

REPORT TITLE:

Civil Service Reform

DESCRIPTION:

Reforms the public employment laws that were enacted to implement two constitutional mandates -- that there be a civil service based on merit and that public employees have the right to bargain collectively. (CD1)

THE SENATE	S.B. NO.	2859
TWENTIETH LEGISLATURE, 2000		S.D. 1
STATE OF HAWAII		H.D. 1
		C.D. 1

A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYMENT.

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

1 SECTION 1. The purpose of this Act is to enact statewide
2 legislation to reform the existing public employment laws that
3 were enacted to implement two constitutional mandates--that there
4 be a civil service based on merit and that public employees have
5 the right to bargain collectively.

6 PART I

7 SECTION 2. Section 26-5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§26-5 Department of human resources development.** (a). The
10 department of human resources development shall be headed by a
11 single executive to be known as the director of human resources
12 development.

13 [The director shall have the authority to adopt rules as
14 heretofore exercised by the civil service commission. Whenever
15 consistent with economic and efficient administration, the
16 director may delegate any of the duties imposed upon the director

17 by chapter 76 or chapter 77 to the department heads, or any of
 18 them, in accordance with standards and procedures issued by the
 19 director. The director shall institute and maintain a system of

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1 inspection to determine that the personnel laws are applied and
 2 administered by the departments in a manner consistent with the
 3 purposes and provisions of the civil service law. Whenever an
 4 inspection indicates failure on the part of a department to
 5 comply with established policies, rules, and standards, the
 6 director shall take any action that may be appropriate, including
 7 suspension or revocation of any delegation of the director's
 8 authority.]

9 **(b).** The department shall administer the state human
 10 resources program, including human resources development and
 11 training, and central human resources services such as
 12 recruitment, examination, [position] classification, [and] pay
 13 administration [for all departments.], and payment of any claims
 14 as required under chapter 386.

15 **(c).** There shall be within the department of human resources
 16 development a [commission] board to be known as the [civil
 17 service commission] merit appeals board which shall sit as an
 18 appellate body on matters [within the jurisdiction of the

19 department of human resources development.] set forth in section
 20 76-14. The [commission] board shall consist of [seven] three
 21 members[, one from each county and three at large. At least one
 22 member of the commission shall be selected from among persons
 23 employed in private industry in skilled or unskilled laboring

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1 positions as distinguished from executive or professional
 2 positions. The functions, duties, and powers of the commission
 3 with respect to appeals shall be as heretofore provided by law
 4 for the civil service commission and for the loyalty board
 5 existing immediately prior to November 25, 1959.

6 The functions and authority heretofore exercised by the
 7 department of civil service and loyalty board as heretofore
 8 constituted are transferred to the department of human resources
 9 development established by this chapter]. All members shall have
 10 knowledge of public employment laws and prior experience with
 11 public employment; provided that at least one member's experience
 12 was with an employee organization as a member or an employee of
 13 that organization and at least one member's experience was with
 14 management. The governor shall consider the names of qualified
 15 individuals submitted by employee organizations or management
 16 before appointing the members of the board. The chairperson of
 17 the board shall be designated as specified in the rules of the

18 board.

19 (d) The provisions of section 26-34 shall not apply and the
20 board members shall be appointed by the governor for four-year
21 terms and may be re-appointed without limitation; provided that
22 the initial appointments shall be for staggered terms, as
23 determined by the governor. The governor shall fill any vacancy.

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1 by appointing a new member for a four-year term. The governor
2 may remove for cause any member after due notice and public
3 hearing.

4 (e) Nothing in this section shall be construed as in any
5 manner affecting the civil service laws applicable to the several
6 counties, the judiciary, or the Hawaii health systems
7 corporation, which shall remain the same as if this chapter had
8 not been enacted.

9 (f) There is created in the state treasury a special fund,
10 which shall consist of two separate accounts to be expended by
11 the department as follows:

12 (1) All revenues received by the department as a result of
13 entrepreneurial efforts in securing new sources of
14 funds not provided for in the department's budget for
15 services rendered by the department shall be deposited

16 into the entrepreneurial account and expended for the
 17 department's related activities and programs; provided
 18 that the department may use the moneys in the fund to
 19 employ necessary personnel or for other purposes in
 20 support of departmental entrepreneurial initiatives and
 21 programs; and

22 (2) All revenues received by the department from the
 23 charging of participant fees for in-service training,

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1 that are in addition to general fund appropriations in
 2 the department's budget for developing and operating
 3 in-service training programs, shall be deposited into
 4 the in-service training account and expended for the
 5 department's training activities and programs."

PART II

7 SECTION 3. Chapter 76, Hawaii Revised Statutes, is amended
 8 by adding a new section to be appropriately designated and to
 9 read as follows:

10 "**§76- Classification.** (a) Each director shall
 11 establish, implement, and maintain one or more classification
 12 systems covering all civil service positions, not otherwise
 13 exempted by rules. The classification systems shall be
 14 constructed with the objective of achieving equal pay for equal

15 work as provided in section 76-1. The director shall adopt rules
 16 that allow for the administrative review of classification and
 17 initial pricing actions.

18 (b) Wherever reference is made in statutes that positions
 19 are either subject to or exempt from "chapter 77" prior to the
 20 effective date of this Act, the positions shall be subject or
 21 exempt from the appropriate classification systems established
 22 under this section."

23 SECTION 4. Chapter 76, Part I, is amended by amending the

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1 title to read:

2 "PART I. GENERAL CIVIL SERVICE PROVISIONS"

3 SECTION 5. Section 76-1, Hawaii Revised Statutes, is

4 amended to read as follows:

5 "§76-1 [Purpose of this chapter; statement of policy.]

6 Purposes; merit principle. It is the purpose of this chapter to
 7 [establish in the State and each of the counties a system of
 8 personnel administration based on merit principles and scientific
 9 methods governing the classification of positions and the
 10 employment, conduct, movement, and separation of public officers
 11 and employees.] require each jurisdiction to establish and
 12 maintain a separately administered civil service system based on

13 the merit principle. The merit principle is the selection of
14 persons based on their fitness and ability for public employment
15 and the retention of employees based on their demonstrated
16 appropriate conduct and productive performance. It is also the
17 purpose of this chapter to build a career service in government
18 [which will attract, select, and retain the best of our citizens
19 on merit], free from coercive political influences, [with
20 incentives in the form of genuine opportunities for promotions in
21 the service, which will eliminate unnecessary and inefficient
22 employees, and which will provide technically competent and loyal
23 personnel] to render impartial service to the public at all

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1 times, [and to render that service] according to the dictates of
2 ethics and morality[.] and in compliance with all laws.

3 In order to achieve these purposes, it is the declared
4 policy of the State that the [personnel system hereby established
5 be applied and] human resource program within each jurisdiction
6 be administered in accordance with the following [merit
7 principles]:

8 (1) Equal opportunity for all [regardless of race, sex,
9 age, religion, color, ancestry, or politics.] in
10 compliance with all laws prohibiting discrimination.

11 No person shall be discriminated against [in any case

12 because of any disability,] in examination,
 13 appointment, reinstatement, reemployment, promotion,
 14 transfer, demotion, or removal, with respect to any
 15 position [the duties of which, in the opinion of the
 16 director of human resources development] when the work
 17 may be efficiently performed by [a person with such a
 18 disability; provided that the employment will not be
 19 hazardous to the appointee or endanger the health or
 20 safety of the appointee's co-workers or others;] the
 21 person without hazard or danger to the health and
 22 safety of the person or others;
 23 (2) Impartial selection of [the ablest person for

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1 government] individuals for public service by means of
 2 competitive tests which are fair, objective, and
 3 practical;
 4 (3) [Just opportunity] Incentives for competent employees
 5 [to be promoted] within the service[;], whether
 6 financial or promotional opportunities and other
 7 performance based group and individual awards that
 8 encourage continuous improvement to achieve superior
 9 performance;

- 10 (4) Reasonable job security for [the] competent [employee,
- 11 including] employees and discharge of unnecessary or
- 12 inefficient employees with the right [of appeal from]
- 13 to grieve and appeal personnel actions[;] through the:
- 14 (A) Contractual grievance procedure for employees
- 15 covered by chapter 89; or
- 16 (B) Internal complaint procedures and the merit
- 17 appeals board for employees excluded from coverage
- 18 under chapter 89;
- 19 (5) [Systematic] Equal pay for equal work shall apply
- 20 between classes in the same bargaining unit among
- 21 jurisdictions for those classes determined to be equal
- 22 through systematic classification of [all] positions
- 23 [through] based on objective criteria and adequate job

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- 1 evaluation[; and], unless it has been agreed in
- 2 accordance with chapter 89 to negotiate the repricing
- 3 of classes; and
- 4 (6) [Proper balance in employer-employee relations between
- 5 the people as the employer and employees as the
- 6 individual citizens, to achieve a well trained,
- 7 productive, and happy working force.] Harmonious and
- 8 cooperative relations between government and its

9 employees, including employee organizations
10 representing them, to develop and maintain a well-
11 trained, efficient, and productive work force that
12 utilizes advanced technology to ensure effective
13 government operations and delivery of public services."

14 SECTION 6. Section 76-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§76-5 [Furnishing of services and facilities.]
17 Alternatives in providing human resources program services. (a)
18 Whenever consistent with economic and efficient administration,
19 the director may delegate the performance of services under this
20 chapter to the departments. The departments shall perform the
21 services in compliance with any policies, standards, and
22 procedures issued by the director. The delegation may be
23 withdrawn at any time as determined by the director.

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1 (b) Whenever consistent with economic and efficient
2 administration and upon the recommendation of its director, the
3 chief executive may decentralize powers of the director under
4 this chapter, except for rule-making, to an appointing authority.
5 The appointing authority shall exercise the powers, including the
6 issuance of policies, standards, and procedures that would apply

7 to the department or agency. Accountability for all actions
 8 taken by the appointing authority or any subordinate employee, as
 9 a result of empowerment by the chief executive, shall rest with
 10 the appointing authority to the same extent as though the action
 11 had been taken by the director.

12 (c). [Subject to the rules of the state department of human
 13 resources development, the director of human resources
 14 development may enter into agreements with the judiciary, any
 15 county, and the Hawaii health systems corporation to furnish]
 16 Whenever consistent with economic and efficient administration, a
 17 jurisdiction, if authorized by rules of the jurisdiction, may
 18 enter into agreements on furnishing services and facilities [of
 19 the state department to the judiciary, any county, and the Hawaii
 20 health systems corporation in the administration of civil service
 21 including position classification in the judiciary, any county,
 22 and the Hawaii health systems corporation.] for human resources.
 23 The human resource services furnished under an agreement on

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1 behalf of a jurisdiction shall be as fully effective as though
 2 these services had been performed by the jurisdiction. The
 3 agreements may provide for [the reimbursement to the State of]
 4 reciprocity or reimbursement from authorized funds for the
 5 [reasonable] value of the services and facilities for human

6 resources furnished[, as determined by the director. The
 7 judiciary, all counties, and the Hawaii health systems
 8 corporation are authorized to enter into the agreements]. If
 9 authorized by the legislature, an agreement on furnishing
 10 services and facilities for human resources may be with a private
 11 entity and shall be subject to any requirements and parameters
 12 set by the legislature or the respective legislative body, as
 13 applicable.

14 (d) When determining how human resource services are to be
 15 provided for the state executive branch, consideration shall be
 16 given to options, such as restructuring the workforce in
 17 conjunction with providing affected employees the option of
 18 electing a voluntary severance benefit or an early retirement
 19 incentive, or initiating a reduction-in-force.

20 (e) Whenever human resource services are delegated,
 21 decentralized, or performed by agreements as authorized in this
 22 section, the director shall institute and maintain a system of
 23 inspection to determine that the personnel laws and rules are

1 applied and administered by the departments in a manner
 2 consistent with the provisions of this chapter. In the event of
 3 any failure to comply with the provisions of this chapter, the

4 director shall take or recommend appropriate action. Such action
 5 may include requiring immediate correction be taken, retracting
 6 the delegation of authority, recommending cessation of
 7 decentralization, or terminating an agreement for human resource
 8 services."

9 SECTION 7. Section 76-6, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "\$76-6 Chapter inoperative, when. If any provision of this
 12 chapter [or chapter 77] jeopardizes the receipt by the State or
 13 any county of any federal grant-in-aid or other federal allotment
 14 of money, the provision shall, insofar as the fund is
 15 jeopardized, be deemed to be inoperative."

16 SECTION 8. Chapter 76, Part II, Hawaii Revised Statutes, is
 17 amended by repealing the title:

18 ["PART II. CIVIL SERVICE FOR THE STATE"]

19 SECTION 9. Section 76-11, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "\$76-11 Definitions. As used in this [part,] chapter,
 22 unless the context clearly requires otherwise:

23 [(1) "Commission" means the civil service commission of the

1 State;]

2 [(5)] "Appointing authority" means a department head or

3 [person] designee having the power to make appointments or
4 changes in the status of employees [in the state service and
5 includes such subordinate, or, under rule of the department of
6 human resources development, subordinates, as the department or
7 person may designate to act for it or the person.
8 Notwithstanding any other provision of law, any department or
9 person may make such a designation;].

10 "Chief executive" means the governor, the respective mayors,
11 the chief justice of the supreme court, and the chief executive
12 officer of the Hawaii health systems corporation. It may include
13 the superintendent of education and the president of the
14 University of Hawaii with respect to their employees on any
15 matter that applies to employees in general, including employees
16 who are not covered by this chapter.

17 [(6)] "Civil service" includes all positions [in the state
18 service] within a jurisdiction that are not exempted by section
19 46-33, 76-16[;], or 76-77, or by other law and must be filled
20 through civil service recruitment procedures based on merit.

21 "Civil service employee" means an employee who has met all
22 requirements for membership in the civil service under section
23 76-27.

1 [(7)] "Class" [or "class of work" means the logical and
2 reasonable grouping of duties and responsibilities and their
3 identification with respect to

4 (A) Kind or subject matter of work,

5 (B) Level of difficulty and responsibility, and

6 (C) Qualification requirements of the work, so that

7 positions which conform substantially to the same

8 class would receive like treatment in the matter

9 of title, and such personnel processes as salary

10 assignment;] means a group of positions that

11 reflect sufficiently similar duties and responsibilities such

12 that the same title and the same pay range may apply to each

13 position allocated to the class.

14 "Classification system" means classes of positions arranged

15 in a logical and systematic order.

16 "Day" means a calendar day unless otherwise specified.

17 [(4)] "Department" [includes the judicial branch and] means

18 any department, board, commission, or agency of [the State;] a

19 jurisdiction.

20 [(2)] "Director" means the [director of human resources

21 development of the State;] head of the central personnel agency

22 for a jurisdiction regardless of title, whether it is the

23 director of human resources development, director of personnel,

1 director of personnel services, or personnel director.

2 [(3) "State service" means all offices and other positions

3 in the public service of the State;

4 (19)] "Employee" or "public employee" means [a] any person

5 holding a position in [accordance with this chapter whether

6 permanently or otherwise and whether as an officer or otherwise;]

7 the service of a jurisdiction, irrespective of status or type of

8 appointment; provided that, if the context clearly applies only

9 to an employee who is a member of the civil service, "employee"

10 means a civil service employee.

11 "Employer" or "public employer" means the governor in the

12 case of the State, the respective mayors in the case of the

13 counties, the chief justice of the supreme court in the case of

14 the judiciary, the board of education in the case of the

15 department of education, the board of regents in the case of the

16 University of Hawaii, the Hawaii health systems corporation board

17 in the case of the Hawaii health systems corporation, and any

18 individual who represents one of the employers or acts in their

19 interest in dealing with public employees. In the case of the

20 judiciary, the administrative director of the courts shall be the

21 employer in lieu of the chief justice for purposes which the

22 chief justice determines would be prudent or necessary to avoid

23 conflict.

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1 "Exclusive representative" means the employee organization
2 certified by the board under section 89-8 as the collective
3 bargaining agent to represent all employees in an appropriate
4 bargaining unit without discrimination and without regard to
5 employee organization membership.

6 "Jurisdiction" means the State, the city and county of
7 Honolulu, the county of Hawaii, the county of Maui, the county of
8 Kauai, the judiciary, the department of education, the University
9 of Hawaii, and the Hawaii health systems corporation.

10 "Legislative body" means the legislature in the case of the
11 State, including the judiciary, the department of education, the
12 University of Hawaii, and the Hawaii health systems corporation;
13 the city council in the case of the city and county of Honolulu;
14 and the respective county councils in the case of the counties of
15 Hawaii, Maui, and Kauai.

16 "Merit appeals board" means a jurisdiction's appellate body
17 for purposes of section 76-14 regardless of whether it is named
18 merit appeals board, civil service commission, or appeals board.

19 [(8) "Promotional examination" means an examination for
20 positions in a particular class, admission to which is
21 limited to regular employees in civil service;

22 (9) "Open-competitive examination" means an examination for
23 positions in a particular class, admission to which is

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1 not limited to persons employed in civil service;

2 (10) "Open-competitive list" means a list of persons who

3 have been found qualified by an open-competitive

4 examination for appointment to a position in a

5 particular class;

6 (11) "Promotional list" means a list of persons who have

7 been found qualified by a promotional examination for

8 appointment to a position in a particular class;

9 (12) "Reemployment list" means a list of persons who have

10 been regular employees in the civil service and who are

11 entitled to have their names certified for appointment

12 to a position in the class in which they last held

13 permanent status, or, as provided by section 76-25, in

14 a related class in the same or lower range for which

15 they meet the qualification requirements;

16 (13) "Eligible list" means a list of persons who have been

17 found qualified for appointment to a position in a

18 particular class, such a list being either open-

19 competitive, promotional, or reemployment;

20 (14) "Eligible" means a person whose name is on an active

21 eligible list;

22 (15) "Regular employee" means an employee who has been
23 appointed to a position in the civil service in

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1 accordance with this chapter and who has successfully
2 completed the employee's initial probation period;

3 (16) "Initial probation period" means a period of not less
4 than six months nor more than one year from the
5 beginning of an employee's service in civil service;

6 (17) "New probation period" means any probation period other
7 than that defined in paragraph (16);

8 (18)] "Position" means a specific [office or employment,
9 whether occupied or vacant, consisting of a group of all the
10 current duties and responsibilities assigned or delegated by
11 competent authority,] job requiring the full or part-time
12 employment of one person[;].

13 [(20) "Position classification plan" means classes of
14 positions arranged in a logical and systematic order.]"

15 SECTION 10. Section 76-12, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§76-12 General powers and duties of director. The
18 director [of human resources development] shall:

19 (1) Represent the public interest in the improvement of
20 human resources administration in the civil service;

21 (2) Assist in fostering the interest of institutions of
 22 learning and civic, professional, and employee
 23 organizations in the improvement of human resources

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1 standards in civil service;

2 (3) Advise the [governor] chief executive on policies and
 3 problems concerning the human resources
 4 [administration;] program; and

5 (4) Make investigations concerning the administration of
 6 human resources policies in the civil service,
 7 including any matter respecting the enforcement or
 8 effect of this chapter or the rules adopted thereunder,
 9 or the action or failure to act of any officer or
 10 employee with respect thereto."

