectives of the federal agency from which funds were received in the area of advanced transportation technologies. Develop and operate the Hawaii Center for Advanced Transportation Technologies, supervise staff, strategic planning, identify funding opportunities through contracts with private sector, military, and other federal government agencies, project development, business management, contract administration, program coordination	25

Department of Business and Economic Development - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - BED Remain Exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00116882	ATDC Secretary	HRS SEC 206J-5(A)(6)	4/16/2004	ATDC	T	Secretary to the ATDC Board & Executive Officer	25
00116951	HCDA Kalealoea Prg Spclt IV	HRS 206E-4(6)	7/1/2004	HCDA	T	Assists implementation of Kalealoea Master Plan to redevelop Kalealoea District	25
00116965	ATDC Dev Mgr/Sp Asst	HRS 206J-5(A)(6)	7/16/2004	ATDC	T	Plans and implements projects as directed by the Board	22, 25
00117108	CEROS Research Administrator	206M-3(6)	9/21/2004	NELHA	R	Pursues opportunities for CEROS to facilitate maritime technology development & applications; technical program development & execution; technical project monitoring & reporting; transition plan development & implementation; and promoting and representing CEROS to the ocean research and development community at large.	27
00117163	HCDA Director of Png & Dev	HRS 206E-4(6)	9/16/2004	HCDA	R	Manages redevelopment in Kalealoea District	25
00117227	HTA Sports Events Manager	HRS 201B-3(A)(7)	12/1/2004	HTA	T	Serves as HTA Sports Events Manager	7
00117281	HTA Strategic Planner	HRS 201B-3(A)(7)	12/1/2004	HTA	T	Serves as HTA Planning Manager	7
00117411	*ATDC Project Manager	206J-5(A)(6)	6/6/2005	ATDC	T	Plans and implements projects as directed by the Board	25
00117412	*ATDC Project Manager	206J-5(A)(6)	6/6/2005	ATDC	T	Plans and implements projects as directed by the Board	25
<b>15 Positions</b>							

Department of Budget and Finance - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - BUF Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00017471	EUTF Clerk II	HRS 87A - 24 (4)	1/16/2004	HEUHIthBenTF	R	Provides clerical services for the EUTF.	27
00023885	Health Benefits Program Spec	HRS 87A - 24 (4)	4/16/2004	HEUHIthBenTF	R	Provides training to EUTF staff and other department personnel and financial offices that are involved in the health and other benefit plan management process.	27
00027886	Membership Enrollment Rec Tech	HRS 87A - 24 (4)	9/1/2004	HEUHIthBenTF	R	Ensures the integrity of the EUTF benefits administration database.	27
00031592	EUTF Clerk	HRS 87A - 24 (4)	1/16/2004	HEUHIthBenTF	R	Provides clerical services for the EUTF	27
00043196	EUTF Accountant	HRS 87A - 24 (4)	1/16/2004	HEUHIthBenTF	R	Maintains the accounts receivable systems for the EUTF.	27
00116735	Customer Svc Representative	HRS 87A - 24 (4)	3/16/2004	HEUHIthBenTF	R	Serves as primary contact responding to beneficiary, carrier and employer inquiries to the EUTF.	27
00116736	Customer Svc Representative	HRS 87A - 24 (4)	3/16/2004	HEUHIthBenTF	R	Serves as primary contact responding to beneficiary, carrier and employer inquiries to the EUTF.	27
00116737	Customer Svc Representative	HRS 87A - 24 (4)	3/16/2004	HEUHIthBenTF	R	Serves as primary contact responding to beneficiary, carrier and employer inquiries to the EUTF.	27
00116848	Member Services Clerk	HRS 87A - 24 (4)	10/1/2004	HEUHIthBenTF	T	Provides clerical services for the EUTF	27
00117104	Member Services Representative	HRS 87A - 24 (4)	10/1/2004	HEUHIthBenTF	T	Serves as primary contact responding to beneficiary, carrier and employer inquiries to the EUTF.	27
<b>10</b>	<b>Positions</b>						

