

## **ACKNOWLEDGEMENT**

In submitting this report, we would like to acknowledge Diana H. Kaapu, Chief of the Employee Classification and Compensation Division, for her guidance and participation in conducting the study of exempt positions that culminated in the 2004 and 2005 Exempt Study Reports. Her knowledge and insights gained from over forty years of experience with the State as an analyst, manager, and administrator, specifically in the field of position classification and in personnel in general, were invaluable in identifying appropriate criteria for exempting positions from the civil service as well as fashioning a balanced approach as to how positions and employees should be transitioned from the exempt service to the civil service. The reports reflect the intelligence, dedication and fairness that Ms. Kaapu is known for.

**REPORT TO THE 2005 LEGISLATURE  
ON POSITIONS EXEMPTED FROM THE CIVIL SERVICE  
AS REQUIRED BY HOUSE CONCURRENT RESOLUTION 94, H.D. 1,  
2003 AND ACT 128, SESSION LAWS OF HAWAII 2004**

Prepared by the Department of Human Resources Development  
December 27, 2004

**BRIEF SUMMARY OF REPORT**

In this report, the Department of Human Resources Development (DHRD) completes the review of positions exempted from the civil service. It also reports extensively on the second phase of the exempt study which provides detailed coverage of positions exempted from civil service under Subsection 12 of Section 76-16(b), Hawaii Revised Statutes (HRS). Finally, it provides comments regarding positions exempted under other subsections and the replacement of filled exempt positions with civil service positions.

Subsection 12 exempts "Employees engaged in special, research, or demonstration projects approved by the governor" from the civil service. The exemptions under this subsection involve 97 projects, with 392 positions exempted from the civil service (Attachment 1). DHRD is recommending that all 392 positions remain exempt. The 2004 report, "Annual Report To The 2004 Legislature On Positions Exempted From The Civil Service As Required By Act 253, Session Laws Of Hawaii 2000" (hereinafter "2004 Report"), by DHRD on exempt positions and its supplement, "Supplement To The Annual Report To The 2004 Legislature On Positions Exempted From The Civil Service As Required By Act 253, Session Laws Of Hawaii 2000" (hereinafter "Supplement"), contained proposed exemption criteria to determine if positions should remain exempt or be replaced with civil service positions. In DHRD's current review of positions exempted under Subsection 12, it was determined that proposed exemption criteria 14 was too narrowly defined. Therefore, DHRD is recommending a modification. Also in this review, DHRD found a need to define "project" and to revise the current "project questionnaire" (Attachment 2).

The 28 proposed exemption criteria in the 2004 report and its supplement encompass positions exempted under the remaining subsections of Section 76-16(b), HRS, so there is no need to examine those positions in detail. Therefore, it is the perspective of DHRD that its obligations under House Concurrent Resolution 94, H.D. 1 and Act 128, Session Laws of Hawaii (SLH) 2004 have been met.

As evidenced by the exemption criteria proposed in the 2004 report and its supplement, there is a legitimate need for positions that are exempt from civil service. In some instances the on-going need for the positions' functions remain, but changed circumstances make it appropriate to replace the exempt positions with civil service

positions. When this occurs, and the exempt positions are occupied, the rights of exempt employees and the needs of the program must be balanced. The report discusses what DHRD is doing to address these issues.

## **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 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 are to additional civil service statutes governing exemptions for the counties.)

On June 19, 2000, the Legislature passed Act 253, SLH 2000, and affirmed the State policy that all positions and personal services in the State should be covered by the civil service, unless specifically exempted. Act 253, SLH 2000 also directed DHRD to “submit, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2001, a report of the positions that were permanently exempted from the civil service prior to the effective date of this Act which it reviewed during the year.” (Note: The effective date of Act 253 was July 1, 2002.)

Subsequently, the 2003 Legislature passed House Concurrent Resolution 94, H.D. 1, which reiterated the legislature’s request for a review of exempt positions as required by Act 253. Then, in 2004 the Legislature passed Act 128, directing DHRD to “complete its review of all positions exempted from civil service in accordance with House Concurrent Resolution No. 94, Regular Session of 2003” (Attachment 3).

The 2004 report and its supplement, prepared by DHRD and submitted to the 2004 Legislature, covered positions exempted from civil service under Subsection 17 of Section 76-16(b), HRS (positions that are exempted from the civil service by other laws.) That subsection has the largest and most varied group of exempt positions that DHRD has jurisdiction over.

The 2004 report and its supplement also provided information regarding the general composition of exempt employees within the Executive Branch of State government, as well as differences between the civil service and the exempt service. That information has not been replicated in this report.

DHRD hereby respectfully submits this written report to the 2005 Legislature in accordance with HCR 94, H.D. 1 and Act 128, SLH 2004.

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

With the 2004 report covering positions exempted from civil service under Subsection 17 of Section 76-16(b), HRS, this report reviews positions covered under the remaining subsections, with emphasis on positions exempted from civil service under the provisions of Subsection 12 of Section 76-16(b), HRS, "Employees engaged in special, research, or demonstration projects approved by the Governor" (Attachment 4). Positions exempted under Subsection 12 have been reviewed with more scrutiny and analysis because exemptions under that subsection involve the use of substantial discretion in determining whether the exemptions are appropriate. The remaining subsections do not require such discretion in the determination of exemptions.

Inasmuch as there is always on-going activity regarding both civil service and exempt positions, it was necessary to focus on the positions as of a specific cut-off date. A cut-off date of April 1, 2004 was selected in order to allow sufficient time to:

- have the departments insure that the information within the Human Resources Management System (HRMS) was complete, accurate and up to date;
- analyze the updated data;
- develop preliminary information for the report, share it with the departments, and solicit additional information and feedback from them; and
- prepare the final report.

After DHRD found that a substantial amount of new projects and positions were being established after the April 1, 2004 cut-off date, requiring additional information from the departments, a new cut-off date of August 2, 2004 was established and is reflected in the report.

As indicated above, DHRD has worked collaboratively with the other departments in preparing this report.

In the review of positions covered by Subsection 12, the data analysis focused on the nature of the projects, why it was desirable or necessary to utilize exempt as opposed to civil service positions, and what factors impact the duration of the projects and exempt positions.

For subsections other than (17) (reported in 2004) and (12), the basis for exemption from civil service is readily discernable. Analysis regarding whether these positions

should remain exempt was confined to determining whether the subsection was consistent with any of the criteria for exemption from civil service recommended in the 2004 report and its supplement. DHRD's authority over certain exempt positions is limited to those that DHRD administers. (Attachment 5)

### **PART III.**

#### **SUBSECTION 12 (PROJECT) EXEMPT POSITIONS**

The primary focus of this report is the evaluation of positions exempted from the civil service under the provisions of Subsection 12 of Section 76-16(b), HRS (Exhibit 1). These are positions "engaged in special, research, or demonstration projects approved by the governor". In applying the provisions, it is necessary to define what constitutes a "project" and to further define each type of project.

#### **Definition of "Project"**

A project that serves as the basis for the establishment of an exempt position pursuant to Subsection 12 of Section 76-16(b), HRS, should involve an undertaking that is not a normal function of an existing program and the necessary activities cannot or should not be performed by the existing staff of the program. Departments should be able to articulate why the project is being pursued, why it is not a function of an existing program, and why existing staff cannot or should not perform the necessary activities. In addition, the need for the "project" position(s) should be temporary. If the activities of the "project" is a normal function, and/or if the project is not temporary, the work should be performed by civil service employees. The use of exempt positions for projects is appropriate when it relieves the central human resources agency and/or the department from unnecessary expenditure of resources to meet a temporary need, and provides flexibility that is often needed by departments.

Therefore, for purposes of Subsection 12 of Section 76-16(b), HRS, a "Project" is defined as an undertaking of limited duration to accomplish a specific purpose that is not a normal function of the department. A project should not be on-going in nature and the scope of the project should be narrow and not an integral function of the department to which it is assigned.

While not required, it is desirable to limit the use of exempt "project" positions to situations where the position is not amenable to establishment and/or filling on a civil service basis (e.g. there is a need to expend funds or get things started quickly, there is no appropriate civil service class, there is no eligible list and it would take too much time to conduct a civil service recruitment, etc.).

#### **Types of Projects--Defined**

"Research Project" is defined as an undertaking to examine or investigate a specific subject, plan, method, activity, or item for a defined purpose. An appropriate duration for the research project is dependent upon the nature of the subject, plan, method,

activity, or item being examined or investigated. There is a distinction between a research project and a research program. Whereas a research project is specific and narrow in focus, with a defined description of what constitutes its completion; a research program is often broad and may involve multiple, successive and/or on-going projects. However, each research project within a research program constitutes a separate project.

“Demonstration Project” is defined as an undertaking to illustrate or exemplify a specific method, technique or principle. Typically, the period needed to demonstrate whether the method, technique, or principle is viable is readily defined prior to the onset of the project.

“Special Project” is defined as an undertaking that meets the characteristics of a project as listed under “Definition”, but is not a “Research Project” or “Demonstration Project”.

### **Duration of a Project**

The anticipated duration of a project should be determined prior to the start of the project and be based upon what is to be accomplished, irrespective of funding limitations. If four years are needed to accomplish the objective, but the project is only funded for the biennium, the duration should be stated as four years with the understanding that the project may be terminated prematurely if funding for the second biennium is not secured. On the other hand, a project should not continue, as a project, beyond the accomplishment of the project’s objective just because funds are still available. As an example, a “demonstration” project should not continue after it has already been demonstrated that the method, technique or principle has been proven or disproven. It then becomes a policy decision as to whether the method, technique or principle should be adopted on a permanent or ongoing basis.

If the objective of the project has been achieved, and funding is continued on a temporary basis, temporary civil service positions should be established and filled to replace the exempt positions. The continued employment of the exempt employees assigned to the project would often be highly desirable because they are already trained to do the work and their abilities are known. To that end, an opportunity for the incumbents of the exempt positions to compete internally for appointment to the replacement civil service positions, at a compensation which is compatible with civil service employment, would be beneficial to both the program and the exempt employees. At the same time the interests of existing civil service employees would be protected as they would also be able to compete for appointment to the positions.