11 SECTION 11. Section 76-13, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "§76-13 Specific duties and powers of director. (a) The
 14 director [of human resources development] shall direct and
 15 supervise all the administrative and technical activities of the
 16 director's department. In addition to other duties imposed upon
 17 the director by this chapter [and chapter 77], the director
 18 shall:

19 [(1) Attend all meetings of the commission;
 20 (2)] (1). Establish and maintain a roster of all persons in
 21 the civil service [in which shall be set forth, as to
 22 each, the class of position held, the salary or pay,
 23 any change in class, title, pay, or status, and any

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1 other necessary data];
 2 [(3)] (2). Appoint [assistants and] employees necessary to
 3 assist the director in the proper performance of the
 4 director's duties and for which appropriations shall
 5 have been made;
 6 [(4)] (3). Foster and develop, in cooperation with appointing
 7 authorities and others, programs for the improvement of
 8 employee efficiency;
 9 [(5)] (4). Cooperate fully with appointing authorities,
 10 giving full recognition to their requirements and
 11 needs, in the administration of this chapter [and
 12 chapter 77 in order] to promote public service [and
 13 establish] by establishing conditions of service that
 14 will attract and retain employees of character and
 15 [capacity,] capability, and to increase efficiency and
 16 [economy] productivity in governmental departments by
 17 [the improvement of] continuously improving methods of

18 human resources administration [with full recognition
 19 of the requirements and needs of management;] and
 20 maximizing the use of advanced technology;

21 [(6)] (5). Encourage and exercise leadership in the
 22 development of effective human resources administration
 23 within the several departments [in civil service] and

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1 make available the facilities of the director's
 2 department to this end;

3 [(7)] (6). Investigate from time to time the operation and
 4 effect of this chapter and [chapter 77 and of] the
 5 rules adopted thereunder;

6 [(8)] (7). Develop and maintain [a position] classification
 7 [plan; and

8 (A) Create and adjust classes of positions and adopt
 9 class specifications including title, description
 10 of typical duties and responsibilities, statement
 11 of training and experience, and other requirements
 12 to be met by applicants, covering all positions;

13 (B) Allocate each position and each newly created
 14 position to the appropriate class;

15 (C) Reallocate positions to recognize material changes

16 in duties and responsibilities or to correct a
 17 previous action; provided that reallocations shall
 18 be made effective retroactively to the beginning
 19 of the pay period immediately following the date
 20 the application for reallocation was filed with
 21 the director or any other date provided by the
 22 rules; and provided further that an employee who
 23 is otherwise properly compensated shall not be

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1 required to make reimbursement of overpayment in
 2 salary when the overpayment is due to salary
 3 increments or repricing actions nullified by the
 4 retroactive feature of a classification action;
 5 and provided further that the proper salary
 6 adjustment shall be made as of the first pay
 7 period following the action taken by the director;
 8 and

9 (D) Determine the status of employees holding
 10 positions affected by classification actions;]
 11 systems;

12 [(9) Pay any claims against the State as required under
 13 chapter 386; and]

14 (8) Make recommendations and advise the chief executive on

15 appropriate adjustments for employees excluded from
 16 collective bargaining as authorized under chapter 89C;
 17 and

18 [(10)] (9). Perform any other lawful acts deemed by the
 19 director to be necessary or desirable to carry out the
 20 purposes and provisions of this [part.] chapter."

21 SECTION 12. Section 76-14, Hawaii Revised Statutes, is
 22 amended to read as follows:

23 "§76-14 [General duties of commission.] Merit appeals

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1 board; duties, and jurisdiction. (a) The [civil service
 2 commission shall hear and decide] merit appeals board of each
 3 jurisdiction shall decide appeals from any action [of the
 4 director of human resources development] under this chapter[, as
 5 well as from dismissals, demotions, and suspensions as
 6 hereinafter provided.] taken by the chief executive, the
 7 director, an appointing authority, or a designee acting on behalf
 8 of one of these individuals, relating to:

9 (1) Recruitment and examination;

10 (2) Classification and reclassification of a particular

11 position;
 12 (3) Initial pricing of classes; and
 13 (4) Other employment actions under this chapter, including
 14 disciplinary actions and adverse actions for failure to
 15 meet performance requirements, taken against civil
 16 service employees who are excluded from collective
 17 bargaining coverage under section 89-6.

18 (b) Any person suffering legal wrong by an action under
 19 subsection (a)(1) or aggrieved by such action shall be entitled
 20 to appeal to the merit appeals board. Any employee covered by
 21 chapter 76 suffering legal wrong by an action under subsection
 22 (a)(2) or (3) shall be entitled to appeal to the merit appeals
 23 board. Only employees covered by chapter 76, who are excluded

1 from collective bargaining, suffering legal wrong by an action
 2 under subsection (a)(4) shall be entitled to appeal to the merit
 3 appeals board. Appeals under this section shall be filed within
 4 time limits and in the manner provided by rules of the merit
 5 appeals board.

6 (c) The rules adopted by the merit appeals board shall
 7 provide for the following:

8 (1) The merit appeals board shall not act on an appeal, but
 9 shall defer to other authority, if the action

10 complained of constitutes a prohibited act that is
 11 subject to the jurisdiction of another appellate body
 12 or administrative agency or the grievance procedure
 13 under a collective bargaining agreement;

14 (2) The merit appeals board shall not proceed on an appeal
 15 or shall hold proceedings in abeyance if there is any
 16 controversy regarding its authority to hear the appeal
 17 until the controversy is resolved by the Hawaii labor
 18 relations board;

19 (3) The merit appeals board shall prescribe time limits for
 20 filing an appeal that require exhaustion of all
 21 internal complaint procedures, including administrative
 22 review and departmental complaint procedures, before an
 23 appeal is filed; and

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1 (4) The merit appeals board shall use the conditions listed
 2 in section 76-41(c) in reaching a decision on whether
 3 actions taken by the appointing authority based on a
 4 failure by the employee to meet the performance
 5 requirements of the employee's position is with or
 6 without merit."

7 SECTION 13. Section 76-15, Hawaii Revised Statutes, is

8 amended to read as follows:

9 "§76-15 Examination consultants. (a) The director [of
10 human resources development] or an appointing authority may
11 select [officers or] employees in the [state] jurisdiction's
12 service or any individual to act as volunteer subject-matter
13 consultants in the preparation and rating of applications and
14 examinations. Notwithstanding the provisions of chapter 92F, the
15 identity of any volunteer subject-matter consultant, and any
16 information which would result in actual identification of any
17 volunteer subject-matter consultant, are confidential and shall
18 not be disclosed[, unless deemed appropriate by the director].

19 (b). An appointing authority may excuse any [officer or]
20 employee in the appointing authority's department from the
21 [officer's or] employee's regular duties for the time required
22 for the [officer's or] employee's work as a volunteer subject-
23 matter consultant.

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1 [Officers and employees] Employees shall not be entitled to
2 extra pay for services as volunteer consultants but shall be
3 entitled to reimbursement for necessary traveling and other
4 expenses."

5 SECTION 14. Section 76-16, Hawaii Revised Statutes, is
6 amended to read as follows:

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

19 **(b).** The civil service to which this [part] chapter applies
20 shall comprise all positions in the State now existing or
21 hereafter established and embrace all personal services performed
22 for the State, except the following:

23 **(1)** Commissioned and enlisted personnel of the Hawaii

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1 national guard as such, and positions in the Hawaii
2 national guard that are required by state or federal
3 laws or regulations or orders of the national guard to
4 be filled from those commissioned or enlisted

5 personnel;

6 (2) Positions filled by persons employed by contract where
 7 the director of human resources development has
 8 certified that the service is special or unique or is
 9 essential to the public interest and that, because of
 10 circumstances surrounding its fulfillment, personnel to
 11 perform the service cannot be obtained through normal
 12 civil service recruitment procedures. Any such
 13 contract may be for any period not exceeding one year;

14 (3) Positions [of a temporary nature needed in the public
 15 interest where the need for the position does not
 16 exceed one year, but before any person may be employed
 17 to render the temporary service, the director shall
 18 certify that the service is of a temporary nature and
 19 that recruitment through normal civil service
 20 recruitment procedures is not practicable;] that must
 21 be filled without delay to comply with a court order or
 22 decree if the director determines that recruitment
 23 through normal recruitment civil service procedures

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1 would result in delay or non-compliance, such as the
 2 Felix-Cayetano consent decree;

3 (4) Positions filled by the legislature or by either house

4 or any committee thereof;

5 (5) Employees in the office of the governor and office of
6 the lieutenant governor, and household employees at
7 Washington Place;

8 (6) Positions filled by popular vote;

9 (7) Department heads, officers, and members of any board,
10 commission, or other state agency whose appointments
11 are made by the governor or are required by law to be
12 confirmed by the senate;

13 (8) Judges, referees, receivers, masters, jurors, notaries
14 public, land court examiners, court commissioners, and
15 attorneys appointed by a state court for a special
16 temporary service;

17 (9) One bailiff for the chief justice of the supreme court
18 who shall have the powers and duties of a court officer
19 and bailiff under section 606-14; one secretary or
20 clerk for each justice of the supreme court, each judge
21 of the intermediate appellate court, and each judge of
22 the circuit court; one secretary for the judicial
23 council; one deputy administrative director of the

1 courts; three law clerks for the chief justice of the

2 supreme court, two law clerks for each associate
3 justice of the supreme court and each judge of the
4 intermediate appellate court, one law clerk for each
5 judge of the circuit court, two additional law clerks
6 for the civil administrative judge of the circuit court
7 of the first circuit, two additional law clerks for the
8 criminal administrative judge of the circuit court of
9 the first circuit, one additional law clerk for the
10 senior judge of the family court of the first circuit,
11 two additional law clerks for the civil motions judge
12 of the circuit court of the first circuit, two
13 additional law clerks for the criminal motions judge of
14 the circuit court of the first circuit, and two law
15 clerks for the administrative judge of the district
16 court of the first circuit; and one private secretary
17 for the administrative director of the courts, the
18 deputy administrative director of the courts, each
19 department head, each deputy or first assistant, and
20 each additional deputy, or assistant deputy, or
21 assistant defined in paragraph (16);
22 (10) First deputy and deputy attorneys general, the
23 administrative services manager of the department of

1 the attorney general, one secretary for the
2 administrative services manager, an administrator and
3 any support staff for the criminal and juvenile justice
4 resources coordination functions, and law clerks;

5 (11) Teachers, principals, vice-principals, district
6 superintendents, chief deputy superintendents, other
7 certificated personnel, [and] not more than twenty
8 noncertificated administrative, professional, and
9 technical personnel not engaged in instructional work,
10 teaching assistants, educational assistants,
11 bilingual/bicultural school-home assistants, school
12 psychologists, psychological examiners, speech
13 pathologists, athletic health care trainers,
14 alternative school work study assistants, alternative
15 school educational/supportive services specialists, and
16 alternative school project coordinators in the
17 department of education[,]; the special assistant to
18 the state librarian, one secretary for the special
19 assistant to the state librarian, and members of the
20 faculty of the University of Hawaii, including research
21 workers, extension agents, personnel engaged in
22 instructional work, and administrative, professional,
23 and technical personnel of the university;

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- 1 (12) Employees engaged in special, research, or
2 demonstration projects approved by the governor;
- 3 (13) Positions filled by inmates, kokuas, patients of state
4 institutions, persons with severe physical or mental
5 handicaps participating in the work experience training
6 programs, and students and positions filled through
7 federally funded programs that provide temporary public
8 service employment such as the federal Comprehensive
9 Employment and Training Act of 1973;
- 10 (14) A custodian or guide at Iolani Palace, the Royal
11 Mausoleum, and Hulihee Palace;
- 12 (15) Positions filled by persons employed on a fee,
13 contract, or piecework basis, who may lawfully perform
14 their duties concurrently with their private business
15 or profession or other private employment and whose
16 duties require only a portion of their time, if it is
17 impracticable to ascertain or anticipate the portion of
18 time to be devoted to the service of the State;
- 19 (16) Positions of first deputies or first assistants of each
20 department head appointed under or in the manner
21 provided in section 6, Article V, of the State
22 Constitution; three additional deputies or assistants
23 either in charge of the highways, harbors, and airports

1 divisions or other functions within the department of
2 transportation as may be assigned by the director of
3 transportation, with the approval of the governor; four
4 additional deputies in the department of health, each
5 in charge of one of the following: behavioral health,
6 environmental health, hospitals, and health resources
7 administration, including other functions within the
8 department as may be assigned by the director of
9 health, with the approval of the governor; an
10 administrative assistant to the state librarian; and an
11 administrative assistant to the superintendent of
12 education;

13 (17) Positions specifically exempted from this part by any
14 other law; provided that all of the positions defined
15 by paragraph (9) shall be included in the position
16 classification plan;

17 (18) Positions in the state foster grandparent program and
18 positions for temporary employment of senior citizens
19 in occupations in which there is a severe personnel
20 shortage or in special projects;

21 (19) Household employees at the official residence of the
22 president of the University of Hawaii;

23 (20) Employees in the department of education engaged in the

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1 supervision of students during lunch periods and in the
2 cleaning of classrooms after school hours on a less
3 than half-time basis;

4 (21) Employees hired under the tenant hire program of the
5 housing and community development corporation of
6 Hawaii; provided that not more than twenty-six per cent
7 of the corporation's work force in any housing project
8 maintained or operated by the corporation shall be
9 hired under the tenant hire program;

10 (22) Positions of the federally funded expanded food and
11 nutrition program of the University of Hawaii that
12 require the hiring of nutrition program assistants who
13 live in the areas they serve;

14 (23) Positions filled by severely handicapped persons who
15 are certified by the state vocational rehabilitation
16 office that they are able to perform safely the duties
17 of the positions;

18 (24) One public high school student to be selected by the
19 Hawaii state student council as a nonvoting member on
20 the board of education as authorized by the State
21 Constitution;

22 (25) Sheriff, first deputy sheriff, and second deputy
23 sheriff; and

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1 (26) A gender and other fairness coordinator hired by the
2 judiciary.

3 The director shall determine the applicability of this
4 section to specific positions.

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

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

14 (d) The director may provide for an exemption from civil
15 service recruitment procedures if the appointment to the position
16 has a limitation date and it would be impracticable to recruit
17 under civil service recruitment procedures because the required
18 probation period that is part of the examination process can not
19 be completed by the limitation date. The rules shall not permit

20 additional exemptions from civil service recruitment procedures
 21 for the same position when the position will be filled for a
 22 duration that would be sufficient to recruit under civil service
 23 recruitment procedures and allow for completion of the required

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1 probation period.

2 (e) It is also the public policy of the State that all
 3 civil service positions be covered under the classification
 4 systems of the jurisdictions, unless the position was exempted
 5 from the classification systems by law prior to the effective
 6 date of this Act or based on reasons set forth in rules. The
 7 rules may include reasons for a temporary exemption of a
 8 position, such as the establishment of a new class is pending, or
 9 for a permanent exemption when the establishment of a class is
 10 impracticable.

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

19 position is temporarily or permanently exempted from the
20 classification systems.

21 (g) Each director shall be responsible for ensuring that
22 all exemptions from civil service recruitment procedures or from
23 the classification systems are consistent with this section.

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

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

16 (1) Whenever a position exempted under subsection (b) or

17 (c) is no longer exempted from the civil service,
 18 normal civil service recruitment procedures shall
 19 apply, unless the incumbent is to be retained without
 20 the necessity for examination by action of the
 21 legislature; provided that in such event, the incumbent
 22 shall be retained, but only if the incumbent meets the
 23 minimum qualification requirements of the position; and

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

11 (i) Employees in positions subject to civil service
 12 recruitment procedures shall be entitled to become and remain
 13 members of the civil service for the duration of their
 14 appointments as provided in section 76-27. Employees in
 15 positions exempted from civil service recruitment procedures

16 shall not be entitled to membership in the civil service.

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

21 SECTION 15. Section 76-17, Hawaii Revised Statutes, is
22 amended to read as follows:

23 "§76-17 Rules [and regulations]; policies [and],

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1 standards[.], and procedures. (a) In conformity with chapter
2 91, the director [of human resources development] shall prescribe
3 rules [and regulations] to carry out this chapter which shall
4 have the force and effect of law. The rules [and regulations]
5 may include any matter not inconsistent with law concerning the
6 establishment and maintenance of a system of personnel management
7 based on the merit [principles,] principle, including but not
8 limited to matters set forth in this chapter, and may be amended
9 or repealed in like manner as the same were adopted. The rules
10 [and regulations] shall be in conformity with principles of good
11 public administration [and shall be in conformity with sections
12 76-18 to 76-43].

13 (b) The director may also issue, without regard to chapter

14 91, policies, standards, and procedures consistent with rules to
15 facilitate and ensure appropriate functioning of the human
16 resources program.

17 (c) The section shall not apply to matters that are
18 negotiable under chapter 89 or adjusted under chapter 89C."

19 SECTION 16. Section 76-18, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§76-18 Examinations[, general character]. There shall be
22 [competitive] examinations for testing [of the relative fitness]
23 the fitness and ability of applicants for positions in civil

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1 service. [The examinations shall be practical in their character
2 and shall provide for ascertaining the physical and educational
3 qualifications, experience, knowledge, and skill of applicants
4 and their relative capacity and fitness for the proper
5 performance of the characteristic duties of the class of
6 positions in which they seek to be employed; except that in the
7 case of a promotional examination, the examination shall be
8 limited, at the request of the department head, to the
9 characteristic duties of the class and nothing else. All
10 examinations shall be public and, except as otherwise provided by
11 law, free and open to all citizens of the State but with such
12 limitations as to health, physical condition, age, sex,

13 education, training, experience, habits, and character as the
 14 director of human resources development may deem necessary and
 15 proper for the class for which the examination is to be given.
 16 Disabled veterans or persons with a disability shall not be
 17 disqualified for reason of the disability if they possess the
 18 physical capacities to perform the duties of the class.
 19 Examinations may be oral or written or partly oral and partly
 20 written, or tests of manual skill and physical strength, or
 21 evaluations of training and experience backgrounds. Except when
 22 clearly required by the nature of the service to be performed,
 23 written examinations shall not be required of applicants for

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1 unskilled labor classes. All examinations shall be under the
 2 control of the director or any suitable person or persons as the
 3 director may designate to conduct them. All persons who have
 4 passed the examination shall be required to take physical
 5 examinations as may be required by the director or, in case of
 6 the counties, by the civil service commission. The reports of
 7 the physical examinations shall be filed with the director.

8 The director, for purposes of expediting the examination
 9 process, may require applicants to take a written examination
 10 prior to filing a formal application. Upon successful completion

11 of the written examination, the applicant shall then file a
12 formal application.] The director shall adopt rules to administer
13 the examination programs."