Department of Commerce and Consumer Affairs - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - CCA Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00117393	Securities Education Assistant	SEC. 26-9(O), HRS	5/10/2005	BusRegtnDiv	T	Assists in creating and organizing investor education program materials.	25
00117443	ISCO DPSA IV	26-9 (O); GM 6/20/05	7/1/2005	InfoSys/Com	T	Maintains the electronic data processing systems that allow the department to process and disseminate information in an accurate and timely fashion.	26
00116590	CIAF Insurance Examiner I	431:2-215,ACT200,SLH2003	11/6/2003	Insurance	R	Provides financial analyses and compliance to operations and practices of licensed captive insurance companies.	26
00116591	CIAF Insurance Examiner II	431:2-215,ACT200,SLH2003	11/6/2003	Insurance	R	Provides financial analyses and compliance to operations and practices of licensed captive insurance companies.	26
00116592	CIAF Insurance Examiner III	431:2-215,ACT200,SLH2003	11/6/2003	Insurance	R	Provides financial analyses and compliance to operations and practices of licensed captive insurance companies.	26
00117413	PVL Bd & Comm Admins Asst II	SEC. 26-9(O)	6/1/2005	Prof&VocLic	T	Provide administrative services to the various regulatory boards, commissions, and programs.	25
<b>6 Positions</b>							

Department of Hawaiian Homelands - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - HHL Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00117343	HHL PERSONNEL CLERK V	SEC 202(B),HHCA 1920 AMENDED	3/18/2005	AdminSvcsOfc	T	Clerical support for human resources/personnel services functions	15
00117344	HHL PERSONNEL MGMT SPCLT IV	SEC 202 (B), HHCA 1920 AMENDED	3/18/2005	AdminSvcsOfc	T	Professional support for human resources/personnel services & special projects functions	15
00117387	HHL ACCOUNT CLERK III	SEC 202 (B),HHCA 1920 AS AMEND	5/5/2005	FiscalOfc	T	Accounts for revenues, expenditures, transfers, other funds transactions	15
00116671	HHL Mortgage Loan Specialist	SEC 202(B) HHCA 1920 AMENDED	1/20/2004	HmstdSvcsDiv	T	Provide assistance to homestead lessees applying for financial assistance in purchasing, building or repairing homes, farms or ranches.	15
00117234	Hmstd Svcs Administrative Asst	SEC 202 (B), HHCA 1920 AMENDED	12/10/2004	HmstdSvcsDiv	T	Assist or act in absence of the HSD Administrator in daily operations statewide; perform special project assignments; draft & revise legislation, proposals, manuals, policies & procedures, etc.	15
00117479	HHL Homestead Assistant II	SEC202 (B) HHCA 1920, AS AMEND	6/27/2005	HmstdSvcsDiv	T	Provide information & assistance to applicants for homesteads, lessees, general public, departmental staff; processes applications; monitor & collect on payments on delinquent loan accounts & other related duties	15
00117266	Labor Compliance Specialist	SEC202(B) HHCA 1920, AS AMEND	12/22/2004	LandDevDiv	T	Perform specialized professional work in conducting & investigating employer compliance with wage, hour and related labor laws; investigate complaints of violations; assist in conducting hearings; etc.	15
00116927	HHL Secretary III	SEC 202(B) HHCA 1920 AS AMENDED	6/21/2004	OfcOfChairmn	T	Personal Assistant to Executive Assistant & clerical support for Office of the Chairman	15
00117158	HHL COMPLIANCE OFFICER ASST	SEC 202(B) HHCA 1920 AMENDED	10/1/2004	OfcOfChairmn	T	Assists in monitoring compliance with DHHL rules & regulations; provide advice to the Commission & staff on Hawaiian home lands laws, policies, rules & regulations	15
00117165	HHL Land Agent/Enforcement Officer I	SEC 202(B) HHCA 1920, AMENDED	10/20/2004	OfcOfChairmn	T	Responds to & resolves complaints in dept & Hawaiian Homes Lands communities; coordinate enforcement activities w/other appropriate agencies & monitor & ensure compliance with dept rules & regulations	15
00117345	HHL SECRETARY III	SEC 202 (B), HHCA 1920 AMENDED	3/18/2005	OfcOfChairmn	T	Clerical support for Dept Commission & Office of the Chairman	7
<b>11 Positions</b>							
<b>NOTE:</b>	<b>Positions funded by the Hawaiian Home Operating Fund cannot be replaced with civil service positions unless funded by the Hawaiian Home Administration account and cash flow issues are resolved.</b>						

Department of Human Services - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - HMS Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00117422	Special Assistant	201 G-2	7/1/2005	H&CDvCpHI	T	Conducts,directs or coordinates essential activities by closely working with the individuals involved to ensure the activities vital to the completion of work products, resolution of problems/concerns and overall accomplishment of the project; study of assignments are complete. This position serves as a principal advisor to the ED on special projects necessary to ensure compliance with policies and procedures.	25
00117429	Special Assistant	HB 100, CD1, SD1, CD1 (201G-2)	7/1/2005	H&CDvCpHI	T	Conducts,directs or coordinates essential activities by closely working with the individuals involved to ensure the activities vital to the completion of work products, resolution of problems/concerns and overall accomplishment of the project; study of assignments are complete. This position serves as a principal advisor to the ED on special projects necessary to ensure compliance with policies and procedures.	25
<b>2 Positions</b>							