The data regarding projects and positions will show that some projects have been on-going for many years. There are a variety of legitimate reasons why some projects continue to exist for extended periods and they include, but are not limited to:

- Funding for the project is provided by an external source, usually on a year-to-year basis, and the project will not be continued if the external funding ceases.

- Projects are dependent on grants. The grants may be subject to annual renewal, subject to availability of funds and demonstrated performance on a competitive basis.
- Difficulty in recruitment.
- There is no existing civil service class for the position to be allocated to.
- The method, technique or principle that was the subject of a demonstration project is viable and worthwhile and is being continued, but the project cannot be changed to an ongoing program because permanent positions have not been authorized.
- The project consists of a series of different projects. (NOTE: In the future, each individual project will be justified on its own merits and approved if appropriate.)

### **Duration of Project Positions**

The duration of the position cannot extend beyond funding limitations and the duration that the project is approved for.

### **Approval of Projects**

Departments are required to document projects through the completion of project questionnaires. Information regarding the objective and duration of the project is required. Requests for the extension of the duration of a project must be justified by factual information including, what is expected to be accomplished by the current end date of the project, information as to why the objective cannot be achieved within the anticipated duration, what still needs to be done, and a revised completion date. Although Subsection 12 of Section 76-16(b) indicates that the projects must be approved by the Governor, the Governor has delegated the authority to approve projects to the Director of the Department of Human Resources Development, who has the legal authority to approve the establishment/extensions of exempt positions for the projects.

### **Proposed Criteria**

The 2004 report to the Legislature contained twenty-four (24) proposed exemption criteria with four (4) additional criteria being added in the supplement to the report. During the process of reviewing exempt "project" positions, it became clear that proposed criteria 14 was too narrowly defined with respect to the funding of the positions. Many projects are general funded rather than federally funded and often the general funds utilized were not appropriated for the project. Unforeseen needs and

opportunities created the need for the projects. Therefore, criteria 14 has been modified to be more practical, by not tying the funding as a basis for a project declaration. The revised criteria is placed in this report for legislative consideration (Attachment 6).

## **Recommendation**

Based on modified criteria 14 and our review of the existing projects and exempt positions staffing those projects, no positions exempted from civil service under Subsection 12 of Section 76-16(b) are being recommended for replacement with civil service positions.

### **PART IV. SUBSECTIONS OTHER THAN (12) AND (17)**

It is the perspective of DHRD that it would be inappropriate for the department to make any recommendations regarding subsections or portions of subsections dealing with exempt positions not within the Executive Branch. They include the following subsections:

- (4) Positions filled by the legislature or by either house or any committee thereof;
- (6) Positions filled by popular vote; (*other than those within the Executive Branch*)
- (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) (*other than private secretaries to department heads, deputies or first assistants, and assistants*)
- (26) A gender and other fairness coordinator hired by the judiciary;



The remaining subsections correspond to the exemption criteria proposed in the 2004 report as follows:

(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; (*Corresponds to proposed criteria 1. Other Personnel System.*)

(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; (*Corresponds to proposed criteria 19. Individuals who are compensated on a fee for service or piecework basis or who are hired as independent contractors.*)

(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; (*Corresponds to proposed criteria 10. Immediate Services Required to Avoid Court Ordered Penalties or Actions.*)

(5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place; (*Corresponds to proposed criteria 4. Personal Services*)

(6) Positions filled by popular vote; (*Corresponds to proposed criteria 2. Elected Officials.*)

(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; (*Corresponds to proposed criteria 5. Gubernatorial Appointees.*)

(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); *(The portion dealing with private secretaries to department heads, deputies or first assistants and assistants corresponds to proposed criteria 6. Assistant to a member of the Governor's Cabinet, the Superintendent of Education or the State Librarian.)*

(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; *(Corresponds to proposed criteria 6. Assistant to a member of the Governor's Cabinet, the Superintendent of Education or the State Librarian, 13. Practicing Attorneys, 20. Law Clerks, and 27. Positions not appropriate for inclusion in the civil service as determined by the Director of Human Resources Development.)*

(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; *(Corresponds to proposed criteria 1. Other Personnel System.)*

(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; *(Corresponds to proposed criteria 1. Other Personnel System.)*

(C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; *(Corresponds to proposed criteria 6. Assistant to a member of the Governor's Cabinet, the Superintendent of Education or the State Librarian.)*

(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; *(Corresponds to proposed criteria 1. Other Personnel System.)*

(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; *(Corresponds to proposed criteria 8. Subsidized employment/Societal purpose.)*

(14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace; *(Corresponds to proposed criteria 27. Positions not appropriate for inclusion in the civil service as determined by the Director of Human Resources Development.)*

(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; *(Corresponds to proposed criteria 19. Individuals who are compensated on a fee for service or piecemeal basis or as independent contractors.)*

(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; *(Corresponds to proposed criteria 6. Assistant to a member of the Governor's Cabinet, the Superintendent of Education or the State Librarian.)*

(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; *(Corresponds to proposed criteria 8. Subsidized employment/Societal purpose.)*

(19) Household employees at the official residence of the president of the University of Hawaii; *(Corresponds to proposed criteria 4. Personal Services.)*

(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; *(Corresponds to proposed criteria 1. Other Personnel System.)*

(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; *(Corresponds to proposed criteria 8. Subsidized employment/Societal purpose.)*

(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; *(Corresponds to proposed criteria 8. Subsidized employment/Societal purpose.)*

(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; *(Corresponds to proposed criteria 8. Subsidized employment/Societal purpose.)*

(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; *(Corresponds to proposed criteria 1. Other Personnel System.)*

(25) Sheriff, first deputy sheriff, and second deputy sheriff; *(Corresponds to proposed criteria 6. Assistant to a member of the Governor's Cabinet, the Superintendent of Education or the State Librarian.)*

(27) Positions in the Hawaii national guard youth challenge academy.  
*(Corresponds to proposed criteria 8. Subsidized employment/Societal purpose.)*

Therefore, DHRD recommends that the positions exempted from the civil service under these subsections remain exempt. In light of time and resource constraints, it is not possible to review every position exempted by the above-mentioned subsections. However, corrective action will be taken if, at any time, it is found that an exempt position should not be exempted from the civil service by the subsection in question or any other subsection.

## **PART V**

### **REPLACEMENT OF EXEMPT POSITIONS WITH CIVIL SERVICE POSITIONS**

At times, it is necessary to replace an exempt position with a civil service position. As an example, an exempt position is established as a result of a court order in order to meet an on-going legal obligation that is not being fulfilled. Eventually, the court order is lifted, but the legal obligation continues to exist. When this occurs, a civil service position should be established and filled to replace the exempt position in order to continue to fulfill the on-going need. In another situation, an exempt position is established for a demonstration project and the results of the project are such that the project is adopted as a permanent program. Again, a civil service position should be established and filled to replace the exempt position. There are also times when an exempt position is justified, but the department may want to voluntarily replace an exempt position with a civil service position. The replacement process is simple if the exempt position being replaced is vacant, but that is not always the case.

Many of the above-mentioned situations are likely to involve multiple positions rather than just one position, and the departure of the existing exempt staff would be devastating. Departments are often reluctant to replace exempt positions with civil service positions because of the potential loss of expertise and decreased productivity if the incumbents are not appointed to the replacement civil service positions. On the other hand, if the exempt employees are to be appointed to the positions, two issues must be addressed: 1) entry into the civil service system through competitive recruitment, and 2) the compensation of the former exempt employee, if appointed. Currently, other than by legislation, the only means of appointing an exempt employee with less than six years of service to a replacement civil service position is by conducting an open-competitive recruitment, which is time consuming and labor intensive. In the past, if the exempt employee is appointed to the position, the

employee would be compensated at the entry rate, which could be substantially less than the employee's current pay as no consideration would be given to the employee's prior experience in the exempt position.

DHRD does not support the legislative approach of "grandfathering" because it is contrary to the merit principle. An appointing authority should have discretion in deciding whether or not the exempt employee should be appointed to the civil service position, and employees appointed to civil service positions should compete for the appointments through normal civil service recruitment processes. In addition, legislative placement of exempt employees into civil service positions, with retention of pay and benefits, has created morale problems because the exempt employees may be receiving compensation substantially different from the compensation level of civil service employees with comparable years of service. By complying with the provision in Section 144 of Act 253, SLH 2000, which requires DHRD to "address the impact of the conversion on the incumbents in these positions", DHRD is adhering to the implementation plan discussed in the 2004 report, as an alternative to the grandfathering approach.

In addition, DHRD is seeking to address the recruitment issue through the development and implementation of a policy and procedures (Attachment 7) which will allow exempt employees, with at least one year of service in the exempt positions, to apply internally for the replacement positions. In doing so, the exempt employees will have to meet all civil service and public employment requirements and will be competing against existing civil service employees for appointment to the replacement civil service positions. The department will be under no obligation to select the exempt employees.

The compensation issue is being addressed through both supplemental agreements with the unions and executive orders covering exempt employees who are excluded from collective bargaining. DHRD has negotiated supplemental agreements with Bargaining Units 03, 04, and 13 (Attachment 8) to allow exempt employees who are appointed to replacement civil service positions that allow them to be initially compensated at a rate commensurate with the compensation that the employee would be receiving if the employee had been initially appointed to a civil service position. Such supplemental agreements will also be pursued with the other civil service bargaining units. The supplemental agreements are only applicable to situations where the exempt position and the replacement civil service position are assigned to the same bargaining unit.

An executive order (Attachment 9) has been drafted which grants the same benefits to exempt employees who are excluded from collective bargaining. This approach is consistent with language in Section 76-16(h)(2) which states that the compensation of exempt employees appointed to replacement civil service positions should be "fair and equitable in comparison to the compensation of other incumbents with comparable experience in the same or essentially similar classes."

DHRD is taking the initiative in establishing procedures to facilitate the replacing of exempt positions with civil service positions where appropriate and desirable. The civil

service recruitment process has been enhanced and an alternative compensation process has been established to accommodate the replacement process.