14 SECTION 17. Section 76-22.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "\$76-22.5 Recruitment [flexibility]. [Notwithstanding
17 section 76-23, the] The director [of human resources development]
18 shall adopt rules in accordance with sections 76-1 and 78-1 to
19 determine, establish, and maintain the manner in which civil
20 service positions [shall] are to be filled [in accordance with
21 section 78-1 and the following standards:

22 (1) Equal opportunity for all regardless of race, sex, age,
23 religion, color, ancestry, physical handicap, or

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1 politics;

2 (2) First consideration for competent employees already
3 within public service; and

4 (3) Impartial selection of the ablest person through
5 competitive means which are fair, objective, and
6 practical]. The director shall seek continuous

7 improvements to streamline the recruitment process so that
8 positions are filled in the most economic, efficient, and

9 expeditious manner possible. This includes maximizing use of new

10 technologies and developing more efficient alternatives to ensure
 11 the availability of qualified applicant pools whether it involves
 12 a change in the manner in which initial appointments are to be
 13 made, increased delegation to departments, or decentralization to
 14 appointing authorities, as necessary and appropriate."

15 SECTION 18. Section 76-23.5, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "[[]§76-23.5[] Travel and transportation expenses.]
 18 Recruitment incentives. [Appointing authorities, with the prior
 19 approval] Within limits set forth in rules of the director,
 20 appointing authorities may pay for all or a portion of the travel
 21 and transportation expenses or to provide a monetary incentive to
 22 enhance the recruitment of persons employed or appointed to
 23 positions in a class declared to be in a shortage category and

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1 on continuous recruitment.] critical-to-fill and labor shortage
 2 positions."

3 SECTION 19. Section 76-27, Hawaii Revised Statutes, is
 4 amended to read as follows:

5 "§76-27 Probationary service and other requirements for
 6 membership[.] in the civil service. (a) All employees [shall
 7 successfully serve an initial probation period before becoming

8 members of the civil service. In addition, membership in the
 9 civil service shall require that the employee shall have been
 10 appointed in accordance with law and shall have satisfied all the
 11 requirements for employment prescribed by this chapter or by the
 12 rules adopted thereunder, including those qualifications
 13 prescribed by section 78-1.] appointed to civil service positions
 14 shall constitute the membership of the civil service, but no
 15 employee shall be entitled to membership in civil service until
 16 the employee has:

- 17 (1) Successfully completed the initial probation period
 18 required as part of the examination process to
 19 determine the employee's fitness and ability for the
 20 position; and
- 21 (2) Satisfied all requirements for employment prescribed by
 22 this chapter and the qualifications prescribed by
 23 section 78-1.

1 (b) Upon becoming a member in the civil service, the
 2 employee shall be entitled to hold the member's position for the
 3 duration of the member's appointment, subject to section 76-46.
 4 In addition, civil service employees with permanent appointments,
 5 including an employee who has return rights to a position in
 6 which the employee has a permanent appointment, shall have layoff

7 rights under section 76-43. All other civil service employees
 8 whose appointments have a limitation date shall not have layoff
 9 rights and shall be released at the end of their appointments or
 10 earlier if there is lack of work, lack of funds, or other
 11 legitimate reasons.

12 (c) To retain membership in the civil service, all
 13 employees must continue to demonstrate their fitness and ability
 14 for their current positions by meeting all performance
 15 requirements of their positions. If an employee fails to meet
 16 performance requirements, section 76-41 shall apply.

17 (d) A member who is promoted or transferred to another
 18 position in the civil service may be required to successfully
 19 serve a new probation period [in] as part of the examination
 20 process to determine the employee's fitness and ability for the
 21 new position but shall be entitled to all the rights and
 22 privileges of a member of the civil service, except the right to
 23 appeal a [dismissal] discharge from the new position (as

1 distinguished from [dismissal] discharge from the service) for
 2 inefficiency during the probationary period, in which case the
 3 member shall be returned to the former position[.] or a
 4 comparable position.

5 (e) An employee [who is] serving [a temporary] an
6 appointment with a limitation date may subsequently be [given a
7 probationary appointment in] appointed to the same position or a
8 related position in the same class within the department
9 [whenever] when a permanent position is established or is
10 vacated; provided that the employee [has been] was hired
11 initially [from the appropriate eligible list] through civil
12 service recruitment procedures and the [temporary] period of
13 service [has] as a temporary appointee immediately preceded the
14 [change to probationary status. Upon certification by the
15 appointing authority] appointment to the permanent position. The
16 period of service performed as a temporary appointee may be
17 credited toward the probation period if the appointing authority
18 certifies that the employee has been performing satisfactorily
19 and that the duties the employee has been performing are
20 essentially similar to those required of the probationary
21 appointment[,]. Upon such certification, the period of service
22 performed as a temporary appointee shall be [subtracted from the
23 probationary period required by this section,] credited toward

1 fulfilling the required probation period and the employee shall
2 serve only the [remaining period, if any, as a probationary
3 employee.] remainder of the probation period, if any."

4 SECTION 20. Section 76-28, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§76-28 Forms required of appointing authorities. [The
7 director of human resources development] Each director shall
8 develop and administer an employment records management system
9 and require appointing authorities to transmit such records as
10 the director may request. Appointing authorities shall maintain
11 records of all appointments, terminations of employment,
12 transfers, resignations, suspensions, demotions, and [dismissals.
13 Appointing authorities shall file necessary forms of such
14 personnel actions as the director may request.] discharges, other
15 employment records and forms deemed appropriate by the director."

16 SECTION 21. Section 76-29, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§76-29 Person ineligible for appointment. [No] A person
19 [who has committed or attempted any deception or fraud in
20 connection with any application or examination,] shall be
21 [eligible] ineligible for any appointment in the civil service[.]
22 for a specified period of time as determined appropriate by the
23 director for reasons including, but not limited to, the

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1 following:

- 2 (1) Deception, fraud, or providing false or misleading
3 statements of material facts in the application or
4 examination process;
- 5 (2) Unauthorized or improper assistance in an examination;
6 or
- 7 (3) A determination of unsuitability for employment."

8 SECTION 22. Section 76-30, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§76-30 Tenure; resignations. (a) Every member of the
11 civil service shall be entitled to hold the member's position
12 [during good behavior, subject to suspension, demotion, or
13 dismissal only as provided in this chapter and in the rules and
14 regulations of the department of human resources development.]
15 for the duration of the member's appointment as provided in
16 section 76-27. Resignations shall be in writing[. In case] in
17 accordance with rules.

18 (b) If an employee resigns without submitting the
19 employee's resignation in writing, if an employee does not report
20 to work for fifteen days without notifying the appointing
21 authority of the employee's employment intentions, if the
22 resignation is submitted while an investigation was pending
23 against the employee, or if the resignation is not accepted for

1 reasons allowed by rules, the [department head] appointing
2 authority shall, within fifteen days following the [resignation,]
3 last day the employee reported to work, file with the director
4 [of human resources development] a statement showing either
5 resignation or termination of employment[.], as appropriate under
6 the circumstances.

7 (c) If the employee does not report for work without
8 authorization, but, within fifteen days following the last day
9 the employee reported for work, expresses a desire to continue
10 employment, the employee shall not be deemed to have resigned.
11 The appointing authority may take appropriate disciplinary
12 action, including discharge, in consideration of the reasons for
13 the employee's absence.

14 (d) Actions taken by the appointing authority under this
15 section shall, if grieved, be filed pursuant to the departmental
16 complaint procedure and the merit appeals board for employees
17 excluded from coverage under chapter 89, as applicable.

18 (e) Whenever there are provisions in a collective
19 bargaining agreement that conflict with this section, the terms
20 of the agreement shall prevail. Actions taken by the appointing
21 authority shall, if grieved, be filed pursuant to the contractual
22 grievance procedure."

23 SECTION 23. Section 76-41, Hawaii Revised Statutes, is

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1 amended to read as follows:

2 "§76-41 Performance [ratings.] appraisal systems; failure
3 to meet performance requirements. (a). There shall be
4 established and maintained [a system of performance ratings]
5 performance appraisal systems for the purpose of [appraising the
6 service] evaluating the performance of employees in the civil
7 service and improving the employees' performance. [Each
8 department shall rate each employee under its jurisdiction in
9 accordance with the system and shall, upon request by the
10 director of the respective jurisdiction, transmit the final
11 performance ratings to the director of human resources
12 development. A copy of the final performance rating shall be
13 given to the affected employee, and the original shall be filed
14 in the employee's official personnel file.

15 The department head shall inform an employee in writing
16 whenever the employee's performance in the employee's position is
17 substandard. The employee shall also be notified in the notice
18 and from time to time thereafter as may be necessary, of the
19 manner in which the employee's performance is substandard.] The
20 performance appraisal systems shall be the basis for evaluating
21 whether employees in the civil service meet the performance
22 requirements of their respective positions as required in section
23 76-27. For the purposes of this section, "performance

1 requirements" includes any qualification required for the
2 position such as a license.

3 (b) An appointing authority may release an employee from
4 the employee's position or discharge an employee from service if
5 the employee fails to meet the performance requirements of the
6 employee's position under the following conditions:

7 (1) The evaluation process and its consequences were
8 discussed with the employee;

9 (2) The employee was made aware of the employee's current
10 job description and job-related performance
11 requirements;

12 (3) The evaluation procedures were observed, including
13 providing the employee the opportunity to meet,
14 discuss, and rebut the performance evaluation and
15 apprising the employee of the consequences of failure
16 to meet performance requirements;

17 (4) The evaluation was fair and objective;

18 (5) The employee was provided performance feedback during
19 the evaluation period and, as appropriate, the employee
20 was offered in-service remedial training in order for
21 the employee to improve and meet performance
22 requirements;

23 (6) The evaluation was applied without discrimination; and

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1 (7) Prior to the end of the evaluation period that the
 2 employee is being considered for discharge due to
 3 failure to meet performance requirements, the
 4 feasibility of transferring or demoting the employee to
 5 another position for which the employee qualifies was
 6 considered.

7 (c) Any civil service employee who fails to meet
 8 performance requirements shall have the right to grieve under:

9 (1) A collective bargaining grievance procedure that
 10 culminates in a final and binding decision by a
 11 performance judge pursuant to section 89- ; or

12 (2) The departmental complaint procedure that culminates in
 13 a final and binding decision by the merit appeals board
 14 under section 76-14.

15 The performance judge or the merit appeals board, as the
 16 case may be, shall use the conditions in subsection (b) as tests
 17 in reaching a decision on whether the employer's action, based on
 18 a failure by the employee to meet performance requirements of the
 19 employee's position, was with or without merit."

20 SECTION 24. Section 76-42, Hawaii Revised Statutes, is
 21 amended to read as follows:

22 "§76-42 [Grievance] Internal complaint procedures. (a)

23 The director [of human resources development] shall promulgate a

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1 uniform plan for the creation of [grievance] internal complaint
 2 procedures in the various departments[.] that shall apply to
 3 matters within the jurisdiction of the merit appeals board. The
 4 internal complaint procedures may also be used for other matters,
 5 such as, when a complaint procedure is required by law to be
 6 available or when a jurisdiction deems it would be beneficial to
 7 avoid the time and expense of litigation; provided that matters
 8 subject to collective bargaining grievance procedures shall not
 9 be processed under the internal complaint procedures. The rules
 10 [and regulations] relating to [grievance] internal complaint
 11 procedures shall conform to the following [principles]:

12 (1) [An employee may, without resort to formal procedures,
 13 discuss informally any problem relating to the
 14 employee's conditions of employment with any of the
 15 employee's supervisors.] The procedures shall encourage
 16 informal discussions and expeditious resolution of all
 17 complaints. Informal resolution includes the use of
 18 any administrative review process available. A written
 19 decision shall be issued to the complainant on the

20 outcome of any efforts to resolve the complaint
 21 informally and, if not resolved, the decision shall be
 22 accompanied by information on the filing of a formal
 23 complaint with the department or the merit appeals

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1 board, as applicable.

2 (2) In presenting a [grievance, the employee] complaint,
 3 the complainant shall be assured freedom from coercion,
 4 discrimination, or reprisal.

5 (3) [An employee] The complainant shall have the right to
 6 be represented by a person or persons of the
 7 [employee's] complainant's own choosing at any stage in
 8 the presentation of the [employee's grievance.]
 9 complaint.

10 (4) To minimize confusion and possible loss of rights, the
 11 time and manner for filing a formal complaint shall be
 12 as uniform and easily understandable as possible to the
 13 employees or general public. Complaint forms,
 14 instructions, and the complaint procedures should be
 15 easily accessible to the employees or general public
 16 and the procedures should allow for complaints to be
 17 filed at central locations convenient to the public.

18 The complaint shall be referred to the appropriate

19 individual at the lowest level of the internal
 20 complaint procedures who has the authority to act on
 21 the complaint and who shall be responsible for
 22 contacting the complainant. If it is discovered after
 23 filing of the complaint that the matter complained of

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1 is not within the authority of a department to act, the
 2 department shall notify the complainant accordingly and
 3 refer the complaint to the appropriate agency, if
 4 known. The deadline for filing a formal complaint
 5 under the internal complaint procedures shall be tolled
 6 after receipt of a reply to the informal complaint if
 7 efforts were made to resolve the complaint informally.

8 [(4)] (5) All proceedings relating to the handling of a
 9 complaint by a person who is not an employee shall as
 10 far as practicable be conducted during office hours at
 11 times convenient to the complainant. All proceedings
 12 relating to the handling of employee [grievances]
 13 complaints shall so far as practicable be conducted
 14 during [office hours.] the employee's work hours to
 15 permit the employee time off from work with pay.

16 (6) The departmental complaint procedure shall culminate in

17 a written decision by the chief executive or the chief
 18 executive's designee, whether the director or other
 19 appropriate authority who is assigned responsibility
 20 for making the final decision on the action being
 21 complained of.

22 (b) The internal complaint procedures shall be exhausted
 23 before an appeal is filed with the merit appeals board. If the

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1 appeal is not under the jurisdiction of the merit appeals board,
 2 but some other administrative agency or appellate body, the
 3 complainant is responsible for the timely filing of an appeal
 4 with the appropriate agency regardless of whether the internal
 5 complaint procedures under this section are used."

6 SECTION 25. Section 76-43, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "§76-43 Layoff. [Rules and regulations shall be
 9 promulgated by the director of human resources development to
 10 govern the conditions under which an employee is to be released
 11 from the employee's position] When it is necessary to release
 12 employees due to lack of work [or], lack of funds[.], or other
 13 legitimate reasons, employees with permanent appointments in
 14 civil service positions shall have layoff rights. Layoffs shall
 15 be made in accordance with procedures negotiated under chapter 89

16 or established under chapter 89C, as applicable."

17 SECTION 26. Section 76-45, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§76-45 Suspension. An appointing authority may, for
20 disciplinary purposes, suspend any employee without pay [for such
21 length of time as the appointing authority considers appropriate,
22 but not exceeding thirty days at any one time nor more than sixty
23 days in any calendar year. No single suspension for a period of

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1 five working days or more, whether consecutively or not, shall
2 take effect unless the appointing authority gives the employee a
3 written notice setting forth the specific reasons upon which the
4 suspension is based. With the approval of the director, an
5 employee may be suspended for a period longer than thirty days
6 pending an investigation or hearing of any charge against the
7 employee. Where an employee has been suspended pending an
8 investigation or hearing of any charge against the employee and
9 the charge is subsequently dropped or not substantiated, the
10 employee shall be reinstated in the employee's position without
11 loss of pay.

12 An employee who is suspended for a period not in excess of
13 four working days, whether consecutively or not, shall be

14 entitled to a written notice from the appointing authority
 15 setting forth the specific reasons upon which the suspension is
 16 based. The written notice shall be given to the employee or
 17 mailed to the employee within forty-eight hours after the
 18 suspension.] or place an employee on leave without pay pending an
 19 investigation. Suspensions and leaves without pay pending an
 20 investigation shall be in accordance with procedures negotiated
 21 under chapter 89 or established under chapter 89C, as
 22 applicable."

23 SECTION 27. Section 76-46, Hawaii Revised Statutes, is

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1 amended to read as follows:

2 "\$76-46 [Dismissals;] Discharges; demotions. An appointing
 3 authority may [dismiss] discharge or demote any employee when the
 4 appointing authority considers that the good of the service will
 5 be served thereby. [Dismissals] Discharges may be made only for
 6 such causes [as] that will promote the efficiency of government
 7 service.

8 [No dismissal or demotion of a regular employee shall be
 9 effective for any purpose unless at least ten days before the
 10 effective date thereof the appointing authority shall have given
 11 to the employee a written statement setting forth the specific
 12 reasons upon which the dismissal or demotion is based.] Demotions

13 or discharges shall be in accordance with procedures negotiated
14 under chapter 89 or established under chapter 89C, as
15 applicable."

16 SECTION 28. Section 76-47, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§76-47 [Appeals from suspensions, dismissals and
19 demotions.] Merit appeals boards; appointment, authority,
20 procedures. (a) Each jurisdiction shall establish a merit
21 appeals board that shall have exclusive authority to hear and
22 decide appeals relating to matters set forth in section 76-14
23 concerning the civil service of the jurisdiction.

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1 (b) Members of the merit appeals board shall be persons
2 that can objectively apply the merit principle to public
3 employment. Other qualifications of board members and other
4 matters pertaining to the establishment of the merit appeals
5 board, whether composition of the board, manner of appointment,
6 term of office, limitation on terms, chairperson, removal of
7 members, and name for its merit appeals board, shall be left to
8 the determination of each jurisdiction based on its own
9 preferences and needs. A jurisdiction may continue to use its
10 civil service commission or appeals board, with or without

11 modification, as its merit appeals board to assume all of the
 12 functions and responsibilities under section 76-14; provided that
 13 the merit appeals board for the State shall be as provided in
 14 section 26-5.

15 (c) The merit appeals board shall adopt rules of practice
 16 and procedure consistent with section 76-14 and in accordance
 17 with chapter 91, except that, in the case of the judiciary and
 18 the Hawaii health systems corporation, the adoption, amendment,
 19 or repeal of rules shall be subject to the approval of their
 20 respective chief executives. The rules shall recognize that the
 21 merit appeals board shall sit as an appellate body and that
 22 matters of policy, methodology, and administration are left for
 23 determination by the director. The rules may provide for the

1 sharing of specific expenses among the parties that are directly
 2 incurred as a result of an appeal as the merit appeals board
 3 deems would be equitable and appropriate, including but not
 4 limited to expenses for transcription costs or for services,
 5 including traveling and per diem costs, provided by persons other
 6 than the board members or permanent staff of the board. Official
 7 business of the merit appeals board shall be conducted in
 8 meetings open to the public, except as provided in chapter 92.

9 (d) Whenever the board determines that mediation may result

10 in a satisfactory resolution of an appeal, may narrow the issues
 11 on appeal, or otherwise expedite a decision, the board may
 12 require the parties to submit the issues to mediation, which
 13 shall not be subject to chapter 92. Mediation may be provided by
 14 any member or members of the merit appeals board or by a public
 15 or nonprofit agency which offers mediation or similar services
 16 for resolving or narrowing differences among the parties.