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00116596	Psychiatrist I	HRS 334-4	12/01/2003	DepDirOfHlth	T	Staff Psychiatrist	10, 23
<b>1</b>	<b>Position</b>						

Department of Land and Natural Resources - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - LNR Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00103112	Hydrological Research Technici	174C-5	8/2/1995	CWRM	R	Performs specialized data gathering and analyses including budget accounting and researching water resource technical documents, judicial and quasi-judicial filings and submittals.	25
00041674	Project Development Specialist	171-19(2)	12/1/2002	Land Div	R	Conducts planning and development activities related to state lands, processing acquisitions and dispositions of state land management leases on state lands, assisting in the maintenance of the SLIMS.	25
00116697	Documentation Specialist	171-19	1/27/2004	Land Div	R	Assists land agents in the processing of land documents, tracking of pending land requests to ensure timely processing, tracking of lease compliance issues, and creation and filing of land documents and other Land Division correspondence.	25
00117517	Education and Outreach Coord	171-19	8/11/2005	Ofc of the Chairprsn	T	Plans, organizes, directs and coordinates the public education and outreach program for the department to promote acceptance of DLNR's activities, interpret its more complicated problems, correct misunderstandings and anticipate possible criticism and recommend action.	25
00101847	Deputy Director	174C-6	10/7/1987	Ofc/Chairpsn	R	Serves as First Deputy for the Commission on Water Resource Management and administers programs and activities under the State Water Code.	25
00117385	Resource Manager	Act 161, SLH 1994	5/5/2005	Ofc/Chairpsn	T	Provides pogram management support to the Executive Director of the KIRC; oversees the natural resources programs, marine resources programs, culture/education programs; coordinates the implementation of the environmental restoration and ocean resources management plans.	18
00117386	Reserve Manager	Act 161, SLH 1994	5/5/2005	Ofc/Chairpsn	T	Provides reserve operations support to the Executive Director of the KIRC; manages the day -to-day operations of the Reserve plans; prepares annual requirement of the base-camp and transportaiton support; investigates laws and rules violations; coordinate law enforcement and public safety programs.	18
00117388	Polciy Advisor for Spec Projec	Act 161, SLH 1994	5/6/2005	Ofc/Chairpsn	T	Provides senior level policy and long-term program planning and development support to the Executive Director of the KIRC	18
00117428	KIR Specialist II	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Performs extensive fieldwork in the planning, organizing and conducting of all the natural resources monitoring, protection and maintenance activities within the Reserve.	18
00117430	KIR Specialist III	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Performs extensive fieldwork in the planning, organizing and conducting of all the natural resources monitoring, protection and maintenance activities within the Reserve. Coordinates with the access and risk management plan and reserve operations.	18

Department of Land and Natural Resources - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - LNR Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00117431	Access Control Specialist	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Coordinates KIRC staff transportation, logistics supply movements, outside agency personnel to and from the Reserve.	18
00117432	Outreach Specialist	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Works with the Executive Director to plan and conduct public relations programs, news releases; educational presentations to the community groups; formulates procedures, policies and guidelines for assigned communication tasks.	18
00117438	Administrative Spec II	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Assists the Executive Director with personnel management and inventory management.	18
00117439	Volunteer Coordinator	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Assists the Executive Director with planning and conducting the volunteer programs and volunteer staff; formulates policies and procedures and guidelines for the volunteer program.	18
00117440	Administrative Spec III	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Prepares documents and processes for procurement of supplies and equipment; prepares, processes and tracks execution of contracts; maintain financial records and other reports.	18
00117441	Natural Resources Spec II	Act 161, SLH 1994	7/1/2005	Ofc/Chairpsn	T	Supervises field crews and volunteer personnel in the management and monitoring of work related to various activities on the reserve.	18
00117559	Cultural Programs Director	HRS 6E	8/16/2005	StHisPresDiv	T	Oversees the coordination of island burial council meetings; develop and implements policy and procedures for the Culture and History Branch.	26
00117560	Cultural Historian	HRS 6E	8/16/2005	StHisPresDiv	T	Reviews and evaluates development proposals that may affect historic properties and make recommendations to ensure the preservation of historic sites including burial sites.	26
<b>18 Positions</b>							