## **PART VI CONCLUSION**

This report to the 2005 Legislature, combined with the 2004 report to the Legislature, "Annual Report To The 2004 Legislature On Positions Exempted From The Civil Service As Required By Act 253, Session Laws Of Hawaii 2000", and its supplement, "Supplement To The Annual Report To The 2004 Legislature On Positions Exempted From The Civil Service As Required By Act 253, Session Laws Of Hawaii 2000", completes DHRD's study of positions that are exempted from civil service coverage as required by House Concurrent Resolution 94, H.D. 1 (2003), and Act 128, SLH 2004. The 2004 report and its supplement covered positions exempted from civil service under Subsection 17 of Section 76-16(b), HRS, "positions that are exempted from the civil service by other laws." This current report covers positions exempted from the civil service under the remaining subsections of Section 76-16(b), HRS, with emphasis on positions exempted from civil service under Subsection 12, "project" exemptions. The 2004 report and its supplement contained recommendations that identified positions to be replaced with civil service positions. In this report, we are recommending that positions exempted from civil service under subsections other than Subsection 17 remain exempt.

One of the most important aspects of the overall study was the examination of the reasons why positions should be exempted from the civil service system. This examination resulted in 28 proposed criteria for exemption from civil service. The bases for a significant majority of the proposed criteria are apparent, while a few of the proposed criteria may be a matter of perspective. The proposed criteria that the DHRD Director be given discretion to grant exemptions from civil service that are not covered by one of the other proposed criteria may be the most controversial. However, since it is impossible to anticipate all possible situations and needs, the administration should be given latitude to grant exemptions when it must in the interests of the public. The proposed criteria should be helpful to the legislature in the future whenever it considers whether it should authorize the exemption of positions from civil service coverage.

The administration's actions to address issues surrounding the replacement of exempt positions with civil service positions is an important outgrowth of the study of exempt positions. When such action occurs, priority must be given to the needs of the public and program, and in doing so the interests of the incumbents of the exempt positions and existing civil service employees should be considered. The needs of the public, and consequently the program, require that qualified individuals be employed to perform the work that needs to be done. The interests of exempt employees require maintaining their employment at a reasonable compensation, while the interests of civil service employees are that they have an opportunity to compete with the exempt employees for appointment to the civil service positions. If exempt employees are appointed to the civil service position, they should be compensated at a rate which is comparable to similarly situated civil service employees. DHRD has taken steps to fairly balance the

interests and needs of all concerned and have collaborated with the unions where appropriate, and will continue to do so.

On a final note, the civil service system is necessary to the public interest. However, there are legitimate reasons for the employment of employees exempt from the civil service. There is no “magic” number of exempt positions that should exist, and as the legislature contemplates whether or not existing exempt positions should remain exempt, we urge you to consider the purpose and context of each position in making your determination. We thank you for the opportunity to provide input regarding this matter and hope that we have adequately addressed the charges that you have given us under Act 253, SLH, 2000, House Concurrent Resolution 94.H.D. 1, 2003 and Act 128, SLH 2004.

DATED: Honolulu, Hawaii, December 27, 2004.

Respectfully submitted,

/s/ Kathleen N.A Watanabe  
Kathleen N.A. Watanabe  
Director  
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### Summary of Projects and Exempt Positions under Subsection (12)

	Totals																
	DAGS	DOA	AG	B&F	BEDT	DCCA	DOD	DOE	DOH	HRD	HMS	DLIR	DLNR	PSD	TAX	DOT	Number
<b>Projects</b>	4	1	4	2	8	1	12	5	31	1	12	1	2	9	1	3	97
<b>Positions</b>	12	1	9	4	30	1	33	13	150	1	104	1	5	16	4	8	392

**Note:** Based on our review, we have determined that all positions in this study will remain exempt pursuant to HRS 76-16(b)(12).

With additional project information requirements, modified criteria and proposed legislation provided during this study, the projects will be 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.



State of Hawaii  
Department of Human Resources Development  
Project Description and Authorization  
for  
Positions Exempted from Civil Service Coverage Pursuant to  
HRS 76-16(b)(12)

Use the following outline to provide and format information about the project and the positions in the project. Additional pages may be used as appropriate.

**I. PROJECT INFORMATION**

**A. Project Location**

*[Indicate where, in the organizational structure, the project will be placed.]*

- 1. Department -**
- 2. Division -**
- 3. Branch -**

**B. Project Title**

*[Indicate what the project is called - make title descriptive, but short.]*

**C. Type of Project**

*[Check the one which is most applicable]*

- ☐ **Research** (examines or investigates an hypothesis, method, or activity)
- ☐ **Demonstration** (illustrates a method, technique, or principle)
- ☐ **Special** (other special activities, outside of the normal continuing activities of the department or program)

**D. Duration of the Project**

*[Indicate the total period of time necessary to achieve the purpose and fulfill the accomplishments of the project (Start Date and Completion Date). Please note that the total projected duration of the project period should be requested rather than limited to the duration of the funding.]*

- 1. Project Start Date** (mm/dd/yyyy) -
- 2. Planned Completion Date** (mm/dd/yyyy) -

**E. Source and Nature of Funds**

*[Indicate what percentage is Federal funded and what percentage is State funded. If source of funds vary for each position, show the distribution on the list of positions. If funds are included in the State budget through the Appropriations Act, indicate the program title and I.D. number in accordance with the State program structure.]*

**F. Project Objective**

*[State the purpose of the project and what it is to accomplish.]*

**G. Describe the Project**

*[Describe how the project will be accomplished and the target group(s) it will provide services to. Discuss alternatives and why these alternatives were not pursued.]*

**H. Major Tasks**

*[List, sequentially, the major tasks in the project. If requesting to extend the project, annotate each task as to whether it is (a) completed; (b) in progress; or (c) not started.]*

**I. Planned Results/Product**

*[Describe what results or final product the project is expected to produce upon completion.]*

**J. Future Activities**

*[If it is anticipated that further activities will result after completion of the project, e.g., development and effectuation of implementation plan, or installation of new function or program in the department, please identify those subsequent steps and indicate whether it would be desirable to continue some or all of the project personnel to carry out those activities. If no future activities are envisioned, enter "none."]*

**K. Explain why the existing staff is not able to perform the project work and how this was determined.****L. Explain why the department is requesting a project exemption instead of establishing civil service positions to perform the work.****M. If requesting to extend a project that has been in existence for more than five (5) years, explain why this should not be an on-going program in civil service.****N. Explain the impact on your organization if the project is not approved.****II. POSITION INFORMATION****A. List all positions assigned to the project**

*[Indicate the position number (if available), title, whether the position is civil service or exempt and monthly salary for each position]*

**B. Project Manager**

*[Indicate the position title, name, and telephone number of the individual who is responsible for the evaluation of the project, as described in Part I.]*

**1. Position Title -**

**2. Name -**

**3. Phone -**

## III. AUTHORIZATION

**A. Acknowledgement by Program Administrator or Manager**

*[Signature (including date) of the Administrator/Manager in whose program the project is placed for purposes of organization. The lowest level of management oversight of the project's daily operations other than the exempt project "administrator/coordinator." If this is not the case, then only the Department Head's certification is necessary.]*

☐*Approved*☐*Disapproved*\_\_\_\_\_  
SIGNATURE\_\_\_\_\_  
DATE**B. Departmental Personnel Officer**

*[Signature of the Departmental Personnel Officer and Date. This Office will be the point of contact and coordination upon notification of a compliance audit regarding the above project.]*

☐*Approved*☐*Disapproved*\_\_\_\_\_  
SIGNATURE\_\_\_\_\_  
DATE**C. Department Head's Certification**

*[Signature of the Department Head and Date.]*

☐*Approved*☐*Disapproved*\_\_\_\_\_  
SIGNATURE\_\_\_\_\_  
DATE**D. Director of Human Resources Development Certification**

*[Signature of the DHRD Director and Date.]*

☐*Approved*☐*Disapproved*\_\_\_\_\_  
SIGNATURE\_\_\_\_\_  
DATE

**ACT 128**

HOUSE OF REPRESENTATIVES  
TWENTY-SECOND LEGISLATURE, 2004  
STATE OF HAWAII

**H.B NO.** 1786  
H.D. 1  
S.D. 2  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO EXEMPT EMPLOYEES.

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

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

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

16       (b) The civil service to which this chapter applies shall  
17 comprise all positions in the State now existing or hereafter  
18 established and embrace all personal services performed for the  
19 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;

- 1 (8) Judges, referees, receivers, masters, jurors, notaries  
2 public, land court examiners, court commissioners, and  
3 attorneys appointed by a state court for a special  
4 temporary service;
- 5 (9) One bailiff for the chief justice of the supreme court  
6 who shall have the powers and duties of a court  
7 officer and bailiff under section 606-14; one  
8 secretary or clerk for each justice of the supreme  
9 court, each judge of the intermediate appellate court,  
10 and each judge of the circuit court; one secretary for  
11 the judicial council; one deputy administrative  
12 director of the courts; three law clerks for the chief  
13 justice of the supreme court, two law clerks for each  
14 associate justice of the supreme court and each judge  
15 of the intermediate appellate court, one law clerk for  
16 each judge of the circuit court, two additional law  
17 clerks for the civil administrative judge of the  
18 circuit court of the first circuit, two additional law  
19 clerks for the criminal administrative judge of the  
20 circuit court of the first circuit, one additional law  
21 clerk for the senior judge of the family court of the  
22 first circuit, two additional law clerks for the civil  
23 motions judge of the circuit court of the first  
24 circuit, two additional law clerks for the criminal  
25 motions judge of the circuit court of the first  
26 circuit, and two law clerks for the administrative  
27 judge of the district court of the first circuit; and  
28 one private secretary for the administrative director  
29 of the courts, the deputy administrative director of  
30 the courts, each department head, each deputy or first

1 assistant, and each additional deputy, or assistant  
2 deputy, or assistant defined in paragraph (16);

3 (10) First deputy and deputy attorneys general, the  
4 administrative services manager of the department of  
5 the attorney general, one secretary for the  
6 administrative services manager, an administrator and  
7 any support staff for the criminal and juvenile  
8 justice resources coordination functions, and law  
9 clerks;