17 (e) Any [regular] civil service employee, who is suspended,
 18 [dismissed,] discharged, or demoted and who is not included in an
 19 appropriate bargaining unit under section 89-6, may appeal to the
 20 [civil service commission] merit appeals board within twenty days
 21 after [notice has been sent the employee of the suspension,
 22 dismissal, or demotion provided that the twenty-day period shall
 23 be extended to twenty days from the final notice on the

1 employee's grievance should the employee exercise the grievance
 2 channel.] a final decision is made under the internal complaint
 3 procedures.

4 Upon the appeal, both the appealing employee and the
 5 appointing authority shall have the right to be heard publicly,
 6 present evidence and be represented by counsel, who shall have
 7 the right to examine and cross-examine witnesses. At the hearing

8 technical rules of evidence shall not apply and the evidence
9 shall be taken stenographically or recorded by machine. For the
10 purpose of hearing the appeals fairly and expeditiously, the
11 [commission] board may at any time appoint a competent and
12 qualified disinterested person to act as its hearing officer.
13 The hearing officer shall hear the matter in the same manner as
14 if it were before the [commission] board and upon the conclusion
15 of the hearing, shall report the hearing officer's findings of
16 fact and the hearing officer's conclusions and recommendations
17 based thereon to the [commission] board and to the employee. The
18 [commission] board shall render the final decision in accordance
19 with section 91-11.

20 If the [commission] finds that the action appealed from was
21 taken by the appointing authority for any political, religious or
22 racial reason, the employee shall be reinstated to the employee's
23 position without loss of pay for the period of the employee's

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1 suspension or separation therefrom. In all other cases, if the
2 [commission] board finds that the reasons for the action are not
3 substantiated in any material respect, the [commission] board
4 shall order that the employee be reinstated in the employee's
5 position, without loss of pay, but if the [commission] board
6 finds that the reasons are substantiated or are only partially

7 substantiated, the [commission] board shall sustain the action of
 8 the appointing authority, provided that the [commission] board
 9 may modify the action of the appointing authority if it finds the
 10 circumstances of the case so require and may thereupon order such
 11 disposition of the case as it may deem just.

12 [When an employee is dismissed and not reinstated after the
 13 appeal, the commission, in its discretion, may direct that the
 14 employee's name be placed on an appropriate reemployment list for
 15 employment in any similar position other than one from which the
 16 employee has been removed.]

17 The findings and decisions of the [commission] board shall
 18 be final on all appeals, unless an appeal is taken as provided in
 19 chapter 91.

20 Notwithstanding any other law to the contrary, when an
 21 appeal hearing is before a merit appeals board of a county [civil
 22 service commission, including the civil service commission of] or
 23 the city and county of Honolulu, the attorney general shall be

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1 counsel for the [commission] board and the county attorney or
 2 corporation counsel shall be counsel for the appointing
 3 authority. If, however, an appeal hearing is before the state
 4 [commission,] merit appeals board, the attorney general shall be

5 counsel for the appointing authority and the county attorney or
6 corporation counsel of the county, including the city and county
7 of Honolulu, in which the appeal hearing is being conducted shall
8 be counsel for the [commission.] state merit appeals board.

9 Notwithstanding any other law to the contrary, when the
10 decision and order of the merit appeals board of a county [civil
11 service commission, including the civil service commission of] or
12 the city and county of Honolulu, is appealed as provided in
13 chapter 91, the attorney general shall be counsel for the
14 [commission] board and the county attorney or corporation counsel
15 shall be counsel for the appointing authority. When the decision
16 and order of the state [civil service commission] merit appeals
17 board is appealed as provided in chapter 91, the attorney general
18 shall be counsel for the appointing authority and the county
19 attorney or corporation counsel of the county, including the city
20 and county of Honolulu, in which the chapter 91 appeal is being
21 conducted, shall be counsel for the state [civil service
22 commission.] merit appeals board."

23 SECTION 29. Section 76-49, Hawaii Revised Statutes, is

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1 amended to read as follows:

2 "§76-49 Subpoenas, oaths. The [civil service commission]
3 merit appeals board shall have such powers as may be provided by

4 law with respect to compelling the attendance of witnesses and
 5 administering oaths to witnesses, and as to all matters within
 6 the scope of [their] its authority the director [of human
 7 resources development] and any hearing officer shall have similar
 8 powers."

9 SECTION 30. Section 76-50, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "§76-50 Compensation and expenses of [commission.] a merit
 12 appeals board. Each member of [the civil service commission
 13 shall be paid compensation at the rate of \$10 per day for each
 14 day's actual attendance at a meeting, but not to exceed, in the
 15 aggregate, \$100 in any month and when any member is required to
 16 travel from any island to another island in the State in the
 17 performance of such duties, the member shall be allowed the
 18 member's reasonable traveling expenses.] a merit appeals board
 19 shall serve without compensation but shall be reimbursed for
 20 expenses, including travel expenses, necessary for the
 21 performance of their duties."

22 SECTION 31. Section 76-51, Hawaii Revised Statutes, is
 23 amended to read as follows:

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1 §76-51 [Political] Prohibited activities by [commissioners

2 prohibited.] members of a merit appeals board. No person who
 3 occupies any elective or appointive office [or any position]
 4 under the state or county government shall be eligible for
 5 membership on or continue to be a member of the [civil service
 6 commission.] merit appeals board. The term "appointive office"
 7 for the purpose of this section, shall not include notaries
 8 public. No member of the [commission] merit appeals board shall,
 9 during the member's term of office, serve as an officer or
 10 committee member of any political party organization, including a
 11 precinct organization, or present oneself as a candidate or be a
 12 candidate for nomination or election to any public office at any
 13 election. The office of any member who violates this section or
 14 [part IV of this chapter,] section 84-13 or 84-14 shall be
 15 conclusively presumed to have been abandoned and vacated by
 16 reason thereof and the [governor] chief executive shall thereupon
 17 appoint a qualified person to fill the vacancy. As an
 18 alternative remedy, proceedings in the nature of quo warranto may
 19 be brought by any person to oust any member who violates this
 20 section or [part IV of this chapter.] section 84-13 or 84-14."

21 SECTION 32. Chapter 76, Part III, Hawaii Revised Statutes,
 22 is amending by amending the title to read:

23 "[PART III.] PART II. SPECIAL CIVIL SERVICE PROVISIONS

1 FOR THE COUNTIES OF HAWAII, MAUI, AND KAUAI"

2 SECTION 33. Section 76-71, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§76-71 Department of civil service. There shall be a
5 department of civil service for each of the counties of Hawaii,
6 Maui, and Kauai, which shall include a personnel director and a
7 [commission consisting of five members appointed by the mayor
8 with the approval of the council of the respective counties.]
9 merit appeals board established under section 76-47."

10 SECTION 34. Section 76-75, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§76-75 Personnel director. The [commission] merit appeals
13 board shall appoint and may at pleasure remove a personnel
14 director, who shall be the chief administrative officer of the
15 department of civil service. The director shall, at the time of
16 the director's appointment, and thereafter, be thoroughly
17 familiar with the principles and methods of personnel
18 administration and shall believe in applying merit principles and
19 scientific administrative methods to public personnel
20 administration."

21 SECTION 35. Section 76-77, Hawaii Revised Statutes, is
22 amended to read as follows:

23 "§76-77 Civil service and exemptions. The civil service to

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1 which this part applies comprises all positions in the public
2 service of each county, now existing or hereafter established,
3 and embraces all personal services performed for each county,
4 except the following:

5 (1) Positions in the office of the mayor; provided that the
6 positions shall be included in the [position]
7 classification [plan;] systems;

8 (2) Positions of officers elected by public vote, positions
9 of heads of departments, and positions of one first
10 deputy or first assistant of heads of departments;

11 (3) Positions of deputy county attorneys, deputy
12 corporation counsel, deputy prosecuting attorneys, and
13 law clerks;

14 (4) Positions of members of any board, commission, or
15 agency;

16 (5) Positions filled by students; positions filled through
17 federally funded programs which provide temporary
18 public service employment such as the federal
19 Comprehensive Employment and Training Act of 1973; and
20 employees engaged in special research or demonstration
21 projects approved by the mayor, for which projects
22 federal funds are available;

23 (6) Positions of district judges, jurors, and witnesses;

- 1 (7) Positions filled by persons employed by contract where
2 the personnel director has certified [and where the
3 certification has received the approval of the
4 commission] that the service is special or unique, is
5 essential to the public interest, and that because of
6 the circumstances surrounding its fulfillment,
7 personnel to perform the service cannot be recruited
8 through normal civil service procedures; provided that
9 no contract pursuant to this paragraph shall be for any
10 period exceeding one year;
- 11 (8) Positions of a temporary nature needed in the public
12 interest where the need does not exceed ninety days;
13 provided that before any person may be employed to
14 render temporary service pursuant to this paragraph,
15 the director shall certify that the service is of a
16 temporary nature and that recruitment through normal
17 civil service recruitment procedures is not
18 practicable; and provided further that the employment
19 of any person pursuant to this paragraph may be
20 extended for good cause for an additional period not to
21 exceed ninety days upon similar certification by the
22 director [and approval of the commission];

23 (9) Positions of temporary election clerks in the office of

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1 the county clerk employed during election periods;

2 (10) Positions specifically exempted from this part by any
3 other state statutes;

4 (11) Positions of one private secretary for each department
5 head; provided that the positions shall be included in
6 the [position] classification [plan;] systems;

7 (12) Positions filled by persons employed on a fee,
8 contract, or piecework basis who may lawfully perform
9 their duties concurrently with their private business
10 or profession or other private employment, if any, and
11 whose duties require only a portion of their time,
12 where it is impracticable to ascertain or anticipate
13 the portion of time devoted to the service of the
14 county and that fact is certified by the director;

15 (13) Positions filled by persons with a severe disability
16 who are certified by the state vocational
17 rehabilitation office as able to safely perform the
18 duties of the positions;

19 (14) Positions of the housing and community development
20 office or department of each county; provided that this
21 exemption shall not preclude each county from

22 establishing these positions as civil service
23 positions; and

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1 (15) The following positions in the office of the
 2 prosecuting attorney: private secretary to the
 3 prosecuting attorney, secretary to the first deputy
 4 prosecuting attorney, and administrative or executive
 5 assistants to the prosecuting attorney; provided that
 6 the positions shall be included in the [position]
 7 classification [plan.] systems.

8 The director shall determine the applicability of this
 9 section to specific positions and shall determine whether or not
 10 positions [excluded] exempted by paragraphs (7) and (8) shall be
 11 included in the [position] classification [plan.] systems.

12 Nothing in this section shall be deemed to affect the civil
 13 service status of any incumbent private secretary of a department
 14 head who held that position on May 7, 1977."

15 SECTION 36. Section 76-2, Hawaii Revised Statutes, is
 16 repealed.

17 ["§76-2 Uniform interpretation. It is the intent of the
 18 legislature that the construction and interpretation of any of
 19 the provisions of this chapter and of chapter 77 be uniform for

20 the State and the several counties.

21 All questions requiring the construction or interpretation
 22 of any of the provisions of this chapter or of chapter 77 shall
 23 be submitted to the attorney general for an opinion and the

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1 attorney general shall render an opinion promptly on any such
 2 question when requested by the head of any department of the
 3 State or any county. In case the opinion is in conflict with an
 4 opinion rendered upon the same or substantially similar question
 5 by any county attorney or corporation counsel and the question
 6 upon which the opinion is rendered has been raised by a county,
 7 the question may, either at the instance of the county attorney,
 8 corporation counsel or the attorney general, be submitted to the
 9 circuit court of the first judicial circuit for a declaratory
 10 judgment on the question, and jurisdiction to hear and determine
 11 the questions is hereby conferred upon the circuit court. The
 12 circuit court shall determine the question without delay."]

13 SECTION 37. Section 76-3, Hawaii Revised Statutes, is
 14 repealed.

15 ["§76-3 Uniform administration. It is the intent of the
 16 legislature that the system of personnel administration
 17 established by this chapter and chapter 77 shall be as uniformly
 18 administered as is practicable. In order to promote such

19 uniformity, the several commissioners and directors of the state
 20 department of human resources development and of the county
 21 departments of civil service, the administrative director of the
 22 courts, and the Hawaii health systems corporation chief executive
 23 officer's designee shall meet at least once each year at the call

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1 of the director of human resources development of the State."]

2 SECTION 38. Section 76-4, Hawaii Revised Statutes, is
 3 repealed.

4 ["§76-4 Agreements of state, county departments, judiciary,
 5 and the Hawaii health systems corporation. The state department
 6 of human resources development, the judiciary, the several
 7 departments of civil service of the counties, and the Hawaii
 8 health systems corporation may enter into agreements for the
 9 joint administration of matters that may be practicable and
 10 consistent with this chapter and chapter 77, including the
 11 conducting of examinations and other procedures for the
 12 establishment and use of eligible lists, reciprocity in the use
 13 of eligible lists, and the conducting of salary studies. All
 14 eligible lists established or used under the agreements shall be
 15 as fully effective as those established or used separately."]

16 SECTION 39. Section 76-5.5, Hawaii Revised Statutes, is

17 repealed.

18 ["§76-5.5 Recruitment flexibility for the counties, the
19 judiciary, and the Hawaii health systems corporation.

20 Notwithstanding section 76-23, or any other provision to the
21 contrary, the directors of the county departments of civil
22 service, the administrative director of the courts, and the
23 Hawaii health systems corporation chief executive officer's

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1 designee may determine, establish, and maintain the manner in
2 which positions shall be filled in accordance with section 78-1
3 and the following standards:

4 (1) Equal opportunity for all regardless of race, sex, age,
5 religion, color, ancestry, physical handicap, or
6 politics;

7 (2) First consideration for competent employees already
8 within public service; and

9 (3) Impartial selection of the ablest person through
10 competitive means which are fair, objective, and
11 practical."]

12 SECTION 40. Section 76-7, Hawaii Revised Statutes, is
13 repealed.

14 ["§76-7] Bars to discrimination; exceptions. Nothing in
15 sections 76-1 and 76-44 shall be deemed to:

- 16 (1) Repeal or affect any law or ordinance or government
- 17 rule or regulations having the force and effect of law
- 18 which prohibits, restricts, or controls the employment
- 19 of minors;
- 20 (2) Prohibit or prevent the establishment and maintenance
- 21 of bona fide occupational qualifications;
- 22 (3) Prohibit or prevent the termination of or change the
- 23 employment of any person who is unable to perform the

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- 1 person's duties;
- 2 (4) Affect the operation of the terms or conditions of any
- 3 bona fide retirement, pension, employee benefit, or
- 4 insurance plan;
- 5 (5) Repeal or affect any law prescribing maximum age limits
- 6 for employees of the State or any county; and
- 7 (6) Conflict with or affect the application of security
- 8 regulations in public employment established by the
- 9 United States or the State of Hawaii."]

10 SECTION 41. Section 76-8, Hawaii Revised Statutes, is

11 repealed.

12 ["§76-8 Public employment program personnel. Employees in

13 the public employment program which is funded in part or wholly

14 under the Emergency Employment Act of 1971, P.L. 92-54, and in
 15 the public service career program plan "A", which is funded in
 16 part or wholly under the Federal Manpower Development and
 17 Training Act of 1962, as amended, who are employed by the state
 18 or county governments and who are not in the civil service
 19 systems of their respective jurisdictions may be granted by the
 20 chief executive of the jurisdiction concerned permanent
 21 appointment status in the appropriate civil service system as
 22 provided in this chapter. Permanent appointment status may be
 23 granted by the chief executive of the jurisdiction concerned

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1 provided that funds shall have been appropriated for the
 2 positions affected and these employees shall not be required to
 3 qualify in civil service examinations and shall be entitled to
 4 all of the rights, benefits and privileges (including credit for
 5 service in the positions occupied, vacation and sick leave
 6 credits) earned or accrued up to the date this Act takes effect,
 7 and provided further the creditable service in computing
 8 retention rights shall commence at the point of conversion to
 9 civil service status. The employees affected shall continue to
 10 receive the same rates of pay as a consequence of this Act,
 11 provided that there is no conflict with existing personnel laws,
 12 rules and regulations."]

13 SECTION 42. Section 76-8.5, Hawaii Revised Statutes, is
14 repealed.

15 ["§76-8.5] Older Americans program personnel. Employees
16 in an office which is funded wholly or in part under the Older
17 Americans Act of 1965, Public Law 89-73 or under the Domestic
18 Volunteers Services Act of 1973, Public Law 93-113, as amended,
19 who are employed by a county and who are not in the civil service
20 system of that county, may be granted by the chief executive of
21 the county permanent appointment status in the civil service
22 system as provided in this chapter. Permanent appointment status
23 may be granted provided that funds shall have been appropriated

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1 for the positions affected and these employees shall not be
2 required to qualify in civil service examinations and shall be
3 entitled to all of the rights, benefits, and privileges
4 (including seniority credit for service in the positions
5 occupied, vacation, and sick leave credits) earned or accrued up
6 to June 13, 1988, and provided further the creditable service in
7 computing retention rights shall commence at the point of
8 conversion to civil service status. The employees affected shall
9 continue to receive the same rates of pay as a consequence of
10 this section; provided there is no conflict with existing

11 personnel laws or rules."]

12 SECTION 43. Section 76-9, Hawaii Revised Statutes, is
13 repealed.

14 ["§76-9 Employees of the judiciary. It is the intent of
15 the legislature that the personnel of the judiciary shall form a
16 separately administered part of the system of personnel
17 administration established by this chapter and chapter 77, unless
18 specifically exempted by this chapter or any other law; provided
19 that:

20 (1) The judiciary shall have a status coequal with the
21 executive branch of the State and with the several
22 counties for purposes of the development of a position
23 classification plan, the formulation of personnel rules

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1 and regulations, and the administration of the
2 judiciary personnel system, including, but not limited
3 to the classification, reclassification, allocation,
4 and reallocation of a particular position, the
5 publication of a vacancy announcement, the examination
6 of applicants, and the preparation of eligible lists;

7 (2) In the development of a position classification plan,
8 the formulation of personnel rules and regulations, and
9 the administration of the judiciary personnel system,

10 the chief justice or the chief justice's designee shall
 11 consult with the director of human resources
 12 development;

13 (3) Any action of the chief justice or the chief justice's
 14 designee including the classification,
 15 reclassification, allocation, and reallocation of a
 16 particular position, the publication of a vacancy
 17 announcement, the examination of applicants, the
 18 preparation of an eligible list, and appeals from
 19 suspensions, dismissals and demotions may be appealed
 20 by any person, employee or the exclusive bargaining
 21 unit representative to the judiciary personnel appeals
 22 board. The board shall be composed of three members,
 23 one representative from the department of human

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1 resources development, one representative of the
 2 judiciary and one exclusive bargaining unit
 3 representative. The provisions contained in section
 4 26-34 shall not apply to the members of the judiciary
 5 personnel appeals board. The board shall sit as an
 6 appellate body on matters within the jurisdiction of
 7 the judiciary with equal authority as the civil service

8 commission established by section 26-5;

9 (4) Nothing in chapters 76 and 77 shall be construed to
10 require the approval of the governor or any executive
11 agency for the judiciary to establish such positions in
12 the judicial branch as may be authorized and funded by
13 the legislature."]