Office of the Lieutenant Governor - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - LTG Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00117247	Staff Attorney	92F-41(D)	12/15/2004		T	Located in the Office of Information Practices, this position is responsible for conducting legal research, writing opinions, and providing advice regarding the Uniform Information Practices Act (Modified), Chapter 92F, HRS.	13
<b>1 Position</b>							

Department of Public Safety - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - PSD Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00102216	Deputy Director For Administration	76-16b-17, SECT 353C-3, HRS	2/15/1990	OfcofDir	R	Assist the director with administration matters	6
00102217	Deputy Director For Corrections	76-16b-17, SECT 353C-3, HRS	2/15/1990	OfcofDir	R	Assist the director with corrections matters	6
00102218	Deputy Director For Law Enforcement	76-16b-17, SECT 353C-3, HRS	2/15/1990	OfcofDir	R	Assist the director with law enforcement matters	6
<b>3 Positions</b>							

Department of Taxation - Exemptions Pursuant to HRS 76-16(b)(17)

Exhibit 3 - TAX Remain exempt

Position	Job Title	Legal Authority	Establ'd	Division	R/T	Purpose	Criteria #
00117557	TAX REVIEW COMM SEC	HRS 232E-1	8/16/2005	OfcofDir	T	Provide secretarial service to the Tax Review Commission	15
00117427	Tax Review Commissn Tech Coord.	HRS 232E-1	6/27/2005	TaxRes&Plan	T	Coordinates operations of the Tax Review Commission; conducts research projects and collects information assigned by the Commission	15
<b>2 Positions</b>							

### Exhibit 3 – BED Criteria # 27 Reason

CEROS Research Administrator, exempt position, criteria 27

The CEROS Research Administrator position is needed in order to provide technical project management and coordination. The position involves developing requests for research proposals, establishing and implementing methods of evaluation proposals received, contracting for projects selected and managing all aspects of the research performed by CEROS Contractors.

The recruitment for this position was difficult; a suitable candidate could not be found under a previous recruitment process. Establishing a class under the civil service system could take years. This position is required to maintain an effective CEROS program while addressing program growth.

The knowledge and skills needed by the CEROS Research Administrator are specialized and extensive. The candidate should have a broad-based background and knowledge of marine science and technology; familiarity with project development, solicitation, evaluation and selection and proven technical project management capability; and working knowledge of Department of Defense technical project management, funding and procurement procedures. The Research Administrator must be able to relate ocean science and technology development both within and outside the maritime technology development community; evaluate technical proposals and business plans to coordinate and assist business development; interact with a diverse spectrum of business, community, and government infrastructure representatives; plan and organize assignments containing many problems for which data or precedents are not readily available; initiate and maintain effective relationships with others; formulate comprehensive programs and projects with other jurisdictions.

The CEROS Research Administrator position is supported wholly by the federal Cooperative Agreement that funds the CEROS Program.

### Exhibit 3 – BUF Criteria # 27 Reason

#### EUTF Positions (10), exempt positions, criteria 27

Exemption from civil service for EUTF clerical and professional positions is required to employ but not necessarily on a tenure basis. Positions and the hiring and firing of incumbents must be flexible due to the unstable workload of this newly created agency. Although EUTF is currently seeking to effectively anticipate and manage its workload and maintain appropriate staffing levels, it continues to be subject to Board directives and legislative initiatives that radically affect the workload and subsequently impact positions and appointments.

For example, Act 254/SLH 2005 authorizes the establishment of VEBA trust by public employee organizations to provide health benefits for its members. Currently, HSTA is moving forward to establish their own trust. HGEA and other unions are also seriously considering this option. Should these trusts be realized, EUTF enrollment could significantly diminish with little to no warning. This unpredictable decrease in workload would ultimately require downsizing and reduction in the EUTF workforce. As such, continuous, tenured employment for these EUTF employees is not a reasonable expectation and temporary, exempt ?at-will? employees would be best suited for this volatile environment. As exempt employees, they would serve at the pleasure of the appointing authority and would not serve probational periods or have "property rights" to their jobs.

On the other extreme, EUTF requires the flexibility in hiring to expeditiously implement and respond to federal and state laws and regulations impacting the health benefits industry. For example, EUTF is currently assisting the State and Counties in taking advantage of the Medicare Part D employer subsidy payments. Preliminary subsidy estimates range from \$5.2M to \$8.6M for the plan year beginning January 1, 2006. Without hiring flexibility and acquisition of immediate services, the State in cooperation with the EUTF will be ineffective in carrying out the multitude of tasks and increased workload required to secure these funds. If positions were not exempted, it would be difficult for HRD to provide certified lists of eligibles to meet the EUTF's immediate needs.