10 (11) (A) Teachers, principals, vice-principals, complex  
11 area superintendents, deputy and assistant  
12 superintendents, other certificated personnel,  
13 not more than twenty noncertificated  
14 administrative, professional, and technical  
15 personnel not engaged in instructional work;  
16 (B) Effective July 1, 2003, teaching assistants,  
17 educational assistants, bilingual/bicultural  
18 school-home assistants, school psychologists,  
19 psychological examiners, speech pathologists,  
20 athletic health care trainers, alternative school  
21 work study assistants, alternative school  
22 educational/supportive services specialists,  
23 alternative school project coordinators, and  
24 communications aides in the department of  
25 education;

26 (C) The special assistant to the state librarian and  
27 one secretary for the special assistant to the  
28 state librarian; and

29 (D) Members of the faculty of the University of  
30 Hawaii, including research workers, extension

1 agents, personnel engaged in instructional work,  
2 and administrative, professional, and technical  
3 personnel of the university;

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

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

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

16 (15) Positions filled by persons employed on a fee,  
17 contract, or piecework basis, who may lawfully perform  
18 their duties concurrently with their private business  
19 or profession or other private employment and whose  
20 duties require only a portion of their time, if it is  
21 impracticable to ascertain or anticipate the portion  
22 of time to be devoted to the service of the State;

23 (16) Positions of first deputies or first assistants of  
24 each department head appointed under or in the manner  
25 provided in section 6, Article V, of the State  
26 Constitution; three additional deputies or assistants  
27 either in charge of the highways, harbors, and  
28 airports divisions or other functions within the  
29 department of transportation as may be assigned by the  
30 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]~~

(A) 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]~~

(B) An administrative assistant to the state librarian; and ~~[an]~~

(C) 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

1 cent of the corporation's work force in any housing  
2 project maintained or operated by the corporation  
3 shall be hired under the tenant hire program;

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

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

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

16 (25) Sheriff, first deputy sheriff, and second deputy  
17 sheriff;

18 (26) A gender and other fairness coordinator hired by the  
19 judiciary; and

20 (27) Positions in the Hawaii national guard youth challenge  
21 academy.

22 The director shall determine the applicability of this  
23 section to specific positions.

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

26 (c) No position shall be exempted from civil service  
27 recruitment procedures unless it is in accordance with this  
28 section. In addition to the exemptions under subsection (b),  
29 sections 46-33 and 76-77, or other law, the director may exempt  
30 additional positions if the reason for exempting the position is

1 for the same reason as a position that is included in the list  
2 of exemptions for the respective jurisdiction.

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

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

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

1 position is temporarily or permanently exempted from the  
2 classification systems.

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

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

- 20 (1) Whenever a position exempted under subsection (b) or  
21 (c) is no longer exempted from the civil service,  
22 normal civil service recruitment procedures shall  
23 apply, unless the incumbent is to be retained without  
24 the necessity for examination by action of the  
25 legislature; provided that in such event, the  
26 incumbent shall be retained, but only if the incumbent  
27 meets the minimum qualification requirements of the  
28 position; and  
29 (2) The manner for setting the compensation of incumbents  
30 upon their inclusion in the classification systems

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

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

15 (j) Employees in exempt positions who have performed work  
16 satisfactorily for six or more consecutive years shall be  
17 eligible to apply for:

18 (1) Intra-departmental and inter-departmental transfers;

19 and

20 (2) Intra-departmental and inter-departmental promotional  
21 exams

22 for which they meet the minimum qualifications as prescribed by  
23 the class specification.

24 In evaluating minimum qualifications, related exempt  
25 experience may be considered state civil service experience in a  
26 class deemed comparable by the department of human resources  
27 development, based upon the duties and responsibilities  
28 assigned.

29 ~~[+j+]~~ (k) Employees in positions that are exempted from the  
30 classification plan, whether temporarily or permanently, may be

1 entitled to membership in the civil service as provided in  
2 subsection (i)."

3 SECTION 2. The legislative reference bureau shall compile a  
4 list of all statutory references to positions exempted from the  
5 civil service and submit a report of its findings to the  
6 legislature at least twenty days prior to the convening of the  
7 regular session of 2005.

8 SECTION 3. The department of human resources development  
9 shall complete its review of all positions exempted from civil  
10 service in accordance with House Concurrent Resolution No. 94,  
11 Regular Session of 2003, and submit a report of its findings and  
12 recommendations to the legislature at least twenty days prior to  
13 the convening of the regular session of 2005.

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2004, and  
17 shall be repealed on July 1, 2006; provided that section 76-16,  
18 Hawaii Revised Statutes, shall be reenacted in the form in which  
19 it read on June 30, 2004.

APPROVED BY THE  
GOVERNOR ON

JUNE 16 2004

## **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 in Subsections Other Than (17) and (12)

SUBSECTIONS	DAGS	DOA	AG	B&F	BEDT	DCCA	DOD	DOE	DOH	HHL	HMS	HRD	Gov	DLIR	DLNR	Lib	LG	PSD	TAX	DOT	UOH	Totals
1							14															14
2									1													1
3			2					10	344		29											385
5									1		7		70	2			7					87
6								13					1				1					15
7	2	1	1	1	1	1	1		2	1	1	1		7	1			4	1	1		27
9	2	2	1	2	2	2	2	3	4	2	2	2		2	3	1		4	2	4	21	63
10			211																			211
13	21		31	56	52	35	6	363	13	64	2	19		1703	65	199	5	1		264		2899
14															1							1
15							1		10												239	250
16	1	1		1	1	1	1		5	1	1	1		1	1	1			1	4		22
18											62											62
19																					1	1
21											40											40
22																					15	15
23								1	1											3	3	8
24								1														1
25																		1				1
27							65															65
Totals	26	4	246	60	56	39	90	391	381	68	144	23	71	1715	71	201	13	10	4	276	279	4168

Summary of Exempt Employees in Subsections Other Than (17) and (12)

SUBSECTIONS	DAGS	DOA	AG	B&F	BEDT	DCCA	DOD	DOE	DOH	HHL	HMS	HRD	Gov	DLIR	DLNR	Lib	LG	PSD	TAX	DOT	UOH	Totals
1							8															8
2									1													1
3			2					9	243		23											277
5									1		7		61	1			6					76
6								13					1				1					15
7	2	1	1	1	1	1	1		2	1	1	1		7	1			4	1	1		27
9	2	2	1	2	2	2	2	3	4	2	2	2		2	3	1		4	2	4	19	61
10			190																			190
13	0		2	0	0	3	3	100	0	1	0	0		9	0	148	0	0		0		266
14															1							1
15							1		5												48	54
16	1	1		1	1	1	1		5	1	1	1		1	1	1			1	4		22
18											45											45
19																					1	1
21											19											19
22																					5	5
23								1	1											3	3	8
24								1														1
25																		1				1
27							53															53
Totals	5	4	196	4	4	7	69	127	262	5	98	4	62	20	6	150	7	9	4	12	76	1131

Notes: HRMS data as of 8/2/04, UH data current-11/29/04.

Effective 9/27/04, DOE has removed all 505 Adult Supervisor and Classroom Cleaner positions (subsection 20) from HRMS.

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

**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]

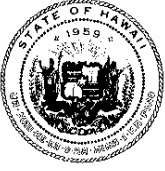


- 17. Positions for which the amount of compensation is specifically set by statute.** One key component of the civil service system is the establishment of job-related pay relationships. If compensation for a position is set by the legislature, the position should not be covered by the civil service 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]

 <p style="text-align: center;"> <b>STATE OF HAWAII</b>  <b>DEPARTMENT OF HUMAN RESOURCES</b>  <b>DEVELOPMENT</b>  <b>POLICIES AND PROCEDURES</b> </p>	<b>POLICY NO.</b>	<b>NO. of PAGES</b>  10	
	<b>EFF. DATE</b>	<b>REV. NO./Date</b>	
<b>TITLE:</b> <b>APPOINTMENT OF EXEMPT EMPLOYEES TO CIVIL SERVICE POSITIONS</b>		<b>APPROVED:</b>  Kathleen 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, and should recognize the exempt employees' service to the State.

NOTE: Portions of this policy and procedures facilitates the implementation of Act 128, 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 (Section 76-16(j), HRS) are extended or made permanent.

## II. RATIONALE

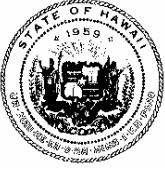
Pursuant to Section 76-1, Hawaii Revised Statutes, all employees within the civil service, whether they initially entered State service as a civil service employee or as an exempt employee, should be treated fairly and equitably.

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

## III. DEFINITIONS

"Cross bargaining unit", for purposes of this policy and procedures, means between positions assigned to one bargaining unit and another bargaining unit, and/or between positions which are included and excluded from collective bargaining or vice versa.

"Internal vacancy announcement" 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

 <p style="text-align: center;"> <b>STATE OF HAWAII</b>  <b>DEPARTMENT OF HUMAN RESOURCES</b>  <b>DEVELOPMENT</b>  <b>POLICIES AND PROCEDURES</b> </p>	POLICY NO.	NO. of PAGES 10
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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 to substantially perform the functions of an existing exempt position, and the exempt 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.

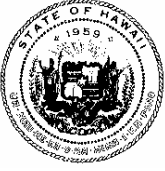
#### IV. SCOPE

This policy and all non-compensation provisions contained herein apply to all exempt employees who receive civil service appointments, unless otherwise specified. The compensation provisions contained herein pertain solely to cross bargaining unit appointments 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

An exempt employee whose position is being replaced by a civil service position who has occupied the exempt position for a minimum of one year shall be allowed to apply for the replacement position through an internal vacancy announcement (IVA) for that replacement civil service position, if the department chooses to conduct an IVA to fill the position. The exempt employee must meet all applicable requirements (e.g., minimum qualification requirements and public employment requirements) to be considered a qualified candidate.

In the event that a department elects to conduct an IVA for a civil service position in order to replace an exempt position, if the employee meets the “one year requirement”, the department shall inform the incumbent of the exempt position, in writing, no later than the date of the IVA, that the employee is entitled to apply in response to the IVA. If the IVA is for more than one position, the exempt employee shall be informed of the applicable position number.