14 SECTION 44. Section 76-10, Hawaii Revised Statutes, is
15 repealed.

16 ["§76-10 Judiciary; powers and duties. All of the powers
17 and duties assigned in parts I, IV, and V of this chapter to the
18 governor or the director of human resources development shall
19 with respect to the judiciary be assigned to the chief justice of
20 the supreme court or the administrative director of the courts."]

21 SECTION 45. Section 76-11.5, Hawaii Revised Statutes, is
22 repealed.

23 ["§76-11.5 Civil service for the judiciary. There shall be

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1 a civil service system for the judiciary. Except as otherwise
2 specifically provided in this section, all of the provisions of
3 part II shall apply to the judiciary.

4 (1) All of the powers and duties assigned to the director
5 of human resources development in part II shall, with
6 respect to the judiciary, be exercised by the

7 administrative director of the courts.

8 (2) When applying part II to the judiciary, the term

9 "state" wherever it appears means the judiciary; the

10 term "governor" means the chief justice of the supreme

11 court; the "director" means the administrative director

12 of the courts; and the "department" means the judicial

13 branch."]

14 SECTION 46. Section 76-19, Hawaii Revised Statutes, is

15 repealed.

16 ["§76-19 Promotional examinations. Examinations may be

17 promotional examinations, which shall be limited to regular

18 employees in the civil service, whenever in the opinion of the

19 director of human resources development the same is practicable

20 and for the best advantage of the public service. Promotional

21 examinations may be either intradepartmental or interdepartmental

22 in scope. Whether a promotional examination is to be

23 intradepartmental or interdepartmental shall be decided by the

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1 director. Ample notice shall be given by the director of the

2 fact that any promotional examination is to be conducted."]

3 SECTION 47. Section 76-20, Hawaii Revised Statutes, is

4 repealed.

5 ["§76-20 Open-competitive examinations. Examinations shall
6 be open-competitive whenever in the opinion of the director of
7 human resources development they are for the best advantage of
8 the public service. In making such determination, the director
9 shall take into consideration the sufficiency of competition
10 within civil service as well as the requirements of the class for
11 which the examinations are to be conducted. Ample notice shall
12 be given by the director of the fact that any open-competitive
13 examination is to be conducted. The director may, if the
14 director deems it necessary because of lack of sufficient
15 competition or any other reason, extend the time for the filing
16 of applications."]

17 SECTION 48. Section 76-21, Hawaii Revised Statutes, is
18 repealed.

19 ["§76-21 Noncompetitive examinations. Noncompetitive
20 examinations may be given when, in the opinion of the director of
21 human resources development, the class for which an examination
22 is to be given calls for special qualifications and training
23 which do not admit of competition."]

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1 SECTION 49. Section 76-23, Hawaii Revised Statutes, is
2 repealed.

3 ["§76-23 Filling vacancy.(a) All vacant civil service

4 positions shall be filled in the manner prescribed in this part
5 or in section 78-1.

6 (b) Whenever there is a position to be filled, the
7 appointing authority shall request the director of human
8 resources development to submit a list of eligibles. The
9 director shall thereupon certify a list of five or such fewer
10 number as may be available, taken from eligible lists in the
11 following order: first the promotional lists, second the recall
12 lists, third the reemployment lists, and fourth the open-
13 competitive lists; provided that laid-off regular employees shall
14 be placed on an appropriate recall list; provided further that
15 with respect to the eligibles under unskilled classes, the
16 director shall certify all of the eligibles on such list. Where
17 there is more than one vacant position in a class to be filled,
18 the director may certify an additional eligible for each
19 additional vacancy. The director shall submit eligibles in the
20 order that they appear on the eligible list before applying
21 veteran's preference; provided that veterans whose examination
22 scores, after addition of applicable preference, are equal to or
23 exceed the examination score of the last eligible certified,

1 shall also be certified; and further provided that if the last

2 eligible to be certified is one of two or more eligibles who have
3 identical examination scores, those two or more eligibles shall
4 be certified notwithstanding the fact that more than five persons
5 are thereby certified to fill a vacancy; and further provided
6 that for each eligible without resident preference certified, a
7 resident who has filed a resident income tax return within the
8 State or who has been claimed as a dependent on a resident income
9 tax return, as provided by section 78-1, shall also be certified.

10 (c) In any case where there are three or more eligibles in
11 one department whose names appear as eligibles on an
12 interdepartmental list, upon the request of the appointing
13 authority of the department those three or more names shall be
14 certified to the appointing authority as eligibles on an
15 intradepartmental eligible list; but where the interdepartmental
16 list has been in existence for more than six months and there are
17 five or more persons in the department qualified for the class,
18 the department may request an intradepartmental promotional
19 examination, in which case the director shall hold either an
20 interdepartmental or an intradepartmental promotional
21 examination. The order in which eligibles are placed on eligible
22 lists shall be fixed by rule. The appointing authority shall
23 make the appointment only from the list of eligibles certified to

1 the appointing authority unless the appointing authority finds no
2 acceptable person on the list certified by the director, in which
3 case the appointing authority shall reject the list and request
4 the director to submit a new list, in which event the director
5 shall submit a new list of eligibles selected in like manner;
6 provided that the appointing authority states reasons in writing
7 for rejecting each of the eligibles on the list previously
8 certified to the appointing authority by the director or, in case
9 of the counties, by the civil service commission. Eligible
10 lists, other than the recall and reemployment lists, shall be
11 effective for one year but this period may be extended by the
12 director.

13 (d) After giving appropriate notice, an appointing
14 authority may fill a vacant position by promoting any regular
15 employee of the department without examination; provided that:

16 (1) The employee meets the minimum qualifications of the
17 class and vacant position;

18 (2) The noncompetitive promotion shall be based on
19 appropriate selection documentation indicating that the
20 person promoted is the best qualified; and

21 (3) When there is no material difference between the
22 qualifications of the employees concerned, the employee
23 with the longest continuous civil service employment

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1 within the State or county granting the promotion shall
2 receive first consideration for the promotion.

3 Any regular employee receiving any such promotion without
4 examination shall be ineligible for a second promotion without
5 examination prior to such employee having completed one year of
6 satisfactory service in the position to which the employee was so
7 promoted, but the employee may at any time be eligible for a
8 promotion to any position through examination.

9 (e) An employee filling a permanent position temporarily
10 vacant may be given a permanent appointment to the position if it
11 later develops that the vacancy will be permanent, provided the
12 employee was originally appointed from an appropriate eligible
13 list and the appointing authority certifies that the employee has
14 been performing the duties of the position in a satisfactory
15 manner."]

16 SECTION 50. Section 76-24, Hawaii Revised Statutes, is
17 repealed.

18 ["§76-24 Unskilled labor; separate eligible and
19 registration lists. The director of human resources development
20 may keep separate eligible lists for different kinds of unskilled
21 labor and separate registration lists of unskilled labor for
22 particular departments, institutions, districts, or localities.
23 Applicants seeking to have their names placed on such

1 registration lists may be required to pass such examination as
2 the director may deem proper or necessary with respect to
3 physical and mental health, ability to do manual labor and
4 habits."]

5 SECTION 51. Section 76-25, Hawaii Revised Statutes, is
6 repealed.

7 ["§76-25 Reemployment and recall lists.(a) Whenever any
8 employee who has been performing the employee's duties in a
9 satisfactory manner as shown by the records of the department of
10 human resources development or the agency in which the employee
11 has been employed, is demoted because of lack of work or lack of
12 funds, has voluntarily accepted a position in a lower class, has
13 resigned in good standing with the consent of the appointing
14 authority, is retired for ordinary or accidental disability, is
15 terminated because of nonwork related injury and there is no
16 other available work which the employee is capable of performing,
17 or whenever the employee's position has been reallocated to a
18 lower class, the employee shall have the right to have the
19 employee's name placed on the appropriate reemployment list for a
20 period of three years thereafter; provided that the employee
21 files a written application for reemployment within three years
22 after the employee's separation, demotion, or reallocation;

23 provided further that the period which an employee spends in a

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1 hospital, settlement, or place within the State undergoing
2 treatment for Hansen's disease or tuberculosis, shall be excluded
3 in computing the three-year period. A person on a reemployment
4 list shall be deemed eligible for certification to positions in
5 the class in which the person last held a permanent status prior
6 to separation, demotion, or reallocation. A person may also be
7 deemed eligible for certification to positions in a class, in the
8 same or lower grade, which are related to the class in which the
9 person last held a permanent appointment.

10 (b) Whenever a regular employee has been laid off because
11 the employee's position has been abolished due to lack of work or
12 funds or because the employee was displaced by another employee
13 because of reduction-in-force, the employee shall have the right
14 to have the employee's name placed on appropriate recall lists
15 and be deemed eligible for certification to positions in the
16 class in which the employee last held permanent status or in a
17 related class in the same or lower grade for which the employee
18 meets the qualification requirements.

19 (c) The director of human resources development may remove
20 the name of a person on any reemployment or recall list or refuse
21 to certify the person's name on any list of eligibles, if the

22 director finds, after giving the person notice and an opportunity
23 to be heard, that the person is no longer able to perform the

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1 necessary duties satisfactorily."]

2 SECTION 52. Section 76-26, Hawaii Revised Statutes, is
3 repealed.

4 ["§76-26 Reemployment of retirees for service-connected
5 disability. Any former employee who has been retired for a
6 service-connected disability but who is not totally and
7 permanently incapacitated from performing service shall be
8 reemployed in those classes for which the employee requests
9 reemployment and for which the employee meets minimum
10 qualification requirements. The appointment shall not be subject
11 to competitive examination. The order of certification when more
12 than one person is eligible for certification for a particular
13 class shall be fixed by rule."]

14 SECTION 53. Section 76-31, Hawaii Revised Statutes, is
15 repealed.

16 ["§76-31 Provisional and short term appointments.(a)
17 Provisional appointment pending establishment of an eligible
18 list. When there is no eligible available on a list or when
19 there are fewer than five eligibles on a list and no selection

20 was made from a list that was certified as appropriate for
 21 filling a vacancy in a continuing position and the public
 22 interest requires that the vacancy be filled before eligibles can
 23 be certified, the director may authorize filling of the vacancy

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1 through provisional appointment. The director shall proceed
 2 without delay to announce an examination for the filling of the
 3 vacancy. The appointment shall continue only for such period as
 4 may be necessary to make an appointment from a list of eligibles
 5 but shall not extend beyond one hundred eighty days in any
 6 twelve-month period, provided that the director may extend the
 7 provisional appointment for an additional six-month period. The
 8 conditions under which the director may extend provisional
 9 appointments shall be prescribed by rules.

10 (b) Temporary limited appointment. When there is need for
 11 temporary employment, the director may authorize the department
 12 concerned to make or extend temporary appointments limited to a
 13 definite period of time, but not in excess of one year, except as
 14 otherwise specifically permitted by law or regulations. If the
 15 temporary appointment is not made from among regular employees
 16 eligible for noncompetitive action, the director shall certify
 17 from an appropriate eligible list; provided that when there are
 18 fewer than five eligibles on a list and no selection was made

19 from a list that was certified as appropriate, the director may
20 authorize the filling of the vacancy through a temporary
21 appointment.

22 (c) Emergency appointments. In order to prevent the
23 stoppage of essential public business, emergency appointments,

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1 not to exceed ten working days, may be made to fill positions
2 temporarily in any serious emergency when it is not practicable
3 to ascertain whether there is an eligible list. The director for
4 good and sufficient cause, and for reasons given in writing by
5 the department concerned, may extend the appointment for a period
6 not to exceed thirty calendar days.

7 (d) Except as may be otherwise specified, provisional and
8 temporary appointees must meet the minimum qualification
9 requirements for the specific position to be filled."]

10 SECTION 54. Section 76-32, Hawaii Revised Statutes, is
11 repealed.

12 ["§76-32 Educational and certain other leaves. Any regular
13 employee may be granted a leave of absence not to exceed one year
14 by the department head in order to pursue a course of
15 instruction, to engage in research, or otherwise to improve the
16 employee's ability and increase the employee's fitness for public

17 employment. When the employee has carried out the plan stated by
 18 the employee at the time the leave was granted, the employee
 19 shall have the right to return to the employee's position at the
 20 expiration of the employee's leave of absence. The leave may for
 21 good cause be extended for a period not to exceed one year but in
 22 that event, all of the original conditions of the leave shall be
 23 complied with. Leaves of absence may also be granted by the

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1 appointing authority to regular employees for such other reasons
 2 or to nonregular employees as may be provided by rule and in such
 3 cases the employee shall have the right to return to the
 4 employee's position at the expiration of the employee's leave."]

5 SECTION 55. Section 76-33, Hawaii Revised Statutes, is
 6 repealed.

7 ["§76-33 Sabbatical leave. Any employee who has been
 8 employed by the State or any county for seven consecutive years
 9 may upon application to and with the approval of the employee's
 10 department head be granted a sabbatical leave of absence by the
 11 appointing authority for not more than one year, provided that
 12 the two years of employment next preceding the application has
 13 been with the same department. The employee shall have the right
 14 to return to the employee's position at the expiration of the
 15 sabbatical leave of absence. The employee on sabbatical leave

16 shall be paid an amount equal to one-half of the basic
 17 compensation which the employee was receiving at the commencement
 18 of the leave. The payments shall be made in regular monthly
 19 installments, the last two of which shall not be made until after
 20 the employee has returned to work with the jurisdiction which
 21 granted the employee the leave. The employee shall agree to
 22 return to work upon termination of sabbatical leave or any other
 23 leave which may be granted immediately following the sabbatical

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1 leave. If the employee fails to report for work upon termination
 2 of sabbatical and any other leave granted, the employee shall be
 3 considered to have resigned and shall refund all moneys received
 4 while on sabbatical leave. Upon return from sabbatical and any
 5 other leave, the employee shall agree to work in the appropriate
 6 department for a period of two continuous years. If the employee
 7 fails to do so, the employee shall refund all moneys received
 8 while on sabbatical leave. An employee on sabbatical leave shall
 9 not engage in any form of employment which interferes with the
 10 employee's professional education and training and as shall be
 11 approved by the employee's department head. An employee granted
 12 sabbatical leave shall not by reason thereof be deprived of any
 13 accumulated vacation allowance or sick leave but shall accrue no

14 additional vacation allowance or sick leave during the period of
15 the leave. Upon the employee's return from sabbatical leave the
16 employee shall have the same salary rating that the employee had
17 at the time of taking the leave and the employee's increment date
18 shall be advanced equivalent to the duration of the leave."]

19 SECTION 56. Section 76-35, Hawaii Revised Statutes, is
20 repealed.

21 ["§76-35 Intragovernmental transfers. A transfer of an
22 employee in the civil service from one position to another
23 position within a department or between two departments may be

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1 made without a reduction in pay and with the approval of the
2 department head or heads and the director of human resources
3 development as provided by rule."]

4 SECTION 57. Section 76-36, Hawaii Revised Statutes, is
5 repealed.

6 ["§76-36 Intergovernmental exchanges or movements.
7 Provisions shall be made for the exchange or movement of civil
8 service employees between the State and any county or between
9 counties or between the federal government and the State or
10 between the federal government and any county. The following
11 conditions shall govern the exchanges and movements:

12 (1) All such actions shall require the approval of the

13 department heads and the director or directors.

14 (2) All such actions shall be to the same or a closely
15 related class of positions.

16 (3) Employees shall be required to meet the minimum
17 qualifications requirements of the class to which they
18 are to be exchanged or moved.

19 (4) No employee shall be moved between the State or any
20 county or between counties or between the federal
21 government and the State or between the federal
22 government and any county to a class for which an
23 appropriate promotional eligible list exists.

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1 (5) The director of human resources development may require
2 a noncompetitive examination of an employee to
3 determine the employee's fitness and qualifications for
4 the class to which the employee is being exchanged or
5 moved.

6 (6) No exchange shall be for a period in excess of one
7 year."]

8 SECTION 58. Section 76-37, Hawaii Revised Statutes, is
9 repealed.

10 ["§76-37 Exchanges with states. The director of human

11 resources development shall promulgate a uniform plan for the
 12 exchange of employees within the civil services of the State and
 13 the counties with the employees of any state or subdivision
 14 thereof and the plan shall uniformly apply to the State and all
 15 counties. The following conditions shall govern the exchanges:

16 (1) Each person coming to the State on exchange shall have
 17 qualifications substantially equal to those of the
 18 employee who is exchanged for the person.

19 (2) The person exchanged from the State shall have served
 20 within the State as an employee of the State or county,
 21 as the case may be, not less than three years before
 22 the beginning of the exchange period.

23 (3) In the selection of employees for exchange from the

1 State, preference shall be given to persons born in the
 2 State.

3 (4) The person exchanged by any state or subdivision
 4 thereof shall hold in the government of the state or
 5 subdivision a position which is substantially
 6 equivalent to the position of the employee for whom the
 7 person is exchanged.

8 (5) The person exchanged from the State shall be paid the
 9 person's regular salary by the State or county, as the

10 case may be, but nothing in addition thereto.

11 (6) The State or county, as the case may be, shall not pay
12 any traveling or other expenses of any person or
13 employee exchanged to or from the State on any contract
14 of exchange, and this prohibition shall apply to all
15 traveling, transportation, board, lodging, or other
16 expense incidental to or arising out of the exchange.

17 (7) The State or county, as the case may be, shall not pay
18 any compensation to any person coming to the State
19 under any contract or exchange; provided that in any
20 case where the person exchanged from the State becomes
21 incapacitated or for any reason leaves the person's
22 exchange position during the period of the exchange,
23 the State or county, as the case may be, may reimburse

1 the employer of the visiting exchange person an amount
2 not to exceed the salary of the person exchanged from
3 the State, until the end of the exchange period or
4 until such time as some adjustment satisfactory to the
5 State or county is made. Contracts of exchange shall
6 provide that in a corresponding situation the exchange
7 state or subdivision thereof shall reimburse the

8 employer of the employee exchanged from the State.

9 (8) No exchange shall be for a period in excess of one
10 year."]

11 SECTION 59. Section 76-39, Hawaii Revised Statutes, is
12 repealed.

13 ["§76-39 Use of official class titles. Official class
14 titles established by the director of human resources development
15 shall be used for personnel, budget and fiscal purposes, but this
16 requirement shall not prevent the use of other titles for
17 internal administration, public conveniences, law enforcement or
18 similar purposes."]

19 SECTION 60. Section 76-44, Hawaii Revised Statutes, is
20 repealed.

21 ["§76-44 Racial, sex, age, religious, color, ancestry,
22 marital status, or political consideration barred. No person
23 holding any position in the civil service shall be suspended,

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1 demoted, or dismissed from the person's position on racial, sex,
2 age, religious, color, ancestry, marital status, or political
3 grounds."]