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## 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 required of 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

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 internal vacancy announcements. 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 for cross bargaining unit appointments as long as the provisions of Section 76-16(j), HRS, remain applicable.

Appointments to Positions Included in or Excluded from BU 01

1. Determine continuous State executive branch service 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.
4. 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.

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### Appointments to Positions Included in or Excluded from BU 02

1. Determine continuous State executive branch service 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.
4. 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.

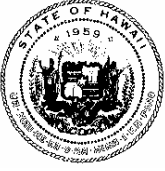
### Appointments to Positions Included in or Excluded from BUs 03, 04, and 13

Appointed officials and exempt employees subject to the provisions of subsection 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 bargaining units.

### Appointments to Positions Included in or Excluded from BU 09

1. Determine continuous State executive branch service 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 will be compensated at Step B.
5. Employees appointed at SR-20 and above shall be compensated as follows:

Years of Service As a Registered Prof. Nurse	Step
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

 <p style="text-align: center;"><b>STATE OF HAWAII</b>  <b>DEPARTMENT OF HUMAN RESOURCES</b>  <b>DEVELOPMENT</b>  <b>POLICIES AND PROCEDURES</b></p>	<b>POLICY NO.</b>	<b>NO. of PAGES</b>  10
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**\*\*20 years, of which 5 must have been within the preceding 5 years**

**L2**

**\*\*These years must have been creditable service.**

### Appointments to Positions Included in or Excluded from BU 10

1. Determine continuous State executive branch service within BU 10 or as an employee excluded from BU 10.
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. Determine the amount of excess qualifying State service\* the employee has, excluding service gained from July 1, 1992 to the present\*\*, and compensate the employee pursuant to the following schedule:

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

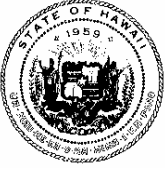
\* For Correctional Officer classes, only excess qualifying State Correctional Officer experience is creditable.

\*\*The BU 10 collective bargaining agreement does not and has not had provisions for step movement based upon service and the mass adjustments that fell between the period July 1, 1992, to the present did not involve step movements. Therefore that period is being excluded for determining qualifying State service.

### Appointments to Positions Included in or Excluded from BU 11

1. Determine continuous State executive branch service 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.



 <p style="text-align: center;"> <b>STATE OF HAWAII</b>  <b>DEPARTMENT OF HUMAN RESOURCES</b>  <b>DEVELOPMENT</b>  <b>POLICIES AND PROCEDURES</b> </p>	<b>POLICY NO.</b>	<b>NO. of PAGES</b> 10
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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:

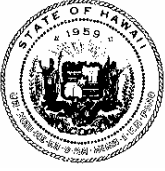
Step	Years
E	0 < 4
F	4 < 7
G	7 < 10
H	10 < 13
L1	13 < 16
L2	16 < 19
L3	19 < 22
L4	22 or more

#### Appointments to EMCP Positions

1. Determine the employee's continuous State executive branch service, 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.
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%.

#### Exempt Employees Whose Positions are Replaced by Civil Service Positions

Under certain circumstances, positions which are exempt from the civil service are replaced by civil service positions. The following provisions shall govern the initial compensation in the event that an exempt employee who is appointed to the replacement civil service position on a cross bargaining unit basis.

 <p style="text-align: center;"> <b>STATE OF HAWAII</b>  <b>DEPARTMENT OF HUMAN RESOURCES</b>  <b>DEVELOPMENT</b>  <b>POLICIES AND PROCEDURES</b> </p>	<b>POLICY NO.</b>	<b>NO. of PAGES</b> 10
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#### Appointments to Positions Included in or Excluded from BU 01

1. Determine continuous State executive branch service within BU 01 or as an employee excluded from BU 01.
2. 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.

#### Appointments to Positions Included in or Excluded from BU 02

1. Determine continuous State executive branch service within BU 02 or as an employee excluded from BU 02.
2. 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.

#### Appointments to Positions Included in or Excluded from BUs 03, 04, and 13

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 bargaining units.

#### Appointments to Positions Included in or Excluded from BU 09

1. Employees appointed at the SR-18 level will be compensated at Step B.
2. Employees appointed at SR-20 and above shall be compensated as follows:

Years of Service As a Registered Prof. Nurse	Step
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

#### Appointments to Positions Included in or Excluded from BU 10



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SERVICE POSITIONS**

**APPROVED:**

Kathleen Watanabe, Director

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

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

Appointments to Positions Included in or Excluded from BU 11

1. Determine continuous State executive branch service within BU 11 or as an employee excluded from BU 11.
2. Determine the amount of service which the employee has and compensate the employee pursuant to the following schedule:

Step	Years
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

Appointments to EMCP Positions

1. Determine the employee's continuous State executive branch service, 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.



STATE OF HAWAII  
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SERVICE POSITIONS**

**APPROVED:**

Kathleen Watanabe, Director

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.
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%.

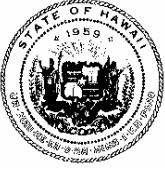
**IX. INITIAL PROBATION PERIOD**

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

**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 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.

 <p style="text-align: center;"> <b>STATE OF HAWAII</b>  <b>DEPARTMENT OF HUMAN RESOURCES</b>  <b>DEVELOPMENT</b>  <b>POLICIES AND PROCEDURES</b> </p>	POLICY NO.	NO. of PAGES 10
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## 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 to Department Heads dated June 30, 2004

## 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.

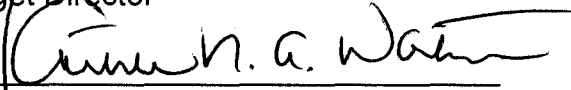


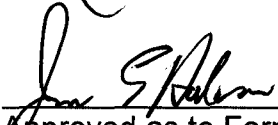
In witness whereof, the parties hereto, by their authorized representatives, have executed this Supplemental Agreement the day and year first written above

**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 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 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:**

**FOR THE UNION:**

Harold De Costa (Deputy)  
for Chief Negotiator

Ruby Peni  
Hawaii Government Employees  
Association

George K. Kawana  
Budget Director

Clinton H. G. Wain  
HRD Director

Jan F. Salomon  
Approved as to Form for Attorney General



**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.

5. 6. The compensation of a ~~non-regular~~ temporary or initial probationary 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

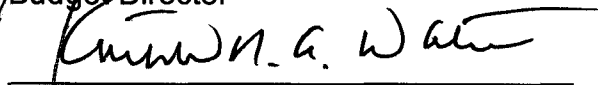
**FOR THE EMPLOYER:**


**FOR THE UNION:**

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

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

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

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

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

**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.)

**EXECUTIVE ORDER NO. 04-**

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, chapter 89C, HRS, requires that adjustments for non-managerial civil service employees under the same classification systems as employees with the collective bargaining units shall be not less than those provided under the collective bargaining agreements for employees hired on a comparable basis;

WHEREAS, chapter 89C, 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(h), HRS, provides that the compensation of an exempt employee who is retained in a replacement civil service position assigned to the same bargaining unit (BU) shall be in accordance with the applicable collective bargaining agreement;

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;

WHEREAS, Supplemental Agreements have been negotiated with the

Hawaii Government Employees Association (HGEA) as the exclusive representative for BUs 03, 04, and 13 amending the Compensation Adjustment articles of the respective collective bargaining agreements;

WHEREAS, the Director of Human Resources Development 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 adjustments shall be implemented as follows:

## **COMPENSATION**

### **I. Exempt Employees Subject to 76-16(j), HRS**

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, which shall be applied by the departmental personnel offices, specify how the initial compensation of a covered appointed official or exempt excluded employee is to be determined if the official or employee is appointed to an excluded civil service position. The following provisions shall continue in effect as long as the provisions of Section 76-16(j), HRS, remain applicable.

#### **A. Appointments to Positions Excluded from BU 01**

1. Determine continuous State executive branch service 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.
4. If the employee has one year or more of excess qualifying State service, the employee shall be compensated at the Step A rate. If not, the employee shall be compensated at the minus one percent (-1%) rate.

## B. Appointments to Positions Excluded from BU 02

1. Determine continuous State executive branch service 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.
4. If the employee has less than 10 years of excess qualifying State service, the employee shall be compensated at the Step A rate. 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. If the employee has 15 or more years of excess qualifying State service, the employee shall be compensated at the L2 rate.

## C. Appointments to 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 to Positions Excluded from BU 09

1. Determine continuous State executive branch service 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.
5. Employees appointed at SR-20 and above shall be compensated as follows:

Years of Service As a  
Registered Prof. Nurse

Step

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 to Positions Excluded from BU 10

1. Determine continuous State executive branch service 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.
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, experience since that date is being excluded for determining qualifying State service.

#### F. Appointments to Positions Excluded from BU 11

1. Determine continuous State executive branch service 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.
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 to EMCP Positions

1. Determine the employee's continuous State executive branch service, 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.
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 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. The following provisions, which shall be applied by the departmental personnel offices, 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:

##### A. Appointments to Positions Excluded from BU 01

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

##### B. Appointments to Positions Excluded from BU 02

1. Determine continuous State executive branch service within BU 02 or as an employee excluded from BU 02.
2. If the employee has less than 10 years of service, the employee shall be compensated at the Step A rate. If the employee has at least 10 years, but

less than 15 years of service, the employee shall be compensated at the L1 rate. If the employee has 15 or more years of service, the employee shall be compensated at the L2 rate.

C. Appointments to 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 to Positions Excluded from BU 09

1. Determine continuous State executive branch service 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.
3. Employees appointed at SR-20 and above shall be compensated as follows:

Years of Service As a  
Registered Prof. Nurse

Step

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 to Positions 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



#### F. Appointments to Positions Excluded from BU 11

1. Determine continuous State executive branch service within BU 11 or as an employee excluded from BU 11.
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 to EMCP Positions

1. Determine the employee's continuous State executive branch service, 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.
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 employee 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 and the BU 13 provisions shall be applied to temporary Excluded Managerial Compensation Plan (EMCP) employees.

The Director of Human Resources Development shall be responsible for uniform administration of these adjustments and 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 \_\_\_\_\_

day of \_\_\_\_\_, 2004.