4 SECTION 61. Section 76-48, Hawaii Revised Statutes, is
5 repealed.

6 ["§76-48 Appeals from action of director or appointing

7 authority. As to any matter within the scope of this part, any
 8 person suffering legal wrong because of any action by the
 9 director of human resources development or the person's
 10 appointing authority, or adversely affected or aggrieved by such
 11 action, shall be entitled to appeal to the civil service
 12 commission. The appeal shall be made within twenty days after
 13 notice of the action has been sent to the person and shall be
 14 heard in a manner similar to that provided in this chapter."]

15 SECTION 62. Section 76-52, Hawaii Revised Statutes, is
 16 repealed.

17 ["§76-52 Reports and statements. Every officer and
 18 employee, including any appointing authority, shall promptly make
 19 such reports and file such statements as may be required by this
 20 part or the rules and regulations prescribed thereunder. In case
 21 any officer or employee refuses or fails within the prescribed or
 22 within a reasonable time to make a report or file a statement,
 23 the director of human resources development or in case of the

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1 counties the civil service commission may notify the comptroller
 2 of the refusal or failure, and upon notification, the comptroller
 3 shall withhold any compensation payable to the officer or
 4 employee until such time as the commission or the director

5 notifies the comptroller in writing that the officer or employee
6 has made the report or filed the statement."]

7 SECTION 63. Section 76-53, Hawaii Revised Statutes, is
8 repealed.

9 ["§76-53 Certification of payrolls.(a) No state or
10 county disbursing or auditing officer shall make, or approve, or
11 take any part in making or approving, any payment for personal
12 service to any person holding a position in the state service
13 unless payroll certification has been made by the director of
14 human resources development or the director's authorized agent
15 that the person named therein has been appointed and employed in
16 accordance with this chapter and the rules, regulations, and
17 orders thereunder. The director may for proper cause withhold
18 payroll certification for any position in the state or county
19 service, as the case may be.

20 (b) Any citizen may maintain a suit to restrain a
21 disbursing officer from making any payment in contravention of
22 this part, or rule or order thereunder. Any sum paid contrary to
23 this part or of any rule, regulation, or order thereunder may be

1 recovered in an action maintained by any citizen from any officer
2 who made, approved, or authorized the payment or who signed or
3 counter-signed a voucher, payroll, check, or warrant for the

4 payment or from the sureties on the official bond of the officer.

5 All money recovered in any such action shall be paid into the
6 state or county treasury, as the case may be.

7 (c) Any person appointed or employed in contravention of
8 this part, or of any rule, regulation, or order thereunder who
9 performs service for which the person is not paid may maintain an
10 action against the officer or officers who purported so to
11 appoint or employ the person to recover the agreed pay for the
12 services or the reasonable value thereof if no pay is agreed
13 upon. No officer shall be reimbursed at any time for any sum
14 paid to the person on account of the services.

15 (d) If the director wrongfully withholds payroll
16 certification for a position in the state service held by any
17 employee, the employee may maintain a proceeding in the courts to
18 compel the director to certify the payroll."]

19 SECTION 64. Section 76-54, Hawaii Revised Statutes, is
20 repealed.

21 ["§76-54 Status of employees of activities acquired by
22 State or county. Employees of activities purchased or acquired
23 by the State or by a county who as of the date of purchase or

1 acquisition have been employed by the activities for at least one

2 full year may, by action of the state director of human resources
3 development or the county civil service commission, be given
4 status as a regular employee of the civil service without
5 competitive examination. Employees of the activities who have
6 been employed at least six full months by the activities may, by
7 action of the state director or the county commission, be given
8 an initial probationary appointment without competitive
9 examination. Positions held by such employees shall be allocated
10 to the appropriate class in the position classification plan and
11 employees shall be paid in accordance with the salary range to
12 which the class is assigned; provided that employees receiving a
13 salary above the minimum rate while employed by such activities
14 may be paid at a rate higher than the minimum but not exceeding
15 the maximum."]

16 SECTION 65. Section 76-55, Hawaii Revised Statutes, is
17 repealed.

18 ["§76-55 Membership of civil service. All regular
19 employees and all other employees having a permanent appointment
20 in civil service pursuant to law shall constitute the membership
21 of the civil service, but no employee shall be entitled to
22 membership in civil service unless the employee has been
23 appointed in accordance with law and has satisfied all

1 requirements for employment, including those prescribed by
2 section 78-1."]

3 SECTION 66. Section 76-56, Hawaii Revised Statutes, is
4 repealed.

5 ["§76-56 Annual report. The state director of human
6 resources development shall make a report to the governor and to
7 the members of the legislature not later than February 15 of each
8 year, which report shall review the operations of each respective
9 department and the administration of the personnel system for the
10 preceding year. The report shall also contain recommendations in
11 the laws relating to the personnel system, deemed by the director
12 to be necessary or desirable to further promote the merit system
13 for public employment."]

14 SECTION 67. Section 76-72, Hawaii Revised Statutes, is
15 repealed.

16 ["§76-72 Commission; appointment; removal. The members of
17 the commission shall be persons who believe in applying merit
18 principles to public employment. They shall be appointed as
19 prescribed in section 76-71 and shall hold office for five years.
20 Each appointment shall be for a term ending five years from the
21 date of the expiration of the term for which the predecessor was
22 appointed. Of the members appointed, one shall be selected from
23 among persons employed in private industry in either skilled or

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1 unskilled laboring positions as distinguished from executive or
2 professional positions. No member of the commission shall be
3 eligible for a second appointment to the commission prior to the
4 expiration of two years from the date the member's previous term
5 as such member expired. A person appointed to fill a vacancy
6 occurring prior to the expiration of any term shall be appointed
7 for the remainder of the term. Each member shall serve until the
8 member's successor has been appointed and qualified. Not more
9 than three members of the commission shall belong to the same
10 political party. The commission shall select a chairperson from
11 its membership annually.

12 Any commissioner may be removed by the mayor with the
13 approval of the council, or, without the approval of the council,
14 upon conviction of any felony or misdemeanor involving moral
15 turpitude, or for neglect of duty or malfeasance in office."]

16 SECTION 68. Section 76-73, Hawaii Revised Statutes, is
17 repealed.

18 ["§76-73 Expenses. When any member of the commission is
19 required to travel to and from the site of a commission meeting
20 or from any island to another island in the State in the
21 performance of the commission's duties, the commissioner shall be
22 allowed reasonable traveling expenses."]

23 SECTION 69. Section 76-74, Hawaii Revised Statutes, is

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1 repealed.

2 ["§76-74 Meeting, quorum. The commission shall meet at
3 least once each month at such places as are made available for
4 such purposes by the mayor. The commission may meet at such
5 other times as may be designated in advance by it, its
6 chairperson, or the mayor. No business of the commission shall
7 be conducted, except in meetings open to the public. Three
8 members shall constitute a quorum."]

9 SECTION 70. Section 76-78, Hawaii Revised Statutes, is
10 repealed.

11 ["§76-78 Provisions of part II applicable. Except as
12 otherwise specifically provided in this part, all of the
13 provisions of part II shall apply to each of the counties of
14 Hawaii, Maui, and Kauai and shall be deemed a part of this part,
15 for which purpose wherever reference is made in part II to the
16 State or governor or the legislature, it means each of the
17 counties, the mayor of each county, and the council of each
18 county, respectively, and references therein to the state
19 director of human resources development and the civil service
20 commission mean the director and the commission provided for in
21 section 76-71; provided that the reference to the director in
22 sections 76-12, 76-17, 76-42, and 76-43 means the commission

23 provided for in section 76-71; and provided further that section

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1 76-16 shall not be deemed a part of this part."]

2 SECTION 71. Section 76-79, Hawaii Revised Statutes, is
3 repealed.

4 ["§76-79 Rules and regulations, general policy. The rules
5 and regulations prescribed by each commission shall, among other
6 things, recognize and be in conformity to the distinction between
7 matters of policy, which are by this chapter and chapter 77 left
8 for the determination of the commission, and matters of technique
9 and administration, which are by the chapters, left for execution
10 by the personnel director."]

11 SECTION 72. Section 76-80, Hawaii Revised Statutes, is
12 repealed.

13 ["§76-80 Additional duties of county director. In addition
14 to the duties prescribed in section 76-13, the county personnel
15 director shall report to the commission the director's findings
16 and recommendations resulting from the investigations under
17 section 76-13(7)."]

18 SECTION 73. Section 76-81, Hawaii Revised Statutes, is
19 repealed.

20 ["§76-81 Director, employees' retirement system
21 representative. In addition to the duties prescribed by section

22 76-13, the personnel director of each county shall represent the
 23 employees' retirement system of the State, when so requested by

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1 the board of trustees of the system, in advising employees of
 2 their rights, duties, and benefits thereunder, in processing the
 3 forms prescribed by the board of trustees and in giving other
 4 assistance with respect thereto."]

5 PART III

6 SECTION 74. Chapter 78, Hawaii Revised Statutes, is amended
 7 by adding twelve new sections to be appropriately designated and
 8 to read as follows:

9 "§78- Definitions. As used herein, unless the context
 10 clearly requires otherwise, the terms "appointing authority,"
 11 "chief executive," "director," "employee," "employer," and
 12 "jurisdiction" shall have the same meaning as those terms are
 13 defined in section 76-11.

14 §78- Prospective employees; suitability for public
 15 employment. (a) All prospective employees, regardless of the
 16 positions they will assume, shall demonstrate their suitability
 17 for public employment by:

18 (1) Passing a pre-employment controlled substance drug test
 19 if required by the employing jurisdiction; and

20 (2) Attesting that during the three-year period immediately
21 preceding the date of application for employment, the
22 person was not convicted of any controlled substance-
23 related offense.

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1 If an applicant fails to meet the suitability requirements of the
2 employing jurisdiction, the applicant shall be disqualified from
3 further employment consideration or deemed ineligible for
4 appointment under section 76-29 on the basis of unsuitability for
5 public employment.

6 §78- Experimental modernization projects. (a) It is the
7 intent of this section to encourage and facilitate improvements
8 in the human resource programs of the several jurisdictions.
9 With the approval of the chief executive, the director may
10 conduct experimental modernization projects to determine whether
11 specific changes in its human resource program would result in a
12 more desirable program for the jurisdiction.

13 (b) Prior to the implementation of any experimental
14 modernization project, the director shall:

15 (1) Develop a plan identifying the purposes of the project,
16 the methodology to be used, the duration of the
17 project, the criteria for evaluation of the project,
18 and the cost of the project, if any;

- 19 (2) Consult with the employees who would be involved in the
20 conduct of the project; and
- 21 (3) Negotiate with the exclusive representative if a
22 modification or waiver of any provision in a collective
23 bargaining agreement is necessary to conduct the

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1 project.

2 (c) While the project is in progress, it shall not be
3 limited by state or local personnel laws and rules, but shall be
4 in compliance with all equal employment opportunity laws and laws
5 prohibiting discrimination.

6 §78- Office hours. Offices of the State and counties
7 shall be open for the transaction of public business as
8 determined by the chief executive. Offices need not be open for
9 the transaction of public business on the state holidays
10 designated under section 8-1 and as observed under section 8-2.

11 §78- Leaves of absence. (a) Employees shall be eligible
12 for vacation leave, sick leave, and other leaves of absence, with
13 or without pay, as negotiated under chapter 89 or adjusted under
14 chapter 89C, as applicable.

15 (b) When an employee is transferred from one department to
16 another within the same jurisdiction or to another jurisdiction

17 within the State, the employee shall be given credit for the
18 vacation earned or accumulated in the department from which the
19 employee transferred, and the director of finance of the State or
20 the equivalent officers of the several jurisdictions shall make
21 the appropriate transfer of funds to implement the employee
22 transfer. Moneys received from any such transfer of funds by a
23 state agency financed by the general fund of the State shall be

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1 deposited with the director of finance of the State to the credit
2 of the general fund of the State; provided that, when an employee
3 is transferred from one department to another within the same
4 jurisdiction, the transfer of funds shall not be made if the
5 employee's salary is paid from the same fund. Compensation for
6 any period of vacation allowance shall be paid at the rate to
7 which the employee is entitled at the time the allowance is
8 granted.

9 (c) Upon discharge, an employee shall be entitled to all of
10 the employee's accumulated vacation allowance plus the employee's
11 current accrued vacation allowance to and including the date of
12 discharge, notwithstanding that the current accrued vacation
13 allowance may not have been recorded at the time. If any
14 employee dies with accumulated or current accrued vacation earned
15 but not taken, an amount equal to the value of the employee's pay

16 over the period of such earned vacation, and any earned and
17 unpaid wages, shall be paid to the person or persons who may have
18 been designated as the beneficiary or beneficiaries by the
19 employee during the employee's lifetime in a verified written
20 statement filed with the comptroller or other disbursing officer
21 who issues warrants or checks to pay the employee for the
22 employee's services as a public employee, or, failing the
23 designation, to the employee's estate.

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1 (d) Whenever an employee is to be discharged, voluntarily
2 or involuntarily, the employee, at the option of the appointing
3 authority, may be discharged and paid forthwith, in lieu of the
4 employee's vacation allowance, the amount of compensation to
5 which the employee would be entitled or which the employee would
6 be allowed during the vacation period if the employee were
7 permitted to take the employee's vacation in the normal manner,
8 and in such case the employee's position may be declared vacant
9 and may be permanently filled by a new appointee before the
10 expiration of any vacation period following the date of the
11 discharge. For an employee hired after June 30, 1997, who is to
12 be discharged, voluntarily or involuntarily, the amount of
13 compensation to be paid in lieu of vacation allowance under this

14 section shall be computed using the rate of pay and amount of
 15 accumulated and accrued vacation on the date the employee is
 16 discharged. Prompt notice upon such forms and in such manner as
 17 may be required shall be given by the department head of any
 18 action taken under this provision.

19 §78- Injured employee; liability of third persons. (a)
 20 Whenever any police officer, firefighter, or any other officer or
 21 employee who is temporarily exposed to unusually hazardous
 22 conditions, or who is a member of a class, recognized by the
 23 action of pricing, to be a class exposed to unusually hazardous

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1 conditions, receives personal injury arising out of and in the
 2 performance of duty and without negligence on the employee's
 3 part, the employee shall be placed on accidental injury leave
 4 unless suspended or discharged for cause. The employee shall be
 5 continued on the department's payroll, as though the employee did
 6 not sustain an industrial injury, as follows:

7 (1) During the first four months of the disability, at the
 8 employee's full regular monthly salary; and

9 (2) Thereafter, during the period of total disability from
 10 work at sixty per cent of the employee's regular
 11 monthly salary.

12 The employee shall be entitled to all rights and remedies allowed

13 under chapter 386; provided that any salary paid under this
 14 section shall be applied on account of any compensation allowed
 15 under chapter 386 or any benefits awarded under part III of
 16 chapter 88 to the employee.

17 (b) When the employer pays benefits to or incurs medical
 18 expenses on behalf of any of its employees under this section for
 19 any injury sustained under circumstances creating in some person
 20 or entity other than the employer a legal liability to pay
 21 damages in respect thereto, the employer or the employee may
 22 proceed against such third persons and recover all payments made,
 23 paid, or due under this section. The employer or employee shall

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1 have all of the rights and remedies contained in or provided for
 2 under section 386-8.

3 §78- Credits for employees receiving workers'
 4 compensation benefits; wage supplement. (a) Where an employee
 5 is absent from work because of injuries incurred within the scope
 6 of the employee's employment and the employee is receiving
 7 workers' compensation benefits, the employee shall continue to
 8 earn vacation, sick leave, and retirement credits as though the
 9 employee were not absent but performing duties of the employee's
 10 regular employment. Section 386-57 or any other law to the

11 contrary notwithstanding, the employee may elect to have deducted
 12 from the employee's workers' compensation benefit checks an
 13 amount calculated in the same manner as if the employee were not
 14 absent but performing duties of the employee's regular employment
 15 to be used as the employee's contribution to the retirement
 16 system.

17 (b) An employee who is receiving workers' compensation wage
 18 loss replacement benefits may use the employee's accumulated sick
 19 leave or vacation credits to supplement the workers' compensation
 20 wage loss replacement benefits to a sum not to exceed the
 21 employee's regular salary.

22 §78- Leave sharing program. (a) The chief executive of
 23 a jurisdiction may establish a leave sharing program to allow

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1 employees to donate accumulated vacation leave credits to another
 2 employee within the same jurisdiction who has a serious personal
 3 illness or injury or who has a family member who has a serious
 4 personal illness or injury. The program shall allow employees
 5 who are not entitled to vacation leave to donate accumulated sick
 6 leave credits.

7 (b) The director of a jurisdiction desiring to establish a
 8 leave sharing program shall develop rules governing donors,
 9 recipients, and an approval process that ensures fair treatment

10 and freedom from coercion of employees and imposes no undue
 11 hardship on the employer's operations. If it is administratively
 12 infeasible to allow leave sharing between different departments
 13 or different bargaining units, the rules may limit leave sharing
 14 to employees within the same department or same bargaining unit,
 15 as necessary. At a minimum, the rules shall require that an
 16 eligible recipient must have:

- 17 (1) No less than six months of service within the
 18 respective jurisdiction;
- 19 (2) Exhausted or is about to exhaust all vacation leave,
 20 sick leave, and compensatory time credits; provided
 21 that sick leave need not be exhausted when the illness
 22 or injury involves a family member;
- 23 (3) A personal illness or injury or a family member's

1 illness or injury certified by a competent medical
 2 examiner as being serious and the cause of the
 3 recipient's inability to work; provided that the
 4 illness or injury is not covered under chapter 386 or,
 5 if covered, all benefits under chapter 386 have been
 6 exhausted; and
 7 (4) No disciplinary record of sick leave abuse within the

8 past two years.

9 §78- Temporary inter- and intra-governmental assignments
10 and exchanges. (a) With the approval of the respective
11 employer, a governmental unit of this State may participate in
12 any program of temporary inter- or intra-governmental assignments
13 or exchanges of employees as a sending or receiving agency.
14 "Agency" means any local, national, or foreign governmental
15 agency or private agency with government sponsored programs or
16 projects.

17 (b) As a sending agency, a governmental unit of this State
18 may consider its employee on a temporary assignment or exchange
19 as being on detail to a regular work assignment or on leave of
20 absence without pay from the employee's position. The employee
21 on temporary assignment or exchange shall be entitled to the same
22 rights and benefits as any other employee of the sending agency.

23 (c) As a receiving agency, a governmental unit of this

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1 State shall not consider the employee on a temporary assignment
2 or exchange who is detailed from the sending agency as its
3 employee, except for the purpose of disability or death resulting
4 from personal injury arising out of and in the course of the
5 temporary assignment or exchange. The employee on detail may not
6 receive a salary from the receiving agency, but the receiving

7 agency may pay for or reimburse the sending agency for the costs,
 8 or any portion of the costs, of salaries, benefits, and travel
 9 and transportation expenses if it will benefit from the
 10 assignment or exchange.

11 (d) An agreement consistent with this section and policies
 12 of the employer shall be made between the sending and receiving
 13 agencies on matters relating to the assignment or exchange,
 14 including but not limited to supervision of duties, costs of
 15 salary and benefits, and travel and transportation expenses;
 16 provided that the agreement shall not diminish any rights or
 17 benefits to which an employee of a governmental unit of this
 18 State is entitled under this section.