LINDA LINGLE  
Governor of Hawaii

APPROVED AS TO FORM:

MARK J. BENNETT  
Attorney General

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

Exhibit 1 - AGR Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
AGR	Developing Opportunities to Revitalize Agriculture in Hawaii	S	AGR171-Agriculture Development and Marketing General Funds	8/1/2003	6/30/2005	1	#100991-Special Assistant

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

Exhibit 1 - AGS Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
AGS	Three Quote Contracts up to \$100,000	S	General Obligation Bond funds appropriated through H.B.1800 CD 1 SLH 2004	7/1/2004	12/31/2005	2	#113276-Construction Manager (Oahu) #113278-Construction Manager (Oahu)
AGS	Infrastructure Development & Performance Evaluation for the Capital Improvement Project (CIP) School Repair & Mtnc & Construction	S	CIP	1/1/2002	12/31/2004	1	#112709-Planning & Policy Analyst
AGS	Electronic Government Project	S	General Funds	Oct 2001	6/30/2005	5	#112484-e-Government Team Leader #112485-e-Government Assistant Team Leader #112486-e-Government Team Specialist #112487-e-Government Team Specialist #112488-e-Government Team Specialist
AGS	Construction Managers & Construction Representatives for AGS-221/Construction, Public Works Div, Oahu, & Public Works Branches in DAGS District Offcs on Kauai, Maui, & Hawaii	S	MOF=C (CIP) General Obligation Bond Funds, School Building Improvements, Statewide	1/1/2003	12/31/2005	4	#113275-Construction Manager #113277-Construction Manager #113279-Construction Manager #113280-Construction Manager

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

Exhibit 1 - ATG Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
ATG	Decentralization of State Identification Card Services	S	ATG-231 (S-322-W); Non-general funds from the State ID Revolving Fund	Nov-01	6/30/2007	2	#112598-Identification Service Representative #112599-Identification Service Representative
ATG	Redesign of the Offender-Based Transaction Statistics/Computerized Criminal History System (renamed CJIS-Hawaii)	S	ATG-231(S321-W);ATG-231 (S-209-N); ATG-231 (SL-210-N) [Criminal History Record Improvement Revolving Fund and Federal Funds]	Nov-96	6/30/2007	5	#102642-HCJDC Disposition Research Clerk #111091-HCJDC Disposition Research Clerk #107706-Clerk III #107707-Information Technology Specialist #111877-Administrative Specialist
ATG	Hawaii Internet Crimes Against Children Task Force	S	Federal Grant	May-01	6/30/2005	1	#111749-Educational Specialist & Computer Forensic Examiner [FTE 50%] [Note: 2 Deputy AG pos (#112920 & #111577) in project, each at FTE 50%-exempted by sub (b)(10)]
ATG	Hawaii High Technology Crime Unit	S	Byrne grant (75% Fed & 25% State funded)	May-02	4/30/2006	1	#111749-Educational Specialist & Computer Forensic Examiner [FTE 50%] [Note: 2 Deputy AG pos (#112920 & #111577) in project, each at FTE 50%-exempted by sub (b)(10)]

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

Exhibit 1 - BED Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
BED	Geographic Information System	S	State General Funds	1989	6/30/2005	1	#102015-Planning and Policy Analyst
BED	Special Marketing, Strategic Planning & Development Project Related to Tourism	S	State General Funds	7/1/2003	6/30/2005	2	#101868-Tourism Liaison #116584-Secretary to Tourism Liaison
BED	Special Marketing, Strategic Planning & Development Project Related to Arts, Film & Entertainment	S	State General Funds	7/1/2003	6/30/2005	1	#103233-Chief Officer for Arts, Film, & Entertainment
BED	State Energy Program (SEP)-Administration	S	SEP federal grants, DOE & EPA	May-76	6/30/2005	3	#101240-Energy Research Statistician #101058-Clerk Typist #106281-Energy Engineer VI
BED	State Energy Program (SEP)-Energy Branch	S	SEP federal grants, DOE & EPA	May-76	6/30/2005	7	#100401-Energy Analyst #101031-Energy Conservation Program Specialist III #101094-Energy Analyst #101146-Energy Conservation Analyst #101831-Energy Engineer IV #107908-Energy Analyst #102203-Energy Clerk Typist
BED	State Energy Program (SEP)-Strategic Technology Industry Development Branch	S	SEP federal grants, DOE & EPA	May-76	6/30/2005	8	#101832-Energy Conservation Analyst V #102073-Energy Conservation Program Specialist III #102072-Energy Analyst III #101070-Energy Analyst III #101028-Energy Conservation Analyst III #102709-Energy Conservation Analyst V #102074-Secretary II #102244-Energy Clerk Typist
BED	Coastal Zone Management Program (includes 7 sub-projects: (1) Section 306-Coastal Zone Management Act-Public Participation and Outreach, (2) Coral Reef Initiative, (3) Coastal Zone Management Act, Section 309 Enhancement Projects-Ocean Resources Management, (4) Coastal Zone Management Act, Section 310-Technical Assistance (Nonpoint Pollution Control), (5) Waianae Ecological Characterization, (6) Coastal Zone Management Act, Section 309 Enhancement Projects-Coastal Hazards, and (7) Coastal Zone Management Act, Section 309 Enhancement Projects-Cumulative and Secondary Impacts).	S	NOAA, Federal Funds	7/18/2003	6/30/2005	5	#102702-Planning and Policy Analyst #102703-Planning and Policy Analyst #102933-Planning and Policy Analyst #102931-Planning and Policy Analyst #102932-Planning and Policy Analyst

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

Exhibit 1 - BED Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
BED	New Film Industry Productions and Studio Construction Project	S	General Funds	7/1/2004	6/30/2005	3	#116941-Film Permit Specialist #117019-Film Indus Admin Svcs Asst #117045-Film Industry/CIP Coord

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

Exhibit 1 - BUF Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
BUF	Conversion of ERS' WANG System to an IBM/APPEX Platform Project	S	Investment, Other funds	11/16/2002	12/31/2004	1	#113214-Information Systems Specialist
BUF	Backlog Reduction & Claims Management Project	S	Investment, Other funds	1/1/1995	6/30/2005	3	#102684-Retirement Program Technician #102686-Retirement Program Technician #107803-Retirement Program Technician



Department of Commerce and Consumer Affairs - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - CCA Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
CCA	DCCA Review of Department's Boards, Commission and Programs	R	Compliance Resolution Fund	Jun-04	6/30/2005	1	#112797-CCA Administrative Assistant

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

Exhibit 1 - DEF Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
DEF	U.S. Army Enviromental Program Requirements	S	Federal Funds	10/1/1999	6/30/2005	12	#110605-Training Site Env'l Spclt Kalaeloa #110724-Env'l Support Spclt #116402-TSES Manager #116403-TSES eMS #116643-Conservation Program Mgr #116846-Water Ecosystem/Quality Spclt #102891-Student Helper I #106356-Student Helper I #110200-INCRMP Student Intern #110201-CRMP Student Intern #110202-AMF Student Intern #110732-Env Awareness Asst Intern
DEF	State Hazard Mitigation Program	S	Federal Funds-FEMA; EMPG)	Jan-97	6/30/2005	3	#102887-State Hazard Mitigation Officer #111378-CD Planner for Mitigation #111379-Hazard Mitigation Clerk
DEF	Population Protection Planning/Survivable Crisis Management	S	50% State;50% Fed (EMPG)	Oct-81	6/30/2005	2	#101273-CD Planner-Pop Protect #100934-Survivable Crisis Mgmt Engr
DEF	Emergency Operational Readiness Training & Testing	S	50% State;50% Fed (EMPG)	Dec-83	6/30/2005	1	#101623-CD Exercise Trng Ofcr
DEF	Earthquake Preparedness Planning	S	State General Funds/Federal Funds	Sep-81	6/30/2005	2	#101276-CD Planner Earthquake #116385-Tsunami-Earthquake Prep. Clerk
DEF	Anti-Terroism/Homeland Security	S	Fed fund	7/1/1999	6/30/2006	3	#110630-Asst CD Planner (Terrorism) #110149-Asst CD Planner (Terrorism) #112782-Terrorism Clerk
DEF	Emergency Operations Plan	S	Fed fund	Apr-04	12/14/2004	2	#116832-CD Planner-EOP #116833-EOP Typist
DEF	Real Property Development Plan (RPDP)	S	Fed fund (National Guard Bureau)	11/26/1999	6/30/2005	1	#110436-Facility Planner Assistant
DEF	Fiscal Yeary Budget Requirements	S	Fed fund (National Guard Bureau)	10/1/2001	6/30/2005	1	#112437-Federal Program Budget Analyst
DEF	Energy Management	S	Fed fund (National Guard Bureau)	11/1/2001	6/30/2005	2	#112515-Energy Manager #116926-Energy Manager Assistant
DEF	Repair & Minor Construction, Statewide	S	Fed fund (National Guard Bureau)	10/1/2001	6/30/2005	2	#112436-Construction Representative #116781-Construction Representative (duplicate pos, while EE is on military LWOP)
DEF	November 2000 Flood Recovery	S	75% Fed Fund/25% State fund-FEMA	Jan-01	6/30/2005	2	#111667-Disaster Recovery Planner #111668-Disaster Recovery Accountant

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

Exhibit 1 - DOE Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
DOE	Educational Interpreter Project	S	Fed Funds	3/4/2004	6/30/2009	7	#116805-Educational Interpreter Coordinator #116806-Educational Interpreter Coordinator #116807-Educational Interpreter Coordinator #116808-Educational Interpreter Coordinator #116809-Educational Interpreter Coordinator #116810-Educational Interpreter Coordinator #116811-Educational Interpreter Coordinator
DOE	Pihana Na Mamo: The Native Hawaiian Special Ed Project	S	Fed Funds	10/1/2000	9/30/2005	2	#111654-Clerk Typist #111655-Account Clerk
DOE	Hawaii Networked Learning Communities Project	S	Fed Funds	3/1/2002	6/30/2007	1	#113122-HNLC Data Processing Systems Analyst
DOE	T3 Media Conversion Project	S	Fed Funds	8/21/2001	8/30/2005	1	#112501-T3 Data Processing User Support Technician
DOE	Art in Public Places-Artists in Residence Project (APP-AIR)	S	State funded	7/1/1996	12/31/2004	2	#103287-APP Project Coordinator #103288-APP Clerical Assistant