19 (e) As a receiving agency, a governmental unit of this
 20 State may give the employee of the sending agency on a temporary
 21 assignment or exchange an exempt appointment and grant the
 22 employee rights and benefits as other exempt appointees of the
 23 receiving agency if it will benefit from the assignment or

1 exchange.

2 §78- In-service training programs. Each director shall
 3 monitor, make recommendations, and develop policies and
 4 guidelines for suitable in-service training programs and

5 activities so that the quality of service rendered by government
6 employees may be continually improved. Participating agencies
7 may be charged fees for training programs.

8 §78- Incentive and service awards. (a) Each chief
9 executive may establish incentive and service awards programs to
10 recognize employees who contribute to the efficiency, economy, or
11 other improvement of government operations or who perform
12 exceptionally meritorious special acts or services in the public
13 interest in connection with or related to their official
14 employment. The programs may allow appointing authorities to
15 establish their own programs consistent with the policies of the
16 chief executive.

17 (b) The programs may provide for cash awards to recognize
18 suggestions, inventions, superior accomplishments, length of
19 service, and other personal or group efforts. A cash award shall
20 be in addition to the employee's regular compensation of the
21 recipients. The acceptance of a cash award shall constitute an
22 agreement that use by the government of any idea, method, or
23 device for which the award is made shall not form the basis of a

1 further claim upon the government by the employees or the
2 employees' heirs and assigns.

3 (c) Awards and expenses for programs may be paid from funds

4 available to the departments and agencies benefiting from or
5 responsible for recognizing the employee's or group of employees'
6 contribution, as determined by the chief executive or appointing
7 authority, as applicable. All administrative decisions made on
8 the issuance of awards under this section shall be final and
9 deemed a performance of a discretionary function of the chief
10 executive or appointing authority.

11 §78- Cafeteria plans. (a) Each chief executive may
12 establish a wage and salary reduction benefit program which
13 qualifies as a cafeteria plan within the meaning of section 125
14 of the Internal Revenue Code of 1986, as amended. The cafeteria
15 plan shall allow eligible employees to elect to reduce their
16 pretax compensation in return for payment by the jurisdiction of
17 the expenses of eligible benefits.

18 (b) In addition to any other powers and duties authorized
19 by law, each chief executive may enter into all contracts
20 necessary to establish, administer, or maintain the cafeteria
21 plans.

22 (c) The contributions, interest earned, and forfeited
23 participant balances may be held in trust outside of the

1 jurisdiction's treasury for the benefit of the participants and

2 the plan. The funds in trust shall not be subject to the
3 jurisdiction's general creditors. Interest earned or forfeited
4 participant balances may be used to defray participant fees and
5 other administrative costs."

6 SECTION 75. Section 78-1, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§78-1 Citizenship and residence [of government officials
9 and employees]; exceptions.(a) All elective officers in the
10 service of the government of the State or [in the service of] any
11 county [or municipal subdivision of the State] shall be citizens
12 of the United States and residents of the State for at least
13 three years immediately preceding assumption of office.

14 (b) All appointive officers in the service of the
15 government of the State or [in the service of] any county [or
16 municipal subdivision of the State] who are employed as
17 department heads[, first assistants, first deputies, second
18 assistants, or second deputies] and deputies or assistants to a
19 department head shall be citizens of the United States and
20 residents of the State for at least one year immediately
21 preceding their appointment[; however, all]. All others
22 appointed in the service of the government of the State or in the
23 service of any county or municipal subdivision of the State shall

1 be citizens, nationals, or permanent resident aliens of the
2 United States and residents of the State at the time of their
3 appointment. A national or permanent resident alien [appointed
4 pursuant to this section] appointee shall not be eligible for
5 continued employment unless such person diligently seeks
6 citizenship upon becoming eligible to apply for United States
7 citizenship.

8 (c) All [employees in the service of] persons seeking
9 employment with the government of the State or in the service of
10 any county [or municipal subdivision of the State] shall be
11 citizens, nationals, or permanent resident aliens of the United
12 States, or eligible under federal law for unrestricted employment
13 in the United States, and residents of the State at the time of
14 their application for employment[.] and as a condition of
15 eligibility for continued employment.

16 "Resident" means a person who is physically present in the
17 State at the time the person claims to have established the
18 person's domicile in the State and shows the person's intent is
19 to make Hawaii the person's permanent residence. In determining
20 this intent, the following factors shall be considered:

- 21 (1) Maintenance of a domicile or permanent place of
22 residence in the State;
- 23 (2) Absence of residency in another state[.]; and

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1 (3) Former residency in the State.

2 (d) [For the purpose of obtaining services which are
3 essential to the public interest for which no competent person
4 with the qualifications under subsection (c) applies within
5 forty-five days after the first public notice of the position or
6 a notice of an examination therefor, which notice has been given
7 more than once, and not more often than once a week, statewide, a
8 person without the qualifications, upon prior certification by
9 the state director of human resources development or the
10 personnel director of the appropriate county, and with the
11 approval of the chief executive officer for the State or the
12 political subdivision concerned, may be employed.] The appointing
13 authority may approve the appointment of persons without
14 consideration of the requirements under subsection (c) when
15 services essential to the public interest require highly
16 specialized technical and scientific skills or knowledge for
17 critical-to-fill and labor shortage positions.

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

23 (f) [A preference shall be granted to state residents who

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1 have filed resident income tax returns within the State or who
2 have been claimed as a dependent on such a return at the time of
3 their application for employment with the State or any county or
4 municipal subdivision of the State.

5 For residents applying for positions covered by chapters 76
6 and 77, the preference shall be accomplished as provided in
7 section 76-23.

8 For residents applying for positions not covered by chapters
9 76 and 77, the preference shall be accomplished by giving first
10 consideration to such residents, if all other factors are
11 relatively equal.

12 (g)] This section shall not apply to persons recruited by
13 the University of Hawaii under the authority of section 304-11."

14 SECTION 76. Section 78-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§78-4 Boards and commissions; service limited.(a) Any
17 other provision of law to the contrary notwithstanding, no person
18 shall be allowed to serve on more than one state board or
19 commission expressly created by a state statute or the state
20 constitution.

21 (b) [Any other provision of the law to the contrary
22 notwithstanding, no nomination or appointment to a state or

23 county board or commission, whether temporary or permanent and

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1 which requires part-time service, shall be denied to a person of
 2 or over the age of majority due to that person's age; provided
 3 that this subsection shall not apply when a law relating to a
 4 particular board or commission requires a member or members
 5 thereof to be of a specified age or age groups.

6 (c) This section shall not apply when in conflict with any
 7 federal law.] Any prohibition in any law against the holding of
 8 outside employment or dual public office, employment, or position
 9 by an employee shall not bar the appointment of an employee to
 10 membership on a board or commission unless service on the board
 11 or commission would be inconsistent or incompatible with or would
 12 tend to interfere with the duties and responsibilities of the
 13 other office, employment, or position held by the employee.

14 (c) When any employee must be away from the employee's
 15 regular work because of service as a member on a board or
 16 commission, the employee shall not, as a result of the absence,
 17 suffer any loss of the employee's regular salary or wages. The
 18 time spent in service as a board or commission member outside of
 19 the employee's regular work hours shall not be considered as time
 20 worked."

21 SECTION 77. Section 78-12, Hawaii Revised Statutes, is

22 amended to read as follows:

23 "§78-12 Salary withheld for indebtedness to the government.

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1 (a) In case any officer, agent, employee or other person in the
2 service of [the State, any county, or any independent board or
3 commission,] a jurisdiction is indebted to [the State, any
4 county, or to any independent board or commission,] a
5 jurisdiction and the indebtedness has been determined by a
6 hearing pursuant to chapter 91, upon demand of the officer
7 charged with the duty of collecting the indebtedness, the
8 [comptroller or other] disbursing officer charged with the duty
9 of paying the indebted officer, agent, employee, or other person,
10 after notice to the indebted person, shall withhold one-quarter
11 of the salary, wages, or compensation due the indebted person and
12 pay the same, from time to time as the same shall become due, to
13 the officer charged with the duty of collecting the indebtedness,
14 until the full amount of the indebtedness, together with
15 penalties and interest thereon, is paid.

16 (b) If the indebtedness has arisen or been incurred by
17 reason of the indebted officer, agent, employee, or other person
18 having embezzled, stolen, or otherwise unlawfully acquired any
19 moneys or other property of the [State, any county, or any

20 independent board or commission,] a jurisdiction the whole amount
 21 of the salary, wages, or compensation, or so much thereof as may
 22 be required to pay the indebtedness in full, shall be withheld
 23 and paid over to the officer charged with the duty of collecting

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1 the indebtedness.

2 (c) The officer, agent, employee or other person in the
 3 service of the [State, any county, or any independent board or
 4 commission] alleged to be indebted to [the State, any county, or
 5 to any independent board or commission] a jurisdiction may waive
 6 the right to a hearing to determine the indebtedness and instead
 7 assign by contract to the officer charged with the duty of
 8 collecting debts:

- 9 (1) The priority right to payment of the total amount of
 10 the alleged indebtedness; and
- 11 (2) The right of the officer to deduct from each and every
 12 periodic payment normally due the assignor an amount
 13 equal to the maximum legally permissible amount
 14 deductible under garnishment law until the total amount
 15 owing is paid in full.

16 For purposes of this section, a person shall be deemed to
 17 waive the hearing if the person fails to request a hearing within
 18 fifteen days from the date the person was notified of the

19 indebtedness and the opportunity to request a hearing.

20 (d) The operation of all garnishment process served upon
 21 the [comptroller or other paying] disbursing officer shall be
 22 stayed until the indebtedness has been fully paid.

23 (e) If the indebtedness has occurred as a result of salary

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1 or wage overpayment, the [comptroller or other] disbursing
 2 officer shall determine the amount of indebtedness and notify the
 3 employee in writing of the indebtedness. If the employee
 4 contests the [comptroller or other] disbursing officer's
 5 determination of indebtedness, the employee may request a hearing
 6 pursuant to chapter 91[, and upon conclusion of the hearing or if
 7 the employee waives the hearing, if].

8 (f) Regardless of whether a contested determination of
 9 indebtedness is pending, the disbursing officer shall commence
 10 immediate recovery of the indebtedness as provided in this
 11 subsection. If the indebtedness is equal to or less than \$1,000,
 12 the [comptroller or other] disbursing officer shall immediately
 13 deduct from any subsequent periodic payment normally due the
 14 employee any amount up to the total amount of indebtedness[.
 15 For] and for indebtedness greater than \$1,000, the [comptroller
 16 or other] disbursing officer shall deduct:

17 (1) An amount agreed to by the employee and [employer,] the
18 appointing authority, but not less than \$100 per pay
19 period; or

20 (2) One-quarter of the salary, wages, or compensation due
21 the employee until the indebtedness is repaid in full.

22 In addition to paragraph (1), an employee and the appointing
23 authority may agree to offset any remaining amount of

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1 indebtedness by applying the current value of appropriate leave
2 or compensatory time credits posted in the employee's respective
3 accounts as balances that would otherwise be payable in cash upon
4 separation from service; provided that credits shall not be
5 applied to any extent that would require a refund of any moneys
6 already deducted or repaid or that would require the payment of
7 any moneys to the employee equivalent to a cashing out of leave
8 or compensatory time credits.

9 (g) If the determination of indebtedness was contested and
10 is subsequently found to be incorrect:

11 (1) Any moneys repaid or deducted under subsection (e) for
12 any indebtedness in excess of the correct amount shall
13 be promptly refunded with interest, to be calculated at
14 a rate and in such manner as the disbursing officer
15 establishes by rules; or

16 (2) All leave or compensatory time credits applied to
 17 offset any indebtedness in excess of the correct amount
 18 shall be re-credited to the employee's respective leave
 19 or compensatory time accounts and shall not result in a
 20 cash payment.

21 (h) If an employee is entitled to contest the determination
 22 of indebtedness under a collective bargaining grievance
 23 procedure, that procedures shall be used in lieu of a hearing

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1 under subsection (e). A collective bargaining agreement may
 2 include overpayment recovery procedures; provided that the
 3 parties do not agree on any provision that would be inconsistent
 4 with subsections (f) and (g)."

5 SECTION 78. Section 78-17, Hawaii Revised Statutes, is
 6 amended to read as follows:

7 "§78-17 Payment of salaries or wages upon [termination of]
 8 discharge from service. Whenever in any case, and for whatever
 9 cause, the employment of any officer, agent, employee, or other
 10 person in the public service is [terminated, he] discharged, the
 11 discharged person shall be paid immediately upon the approval of
 12 the head of the department in which [he] the person was engaged
 13 whatever salary or wages that are due [him.] the person."

14 SECTION 79. Chapter 78, Part I, Hawaii Revised Statutes, is
15 amended by repealing the title:

16 ["[PART I.] GENERAL PROVISIONS"]

17 SECTION 80. Section 78-2, Hawaii Revised Statutes, is
18 repealed.

19 ["§78-2 Equal opportunity. No person shall be
20 discriminated against in any case because of any physical or
21 mental handicap, in examination, appointment, reinstatement,
22 reemployment, promotion, transfer, demotion, or removal, with
23 respect to any position the duties of which, in the opinion of

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1 the director, may be efficiently performed by a person with a
2 physical or mental handicap; provided that the employment will
3 not be hazardous to the person appointed or endanger the health
4 or safety of the person's fellow employees or others.

5 To promote employment opportunities for the severely
6 handicapped individuals, all departments or agencies of the state
7 and county governments shall develop and implement programs for
8 the selective employment of the severely handicapped individuals.
9 Such programs shall provide for the certification by the state
10 vocational rehabilitation office that the severely handicapped
11 individual possesses the skills necessary to safely perform the
12 duties of the position to which the individual will be placed."]

13 SECTION 81. Section 78-2.5, Hawaii Revised Statutes, is
14 repealed.

15 ["§78-2.5] Arrest record. No applicant for employment by
16 the State or any political subdivision or agency thereof shall be
17 required to answer, either orally or in writing, as a condition
18 precedent to employment, whether or not the applicant has been
19 arrested; provided that this shall not preclude any question
20 concerning any conviction of a crime or the arrest and other
21 circumstances pertaining to the conviction."]

22 SECTION 82. Section 78-5, Hawaii Revised Statutes, is
23 repealed.

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1 ["§78-5 Public officer or employee serving on state or
2 county board or commission.(a) Any prohibition in any law
3 against the holding of outside employment or dual public office,
4 employment, or position by a state or county officer or employee
5 shall not bar the appointment of a public officer or employee to
6 membership on a commission or board unless service on the
7 commission or board would be inconsistent or incompatible with or
8 would tend to interfere with the duties and responsibilities of
9 the other office, employment or position held by the officer or
10 employee.

11 (b) The foregoing provision shall not be construed to
 12 permit an officer or employee to serve as a member of any civil
 13 service commission nor to permit the officer or employee to
 14 receive compensation, other than expenses, as a member of any
 15 board or commission.

16 (c) When any officer or employee must be away from the
 17 officer's or employee's regular work because of service as a
 18 member on a board or commission, the officer or employee shall
 19 not, as a result of the absence, suffer any loss of the officer's
 20 or employee's regular salary or wages.

21 The time spent in service as a board or commission member
 22 shall not be credited as time worked for purposes of overtime
 23 compensation."]

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1 SECTION 83. Section 78-6, Hawaii Revised Statutes, is
 2 repealed.

3 ["§78-6 Private employment or practice prohibited;
 4 officers. No full-time officer of the State or of the counties
 5 or city and county may, during the officer's term of office,
 6 engage in other gainful occupational employment or the private
 7 practice of any profession."]

8 SECTION 84. Section 78-14, Hawaii Revised Statutes, is
 9 repealed.

10 ["§78-14 Salaries of employees during absence abroad. No
 11 state or county officer or employee, except with the written
 12 approval of the governor or mayor, as the case may be, shall
 13 receive the officer's or employee's salary during an absence of
 14 more than two months from the State on official business. Any
 15 state or county officer or employee who, at the request of the
 16 officer's or employee's department head, acting with the written
 17 approval of the governor or mayor, as the case may be, goes
 18 abroad from the State and engages in research work, or makes a
 19 survey for the benefit of the government employing the officer or
 20 employee, shall be considered to be on official business, and
 21 shall receive, while absent from the State, the officer's or
 22 employee's regular compensation as provided by law."]

23 SECTION 85. Section 78-15, Hawaii Revised Statutes, is

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1 repealed.

2 ["§78-15 Traveling expenses of state officials. A state
 3 official or representative while traveling abroad on state
 4 official business shall be allowed \$60 a day, except for
 5 interisland travel which shall be \$45 a day, which amount is to
 6 cover all personal expenses, such as board, lodging, etc., but
 7 not fares for transportation; provided that a rate in excess of

8 \$45 a day for interisland travel and \$60 a day for other travel
 9 abroad may be allowed, but neither for more than \$65 a day, upon
 10 application to and approval by the governor. The comptroller
 11 shall issue a warrant payable to the official for the purpose, at
 12 the authorized rate, from the date of the official's departure to
 13 the date of the official's return upon being furnished by the
 14 official with a certified statement setting forth the time of
 15 absence."]

16 SECTION 86. Section 78-16, Hawaii Revised Statutes, is
 17 repealed.

18 ["§78-16 Payment of traveling expenses from special fund,
 19 prohibited when. No expenditure for traveling abroad on official
 20 business of the State by any officer or employee shall be made
 21 from any special fund without the prior authorization of the
 22 governor."]

23 SECTION 87. Section 78-19, Hawaii Revised Statutes, is

1 repealed.

2 ["§78-19 Safety equipment. Each department or agency of
 3 the State and its political subdivisions shall furnish its
 4 employees with safety equipment when such equipment is required
 5 in connection with the employees' official duties by the codes
 6 and rules and regulations of the department of labor and

7 industrial relations. The cost of such equipment shall be a
8 proper charge against the funds of the department or agency and
9 the respective political subdivisions, as the case may be,
10 furnishing such equipment. Except in the case of gross
11 negligence on the part of the employee losing or damaging such
12 equipment, lost or damaged safety equipment and equipment worn
13 out through wear and tear shall be replaced by the department or
14 agency, or the respective political subdivisions, as the case may
15 be.

16 No employee shall be required to operate a motor vehicle
17 which is deemed unsafe. If an employee demonstrates that a motor
18 vehicle which he has been directed to operate is unsafe, he or
19 his employee representatives and his department head shall
20 mutually agree upon the appointment of a third party qualified to
21 evaluate the safety of motor vehicles to determine the safety of
22 said motor vehicle. The decision of the third party shall be
23 final and binding upon the parties. If the third party decides

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1 that the motor vehicle is unsafe, the employee shall not be
2 required to operate such motor vehicle. On the other hand, if
3 the motor vehicle is deemed safe by the third party, the employee
4 may be required to operate the vehicle."]