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

Exhibit 1 - DHS Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
DHS	Search for Public & Private Grants	S	General Funds	2/17/2004	7/30/2005	1	#116668-Grant Administrator
DHS	DHS HIPAA Project	S	General Funds	7/1/2002	6/30/2006	1	#112888-HIPAA Project Director
DHS	Youth Gang Response System	D	General Funds	10/1/1989	6/30/2005	2	#102149-Project Coordinator, Youth Gang Response System #102150-Project Specialist, Youth Gang Response System
DHS	Projects with Industry	S	100% Federal(77.35% Fed/22.65% State-in-kind)	10/1/2002	9/30/2005	1	#111602-PWI Employment Service Specialist (Kauai)
DHS	Work Incentive Grant Hawaii Project	S	Federal funds	3/1/2004	6/30/2005	5	#116778-WIG Project Service Specialist #116779-WIG Direct Service Provider (Oahu Branch) #116787-WIG Direct Service Provider (Hawaii Branch) #116783-WIG Direct Service Provider (Maui Branch) #116784-WIG Direct Service Provider (Kauai Branch)
DHS	Child and Family Service Review (CFSR) - Program Improvement Plan (PIP)	D	Federal	April-04	6/30/2006	37	#116983-Case Support Aide #116985-Case Support Aide #116986-Case Support Aide #116987-Crisis Aide #117022-Crisis Aide #116988-Crisis Worker #117023-Crisis Worker #116984-Case Support Aide #116989-Case Support Aide #116990-Case Support Aide #116991-Case Support Aide #116992-Case Support Aide #116993-Case Support Aide #116994-Case Support Aide #116995-Case Support Aide #116996-Case Support Aide #116997-Case Support Aide #116998-Case Support Aide #116999-Case Support Aide #117001-Case Support Aide #117002-Case Support Aide #117003-Case Support Aide #117004-Case Support Aide #117005-Case Support Aide

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

Exhibit 1 - DHS Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
							#117006-Crisis Aide #117007-Crisis Aide #117008-Crisis Aide #117009-Crisis Worker #117010-Crisis Worker #117011-Crisis Worker #117012-Case Support Aide #117014-Case Support Aide #117013-Case Support Aide #117015-Crisis Aide #117020-Crisis Aide #117016-Crisis Worker #117021-Crisis Worker [Positions continued from list above]
DHS	Financial Exploitation Project	D	Federal	3/1/2002	2/28/2006	1	#112754-Investigator/Auditor
DHS	Licensing Demonstration	D	50% State;50% Fed	7/1/2001	6/30/2005	2	#112322-Licensing registered nurse #112321-Licensing social worker
DHS	Head Start Collaboration Project	D	Fed funds	7/1/2001	6/30/2006	2	#112345-Head Start Collaboration Director #112352-Head Start Collaboration Secretary
DHS	Hawaii Health QUEST	D	Fed/State	8/1/1994	N/A	46	#108900-HIPAA Proj Mgr #103025-Quest Pub Rel Officer #108912-HAPA Project Mgr #110978-Customer Service Branch Administrator #110968-Enrollment Clerk #110972-Enrollment Clerk #110967-Enrollment Clerk #110969-Enrollment Clerk #110970-Enrollment Clerk #110979-Membership Svcs Supvr #111031-Membership Rep #110976-Membership Rep #110973-Membership Rep #110974-Membership Rep #110971-Membership Rep #110975-Membership Rep #110977-MFIS Supvr

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

Exhibit 1 - DHS Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
							#108913-Finance Officer #108930-Hlth Care Cont & Purch Spclt #103026-Hlth Cov. Mgmt Branch Admr #100519-Med Asstnce Pgm Spclt #100496-Med Asstnce Pgm Spclt #108927-Encounter Data Validation Spclt #103032-Researcher #90793K-HCMB Supvr #111068-Provider Data Technician #108908-Hlth Plan Data Spclt #108928-Hlth Plan Data Spclt #103031-Research Officer #108926-Managed Care Nurse Supvr #101589-Hlth Coverage Prgm Spclt <b>[Positions continued from list above]</b>
							#108910-Hlth Care Bus Analyst #110716-Project Assistant #111003-Network Spclt #111004-Network Spclt #116842-HAPA Systems Dev Spclt #111100-Hlth Care Bus Analyst #108909-Hlth Care Bus Analyst #111046-Hlth Care Bus Analyst #108914-Hlth Care Bus Analyst #111099-Hlth Care Bus Analyst #108915-Hlth Care Bus Analyst #108929-Network Coordinator #111159-CAMHD Prgm Spclt #111047-Hlth Care Systems Trainer #111045-Hlth Care Systems Trainer <b>[Positions continued from list above]</b>
DHS	Service Integration Project	D	Federal	Jul-04	1/31/2006	5	#116849-Self Sufficiency and Support Services Specialist #116850-Self Sufficiency and Support Services Specialist #116851-Self Sufficiency and Support Services Specialist #116852-Self Sufficiency and Support Services Specialist #116853-Clerk Typist
DHS	Hawaii Youth Correctional Facility Improvement Project	S	Federal	7/1/2004	6/30/2006	1	#116905-Project Director

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

Exhibit 1 - HRD Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
HRD	Implementation of Act 253, SLH 2000	S	State General Fund	April-03	6/30/2005	1	#108800-Special Assistant-Special Project

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

Exhibit 1 - HTH Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
HTH	Tracking, Integration & Research for Early Assessment, Screening & Intervention-Level II	S	Federal	11/5/2001	9/29/2005	3	#112498-EASI-II Program Coordinator #112499-EASI-II Clerk Typist #112500-EASI-II Program Specialist
HTH	HI Early Childhood Hearing Detection & Intervention Project	S	Federal	5/22/2000	3/31/2005	3	#110661-Early Hearing Detection Coordinator #110662-Early Intervention Specialist for Hearing Impaired #110663-Early Hearing Clerk Typist
HTH	Office of Health Equity	S	Position 100% Fed; Operations budget special funds	10/1/2000	12/31/2005	3	#111743-OHE Project Coordinator #111744-OHE Project Planner #111745-OHE Project Clerk Typist
HTH	Epidemiology & Laboratory Capacity for Infectious Disease (ELC)	S	Federal Cooperative Agreement	7/1/2000	6/30/2005	7	#110250-Microbiologist #110679-Hepatitis B School Survey Coordinator, DIB/DOCD #110680-Influenza Surveillance Coordinator, DIB/DOCD #110681-Foodborne Disease Surveillance and Response Coordinator, DIB/DOCD #110682-Hepatitis C Coordinator, SAPB/CDD #110683-Notifiable Disease Surveillance and Informatics Coordinator, DIB/DOCD #116795-Vector-Borne Disease Coordinator, DIB/DOCD
HTH	HI Genetic Awareness, Implementation & Data Project	S	Fed funds	6/1/2001	5/31/2005	3	#112317-HGAID Clerk Typist #112318-HGAID Project Coordinator #116667-HGAID Program Specialist
HTH	Pregnancy Risk Assessment Monitoring System (PRAMS)	R	Fed funds	6/1/1999	4/14/2006	2	#112254-PRAMS Project Coordinator #112255-PRAMS Data Management Specialist
HTH	Bioterrorism Hospital Preparedness Program	S	Fed funds	9/1/2003	8/31/2006	2	#113108-Bioterrorism Preparedness Program Specialist (EMS) #113110-Bioterrorism Preparedness Clerk Typist
HTH	Tuberculosis Epidemiologic Studies Consortium	R	Fed funds	4/1/2002	10/31/2004	1	#116521-TB Epidemiological Studies Consortium (TBESC) Coordinator
HTH	Coordination of Federal Total Maximum Daily Load (TMDL) Program	S	Fed funds	4/1/101	9/30/2005	1	#111851-Total Maximum Daily Load Coordinator
HTH	Tobacco Settlement Project	S	Special fund; #112991exception-35%Special/65%Trust funded	9/1/1999	6/30/2005	12	#110241-Tobacco Settlement (TS) Project Manager #108700-Tobacco Sales Control Coordinator #111463-School Health Coordinator #111585-TS Education Coordinator #111586-TS Community Programs Coordinator #111584-TS Secretary



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

Exhibit 1 - HTH Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
							#112413-TS Fiscal Coordinator #112991-TS Chronic Disease Epidemiologist #112992-TS Clerk Typist #112993-TS Community Outreach Coordinator #112994-TS Community Outreach Coordinator #111694-Children and Youth Specialist <b>[Positions continued from previous page]</b>
HTH	Addressing Asthma from a Public Health Perspective	S	Fed funds	9/30/2002	6/30/2005	2	#113144-Asthma Program Coordinator #113023-Chronic Disease Epidemiologist (.5 FTE)
HTH	Systems-Based HI State Diabetes Prevention & Control Program	S	Fed funds	9/19/2002	9/29/2005	1	#113023-Chronic Disease Epidemiologist (.5 FTE)
HTH	Medicare Rural Hospital Flexibility Program	S	Fed funds	9/1/1999	8/31/2005	1	#110203-Planner/Grant Writer
HTH	Preventive Health & Health Svcs Block Grant Project	S	Fed funds	12/1/2002	6/30/2005	1	#113271-Preventative Health Epidemiologist
HTH	HI's State Initiative Grants for Treatment of Persons w/Co-Occurring Substance Related & Mental Disorders (COSIG)	R	Fed funds	9/30/2003	9/29/2008	6	#116674-AMHD COSIG Project Manager #116799-AMHD COSIG Project Asst #116800-AMHD COSIG Project Asst #116801-AMHD COSIG Project Asst #116844-ADAD Co-Manager #116918-AMHD COSIG Boundary Spanner
HTH	Health Insurance Portability & Accountability Act Compliance	S	State General	4/14/2003	6/30/2005	2	#116352-HIPAA Privacy Officer #116644-HIPAA Security Officer
HTH	Healty Start Initiative Grant	S	Fed funds	7/1/1999	5/31/2005	16	#110431-Malama Fiscal Clerk #110435-Malama Statistics Clerk #110523-Malama Consortium Program Specialist #110543-Malama Social Worker #110544-Malama Social Worker #110545-Malama Clerk Typist #110546-Malama Clerk Typist #110547-Malama Clerk Typist #110549-Malama Social Service Aid #110550-Malama Social Service Aid #112360-Malama RPN #112361-Malama RPN #112393-Malama Clerk Typist #112394-Malama Clerk Typist #110528-Malama Epidemiologist #110557-Malama/PRAMS Account Clerk
HTH	Comprehensive Cancer Control Program	S	Fed funds	9/30/2002	6/29/2007	1	#113307-Cancer Program Coordinator

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

Exhibit 1 - HTH Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
HTH	Walkable Communities/Safe Routes to School Project	S	Special funds	7/1/2002	6/30/2005	1	#113199-Walkable Communities Project Coordinator
HTH	(Keiki) Injury Prevention Initiative Project	S	Fed funds	7/23/1993	6/30/2005	3	#102970-KIP Coordinator #102971-KIP Epidemiologist #102972-KIP Clerk Typist II
HTH	Emergency Medical Svcs for Children State Implementation & Partnership Grant	S	Fed funds	10/1/1998	2/28/2006	3	#108776-EMS Injury Prevention Coordinator #108775-State Pediatric EMS Physician #108774-EMS Injury Prevention Clerk Typist II
HTH	CDC Cooperative Agreement Grant for Core State Injury Surveillance & Progrm Dev, Phase II - Enhanced Core Injury Prgm Dev	S	Fed funds	9/30/2002	7/31/2005	1	#113232-Inj Prev Research Statistician IV
HTH	Health Information Coordination Special Project	S	Fed/Special funds	10/1/2001	6/30/2005	2	#112504-Public Health Informatics Specialist #112507-Public Health Informatics Analyst
HTH	State Incentive Grant, HI Youth Substance Abuse Prevention	S	Fed funds	9/30/2000	9/29/2005	3	#111556-ADAD State Incentive Project Coordinator #111555-ADAD State Incentive Project Program Spclt #111557-ADAD State Incentive Project Clerk
HTH	HI NW Frontier Addiction Technology Transfer Center	S	Contract (Federal) w/Oregon Health & Science Univ	9/30/2001	9/30/2006	1	#112877-NFATTC Specialist
HTH	7/1/02-Cost Allocation/Random Moment Study Project (7/1/98-Cost Allocation/RMS Project under Interagency Fed Revenue Maximization Contract)	S (D)	7/1/01-General Funds (7/1/98-Revolving Funds)	7/1/1998	6/30/2005	3	#108715-RMS Supervisor #108716-RMS Interviewer #108717-RMS Interviewer
HTH	SAGEWATCH-The Health Care Anti-Fraud Waste & Abuse Community Volunteer Demonstration Project	D	Fed funds	8/1/1997	8/31/2006	2	#103512-Program Specialist (Aging) #103513-Program Specialist (Aging)
HTH	State Health Insurance Assistance Program	D	Fed funds	Sep-92	3/31/2005	2	#103196-Program Specialist (Health/Aging) II #108777-Health Insurance Program Specialist (Aging) III
HTH	Reinvention Project	S	State General. State Special Funds.	9/1/1999	6/30/2006	1	#110299-Reinvention Project Coordinator
HTH	Public Health Preparedness & Response for Bioterrorism,PHS Act, Section 301(A) & 317	S	Fed funds	8/31/1999	8/30/2005	56	#110309-BTP Biostatistician #110314-BTP Data Processing Systems Analyst IV #110430-BTP Microbiologist IV #110713-BTP Senior Planner #112132-Bioterrorism Medical Coordinator #112288-BTP Clerk Typist #112860-BTP Project Manager

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

## Exhibit 1 - HTH Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
							#112861-BTP Fiscal Specialist #112862-BTP Statistics Clerk #112863-BTP Personnel Management Specialist #112865-BTP Epidemiological Specialist #112866-BTP Epidemiological Specialist #112867-BTP Epidemiological Specialist #112868-BTP Epidemiological Specialist #112869-BTP Epidemiological Specialist <b>[Positions continued from previous page]</b>
							#112903-BTP Secretary I #112904-BTP Lab Information Technologist #112905-BTP Microbiologist & Lab Coordinator #112906-BTP Laboratory Assistant #112907-BTP Lab & Information Support Technician #112908-BTP Microbiologist III #112995-BTP Data Processing Systems Analyst III #112996-BTP Data Processing Systems Analyst III #113011-BTP Clerk Typist #113012-BTP Secretary #113013-BTP Planner IV <b>[Positions continued from list above]</b>
							#113014-BTP Pharmacist #113076-BTP Information Specialist IV #113077-BTP Information Specialist III #113113-BTP Clerk Typist #113115-BTP Distance Learning Coordinator #113124-BTP Education & Training Coordinator #116378-BTP Planner IV #116448-BTP Clincl Operations Mgr (MD) #116520-BTP Account Clerk III #116523-BTP Contracts Specialist #116532-BTP Environmntl Hlth Spclt IV #116533-BTP Epidemiological Specialist #116534-BTP Food Safety Coordinator #116536-BTP Clerk Typist II #116537-BTP Planner IV #116538-BTP Public Health Educator III #116539-BTP Planner IV <b>[Positions continued from list above]</b>

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

Exhibit 1 - HTH Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
							#116540-BTP SR Data Procsg Sys Analyst #116598-BTP Microbiologist IV #116599-BTP Public Health Educator III #116600-BTP Laboratory Assistant #116601-BTP Planner IV #116602-BTP Clerk Typist II #116603-BTP Data Processing Systems Analyst IV #116604-BTP Chemist & Laboratory Coordinator #116605-BTP Chemist III #116606-BTP Chemist IV #116607-BTP Clerk Typist II #116608-BTP Public Health Educator IV #116653-BTP Disaster Planner <b>[Positions continued from previous page]</b>
HTH	Introduction of Co-occurring Disorders and Illness Management	R	Fed funds	9/30/2003	9/29/2006	5	#116839-AMHD EBP Project Clerk #116840-AMHD EBP Project Clerk #116857-AMHD EBP Project Manager #116858-AMHD EBP Project Trainer #116859-AMHD EBP Project Trainer

Department of Labor and Industrial Relations - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - LBR Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
LBR	HI Occupational Safety & Health Business Safety Consultation Project	S	Fed funds	2/17/2004	6/30/2005	1	#116673-OSH Business Safety Facilitator

Department of Land and Natural Resources - Exemptions Pursuant to HRS 76-16(b)(12)

Exhibit 1 - LNR Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
LNR	Hawaiian Islands Humpback Whale National Marine Sanctuary, State Office	S	Fed funds	6/6/1997	9/6/2007	4	#109101-Co-Manager HIHWNMS #113267-Marine Conservation Specialist #116574-Kauai Marine Conservation Coordinator #116575-West Hawaii Marine Conservation Coordinator
LNR	State of HI Fisheries Disaster Relief Program	S	Fed funds	10/1/2003	9/30/2005	1	#116642-Project Coordinator

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

Exhibit 1 - PSD Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
PSD	Project Bridge	D	75% Fed 25% State	Apr-98	9/30/2006	3	#106966-Substance Abuse Specialist #111693-Substance Abuse Specialist #103635-Secretary I
PSD	Victims of Crime Act, 1984	S	Fed funds	10/1/1999	6/30/2005	1	#103164-Investigator I
PSD	Restitution Recovery Project	S	Special fund	1/1/2003	12/31/2005	1	#113226-Project Coordinator for Restitution Recovery
PSD	Internal & external security requirements for executive protection of key state officials & dignitaries	S	General Funds	10/1/2003	6/30/2005	1	#116544-Special Services Asst. Administrator
PSD	Media Intervention	S	General Funds	4/29/2004	12/4/2006	1	#116818-Departmental Communications News Director
PSD	Prison Population Management Initiative (PMI)	S	General Funds	9/4/2002	6/30/2005	3	#113126-Parole Field Contact/Verification Officer II #113127-Parole Field Contact/Verification Officer II #113128-Parole Field Contact/Verification Officer II
PSD	Corrections Program Evaluations	S	General Funds	2/1/2004	12/4/2006	1	#116699-Special Assistant to the Director
PSD	Mainland/Federal Detention Center (FDC) Branch	S	General Funds	7/1/2004	6/30/2007	3	#116946-Mainland/Federal Detention Center Branch Program Manager #116947-Mainland/Federal Detention Center Branch Secretary #116959-Mainland/Federal Detention Center Branch Supervisor
PSD	Inmate Release Office	S	General Funds	7/1/2004	6/30/2006	2	#116920-Offender Management Administrator #116921-Offender Management Legal Secretary

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

Exhibit 1 - TAX Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
TAX	Integrated Tax Information Management System Project <i>(Project formerly known as Tax System Replacement Project)</i>	S	General Funds	Sept 1999	6/30/2005	4	#106474-Project Manager #106475-Functional Team Leader (.5 FTE) #106476-Technical Team Leader #116672-Functional Team Leader (.5 FTE)



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

Exhibit 1 - DOT Remain exempt

Dept	Project Title	Kind of Project [R, D, S]	Funds	Begin Date	End Date	# Exempt Positions	Position No.-Title
DOT	H-1 Freeway Waimalu Viaduct Widening Project	S	82.5% Federal 12.4% Highways Revenue Bonds 4.9% State Highway Special Funds 0.2% Other (Utilities)	3/15/2004	8/15/2005	6	#116691-Waimalu Hotline Assistant #116692-Waimalu Hotline Assistant #116694-Waimalu Hotline Assistant #116695-Waimalu Hotline Assistant #116696-Waimalu Hotline Assistant #116342-Community Development Specialist
DOT	Nimitz Highway Contra-flow/Zipper Lane Extension	S	80.8% Federal 19.2% State Highway Special Funds	Sep-03	12/4/2006	1	#116342-Community Development Specialist
DOT	Emergency/Disaster & Security	S	Special Funds	7/1/04	4/1/06	1	#116952-Emerg/Disaster & Sec Spec