5 SECTION 88. Section 78-22, Hawaii Revised Statutes, is
6 repealed.

7 ["[§78-22] Uniform of institution employee; reimbursement
8 for damage. Any other law, including section 37-77, to the
9 contrary notwithstanding, any employee of a public institution
10 responsible for the care of patients or inmates shall, upon proof
11 of loss in such manner as prescribed by the director of finance
12 of the State in the case of state employees, or the director of
13 finance of the respective counties, in the case of county
14 employees, be reimbursed for the repair or replacement of the
15 employee's uniform or clothing worn on duty and damaged by the
16 patients or inmates of the institution where the employee is
17 employed, not to exceed the sum of \$50 per employee per year."]

18 SECTION 89. Section 78-51, Hawaii Revised Statutes, is
19 repealed.

20 ["§78-51 Applicability of chapter to the judiciary and the
21 Hawaii health systems corporation. All of the provisions of this
22 chapter apply with equal force to the judiciary and the Hawaii
23 health systems corporation as to the State. The powers and

1 duties assigned in this chapter shall, with respect to the
2 judiciary, be assigned to the chief justice of the supreme court
3 in the place and stead of the governor or chief executive officer

4 for the State, and to the administrative director of the courts
 5 in the place and stead of the director of human resources
 6 development. The powers and duties assigned in this chapter,
 7 with respect to the Hawaii health systems corporation, shall be
 8 assigned to the chief executive officer of the Hawaii health
 9 systems corporation in the place and stead of the governor or
 10 chief executive officer for the State, and to the Hawaii health
 11 systems chief executive officer's designee in the place and stead
 12 of the director of human resources development."]

13 SECTION 90. Chapter 78, Part II, Hawaii Revised Statutes,
 14 is repealed.

15 PART IV

16 SECTION 91. Chapter 89, Hawaii Revised Statutes, is amended
 17 by adding a new section to be appropriately designated and to
 18 read as follows:

19 "§89- Resolution of disputes; grievances. (a) A public
 20 employer shall enter into written agreement with the exclusive
 21 representative setting forth a grievance procedure culminating in
 22 a final and binding decision, to be invoked in the event of any
 23 dispute concerning the interpretation or application of a written

1 agreement. The grievance procedure shall be valid and

2 enforceable and shall be consistent with the following:

3 (1) A dispute over the terms of an initial or renewed
4 agreement shall not constitute a grievance;

5 (2) No employee in a position exempted from chapter 76, who
6 serves at the pleasure of the appointing authority,
7 shall be allowed to grieve a suspension or discharge
8 unless the collective bargaining agreement specifically
9 provides otherwise; and

10 (3) With respect to any adverse action resulting from an
11 employee's failure to meet performance requirements of
12 the employee's position, the grievance procedure shall
13 provide that the final and binding decision shall be
14 made by a performance judge as provided in this
15 section.

16 (b) The performance judge shall be a neutral third party
17 selected from a list of persons whom the parties have mutually
18 agreed are eligible to serve as a performance judge for the
19 duration of the collective bargaining agreement. The parties, by
20 mutual agreement, may modify the performance judge list at any
21 time and shall determine a process for selection from the list.

22 (c) The performance judge shall use the conditions in
23 section 76-41(b) as tests in reaching a decision on whether the

1 employer's action, based on a failure by the employee to meet the
2 performance requirements of the employee's position, was with or
3 without merit.

4 (d) If it is alleged that the adverse action was not due to
5 a failure to meet performance requirements but for disciplinary
6 reasons without just and proper cause, the performance judge
7 shall first proceed with a determination on the merits of the
8 employer's action under subsection (c). If the performance judge
9 determines that the adverse action may be based on reasons other
10 than a failure to meet performance requirements, the performance
11 judge shall then determine, based on appropriate standards of
12 review, whether the disciplinary action was with or without
13 proper cause and render a final and binding decision."

14 SECTION 92. Section 89-1, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§89-1 Statement of findings and policy. (a) The
17 legislature finds that joint decision-making is the modern way of
18 administering government. Where public employees have been
19 granted the right to share in the decision-making process
20 affecting wages and working conditions, they have become more
21 responsive and better able to exchange ideas and information on
22 operations with their administrators. Accordingly, government is
23 made more effective. The legislature further finds that the

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1 enactment of positive legislation establishing guidelines for
2 public employment relations is the best way to harness and direct
3 the energies of public employees eager to have a voice in
4 determining their conditions of work[,]; to provide a rational
5 method for dealing with disputes and work stoppages[,]; and to
6 maintain a favorable political and social environment.

7 (b) The legislature declares that it is the public policy
8 of the State to promote harmonious and cooperative relations
9 between government and its employees and to protect the public by
10 assuring effective and orderly operations of government. These
11 policies are best effectuated by:

12 (1) [recognizing] Recognizing the right of public employees
13 to organize for the purpose of collective
14 bargaining[,];

15 (2) [requiring the] Requiring public employers to negotiate
16 with and enter into written agreements with exclusive
17 representatives on matters of wages, hours, and other
18 conditions of employment, while, at the same time,

19 [(3)] maintaining the merit [principles and the
20 principle of equal pay for equal work among state and
21 county employees pursuant to sections 76-1, 76-2,
22 77-31, and 77-33,] principle pursuant to section 76-1;
23 and [(4) creating]

1 (3) Creating a labor relations board to administer the
2 provisions of chapters 89 and 377."

3 SECTION 93. Section 89-2, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding two new definitions to be appropriately
6 inserted and to read:

7 "Day" means a calendar day unless otherwise specified.

8 "Jurisdiction" means the State, the city and county of
9 Honolulu, the county of Hawaii, the county of Maui, the county of
10 Kauai, the judiciary, and the Hawaii health systems corporation."

11 2. By amending the definitions of "arbitration",
12 "collective bargaining", "cost items", "employee" or "public
13 employee", "employer" or "public employer", "exclusive
14 representative", "fact-finding", "impasse", "legislative body",
15 "mediation", and "strike" to read:

16 "Arbitration" means the procedure whereby parties involved
17 in an impasse [mutually agree to] submit their differences to a
18 third party, whether a single arbitrator or an arbitration panel,
19 for [a final and binding] an arbitration decision. It may
20 include mediation whereby the neutral third party is authorized
21 to assist the parties in a voluntary resolution of the impasse.

22 "Collective bargaining" means the performance of the mutual

23 obligations of the public employer and [the] an exclusive

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1 representative to meet at reasonable times, to confer and
2 negotiate in good faith, and to execute a written agreement with
3 respect to wages, hours, amounts of contributions by the State
4 and counties to the Hawaii public employees health fund, and
5 other terms and conditions of employment, except that by any such
6 obligation neither party shall be compelled to agree to a
7 proposal, or be required to make a concession. For the purposes
8 of this definition, "wages" includes the number of incremental
9 and longevity steps, the number of pay ranges, and the movement
10 between steps within the pay range and between the pay ranges on
11 a pay schedule under a collective bargaining agreement.

12 "Cost items" [includes wages, hours, amounts of
13 contributions by the State and counties to the Hawaii public
14 employees health fund, and other terms and conditions of
15 employment, the implementation of which requires an appropriation
16 by a] means all items agreed to in the course of collective
17 bargaining that an employer cannot absorb under its customary
18 operating budgetary procedures and that require additional
19 appropriations by its respective legislative body[.] for
20 implementation.

21 "Employee" or "public employee" means any person employed by

22 a public employer, except elected and appointed officials and
23 [such] other employees [as may be] who are excluded from coverage

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1 in section 89-6(c).

2 "Employer" or "public employer" means the governor in the
3 case of the State, the respective mayors in the case of the [city
4 and county of Honolulu and the] counties [of Hawaii, Maui, and
5 Kauai], the chief justice of the supreme court in the case of the
6 judiciary, the board of education in the case of the department
7 of education, [and] the board of regents in the case of the
8 University of Hawaii, the Hawaii health systems corporation board
9 in the case of the Hawaii health systems corporation, and any
10 individual who represents one of these employers or acts in their
11 interest in dealing with public employees. In the case of the
12 judiciary, the [governor shall be the employer for the purposes
13 of this chapter.] administrative director of the courts shall be
14 the employer in lieu of the chief justice for purposes which the
15 chief justice determines would be prudent or necessary to avoid
16 conflict.

17 "Exclusive representative" means the employee organization[,
18 which as a result of certification by the board, has the right to
19 be] certified by the board under section 89-8 as the collective

20 bargaining agent [of] to represent all employees in an
 21 appropriate bargaining unit without discrimination and without
 22 regard to employee organization membership.

23 "Fact-finding" means identification of the major issues in a

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1 particular impasse, review of the positions of the parties and
 2 resolution of factual differences by one or more [impartial]
 3 neutral fact-finders, and the making of recommendations for
 4 settlement of the impasse.

5 "Impasse" means failure of a public employer and an
 6 exclusive representative to achieve agreement in the course of
 7 [negotiations.] collective bargaining. It includes any
 8 declaration of an impasse under section 89-11.

9 "Legislative body" means the legislature in the case of the
 10 State, including the judiciary, the department of education, the
 11 University of Hawaii, and the Hawaii health systems corporation;
 12 the city council, in the case of the city and county of
 13 Honolulu[,]; and the respective county councils, in the case of
 14 the counties of Hawaii, Maui, and Kauai.

15 "Mediation" means assistance by [an impartial] a neutral
 16 third party to [reconcile] resolve an impasse between the public
 17 employer and the exclusive representative [regarding wages,
 18 hours, amounts of contributions by the State and counties to the

19 Hawaii public employees health fund, and other terms and
 20 conditions of employment] through interpretation, suggestion, and
 21 advice [to resolve the impasse].

22 "Strike" means a public employee's refusal, in concerted
 23 action with others, to report for duty, or the employee's wilful

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1 absence from the employee's position, or the employee's stoppage
 2 of work, or the employee's abstinence in whole or in part from
 3 the full, faithful, and proper performance of the duties of
 4 employment, for the purpose of inducing, influencing, or coercing
 5 a change in the conditions, compensation, rights, privileges, or
 6 obligations of public employment; and except in the case of
 7 absences authorized by public employers, includes such refusal,
 8 absence, stoppage, or abstinence by any public employee out of
 9 sympathy or support for any other public employee who is on
 10 strike or because of the presence of any picket line maintained
 11 by any other public employee; provided that, nothing herein shall
 12 limit or impair the right of any public employee to express or
 13 communicate a complaint or opinion on any matter related to the
 14 conditions of employment."

15 3. By repealing the definitions of "certification",
 16 "professional employee", and "supervisory employee".

17 ["Certification" means official recognition by the board
 18 that the employee organization is, and shall remain, the
 19 exclusive representative for all of the employees in an
 20 appropriate bargaining unit for the purpose of collective
 21 bargaining, until it is replaced by another employee
 22 organization, decertified, or dissolved.

23 "Professional employee" includes (A) any employee engaged in

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1 work (i) predominantly intellectual and varied in character as
 2 opposed to routine mental, manual, mechanical, or physical work,
 3 (ii) involving the consistent exercise of discretion and judgment
 4 in its performance, (iii) of such a character that the output
 5 produced or the result accomplished cannot be standardized in
 6 relation to a given period of time, (iv) requiring knowledge of
 7 an advanced type in a field of science or learning customarily
 8 acquired by a prolonged course of specialized intellectual
 9 instruction and study in an institution of higher learning or a
 10 hospital, as distinguished from a general academic education or
 11 from an apprenticeship or from training in the performance of
 12 routine mental, manual, or physical processes; or (B) any
 13 employee, who (i) has completed the courses of specialized
 14 intellectual instruction and study described in clause (A)(iv),
 15 and (ii) is performing related work under the supervision of a

16 professional employee as defined in (A).

17 "Supervisory employee" means any individual having authority
18 in the interest of the employer, to hire, transfer, suspend,
19 layoff, recall, promote, discharge, assign, reward, or discipline
20 other employees, or the responsibility to assign work to and
21 direct them, or to adjust their grievances, or effectively to
22 recommend such action, if, in connection with the foregoing, the
23 exercise of such authority is not of a merely routine or clerical

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1 nature, but requires the use of independent judgment."]

2 SECTION 94. Section 89-3, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§89-3 Rights of employees. Employees shall have the right
5 of self-organization and the right to form, join, or assist any
6 employee organization for the purpose of bargaining collectively
7 through representatives of their own choosing on questions of
8 wages, hours, and other terms and conditions of employment, and
9 to engage in lawful, concerted activities for the purpose of
10 collective bargaining or other mutual aid or protection, free
11 from interference, restraint, or coercion. An employee shall
12 have the right to refrain from any or all of such activities,
13 except [to the extent of making such payment of amounts] for

14 having a payroll deduction equivalent to regular dues remitted to
15 an exclusive representative as provided in section 89-4."

16 SECTION 95. Section 89-5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 §89-5 Hawaii labor relations board.(a) There is created
19 a Hawaii labor relations board to ensure that collective
20 bargaining is conducted in accordance with this chapter and that
21 the merit principle under section 76-1 is maintained.

22 (b) The board shall be composed of three members of which
23 (1) one member shall be representative of management, (2) one

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1 member shall be representative of labor, and (3) the third
2 member, the chairperson, shall be representative of the public.
3 All members shall be appointed by the governor for terms of six
4 years each. Public employers and employee organizations
5 representing public employees may submit to the governor for
6 consideration names of persons [representing their interests] to
7 serve as members of the board and the governor shall first
8 consider these persons in selecting the members of the board [to
9 represent management and labor].

10 (c) Each member shall hold office until the member's
11 successor is appointed and qualified. Because cumulative
12 experience and continuity in office are essential to the proper

13 administration of this chapter, it is declared to be in the
 14 public interest to continue board members in office as long as
 15 efficiency is demonstrated, notwithstanding the provision of
 16 section 26-34, which limits the appointment of a member of a
 17 board or commission to two terms.

18 (d) The members shall devote full time to their duties as
 19 members of the board. Effective January 1, 1989, and January 1,
 20 1990, the salary of the chairperson of the board shall be set by
 21 the governor within the range from \$69,748 to \$74,608 and \$72,886
 22 to \$77,966 a year, respectively, and the salary of each of the
 23 other members shall be ninety-five per cent of the chairperson's

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1 salary. No member shall hold any other public office or be in
 2 the employment of the State or a county, or any department or
 3 agency thereof, or any employee organization during the member's
 4 term.

5 (e) Any action taken by the board shall be by a simple
 6 majority of the members of the board. All decisions of the board
 7 shall be reduced to writing and shall state separately its
 8 finding of fact and conclusions. Any vacancy in the board shall
 9 not impair the authority of the remaining members to exercise all
 10 the powers of the board. The governor may appoint an acting

11 member of the board during the temporary absence from the State
 12 or the illness of any regular member. An acting member, during
 13 the acting member's term of service, shall have the same powers
 14 and duties as the regular member.

15 (f). The chairperson of the board shall be responsible for
 16 the administrative functions of the board. The board may appoint
 17 an executive officer, mediators, members of fact-finding boards,
 18 arbitrators, and hearing officers, and employ other assistants as
 19 it may deem necessary in the performance of its functions,
 20 prescribe their duties, and fix their compensation and provide
 21 for reimbursement of actual and necessary expenses incurred by
 22 them in the performance of their duties within the amounts made
 23 available by appropriations therefor. Section 103D-209(b)

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1 notwithstanding, an attorney employed by the board as a full-time
 2 staff member may represent the board in litigation, draft legal
 3 documents for the board, and provide other necessary legal
 4 services to the board and shall not be deemed to be a deputy
 5 attorney general.

6 (g). The board shall be within the department of labor and
 7 industrial relations for budgetary and administrative purposes
 8 only. [The] All members of the board and employees other than
 9 clerical and stenographic employees shall be exempt from chapters

10 76[, 77,] and 89. Clerical and stenographic employees shall be
11 appointed in accordance with [chapters 76 and 77.] chapter 76.

12 (h). At the close of each fiscal year, the board shall make
13 a written report to the governor [of such facts as it may deem
14 essential to describe] on its activities, including the cases and
15 their dispositions, and the names, duties, and salaries of its
16 officers and employees. Copies of the report shall be
17 transmitted to the [legislative bodies.] other chief executives,
18 the exclusive representatives, and the legislative body of each
19 jurisdiction.

20 [(b)] (i). In addition to the powers and functions provided
21 in other sections of this chapter, the board shall:

22 (1) Establish procedures for, investigate, and resolve, any
23 dispute concerning the designation of an appropriate

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1 bargaining unit and the application of section 89-6 to
2 specific employees and positions;

3 [(2) Resolve any dispute concerning cost items;

4 (3)] (2). Establish procedures for, resolve disputes with
5 respect to, and supervise the conduct of, elections for
6 the determination of employee representation;

7 (3). Resolve controversies under this chapter;

- 8 **(4) Conduct proceedings on complaints of prohibited**
- 9 **practices by employers, employees, and employee**
- 10 **organizations and take such actions with respect**
- 11 **thereto as it deems necessary and proper;**
- 12 **(5) Hold such hearings and make such inquiries, as it deems**
- 13 **necessary, to carry out properly its functions and**
- 14 **powers, and for the purpose of such hearings and**
- 15 **inquiries, administer oaths and affirmations, examine**
- 16 **witnesses and documents, take testimony and receive**
- 17 **evidence, compel attendance of witnesses and the**
- 18 **production of documents by the issuance of subpoenas,**
- 19 **and delegate such powers to any member of the board or**
- 20 **any person appointed by the board for the performance**
- 21 **of its functions;**
- 22 **(6) [Establish,] Determine qualifications and establish,**
- 23 **after reviewing nominations submitted by the public**

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- 1 **employers and employee organizations, lists of**
- 2 **qualified persons, broadly representative of the**
- 3 **public, to be available to serve as mediators, members**
- 4 **of fact-finding [boards,] panels, or arbitrators;**
- 5 **(7) Establish a fair and reasonable range of daily or**
- 6 **hourly rates at which mediators, members of fact-**

7 finding [boards,] panels, and arbitrators [serving
 8 pursuant to section 89-11(b)(3)] on the lists
 9 established under paragraph (6) are to be compensated
 10 [and apportion the costs of arbitration to the parties
 11 involved];

12 (8) Conduct studies on problems pertaining to public
 13 employee-management relations, and make recommendations
 14 with respect thereto to the legislative bodies; request
 15 information and data from state and county departments
 16 and agencies and employee organizations necessary to
 17 carry out its functions and responsibilities; make
 18 available to [employee organizations, as may exist,]
 19 all concerned parties, including mediators, members of
 20 fact-finding [boards,] panels and arbitrators, [and
 21 other concerned parties] statistical data relating to
 22 wages, benefits, and employment practices in public and
 23 private employment to assist them in resolving issues

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1 in negotiations; [and]
 2 (9) Adopt rules relative to the exercise of its powers and
 3 authority and to govern the proceedings before it in
 4 accordance with chapter 91[.]; and

5 **(10) Execute all of its responsibilities in a timely manner**
6 **so as to facilitate and expedite the resolution of**
7 **issues before it.**

8 **(j) For the purpose of minimizing travel and per diem**
9 **expenses for parties who are not located on Oahu, the board shall**
10 **utilize more cost efficient means such as teleconferencing which**
11 **does not require appearances on Oahu, whenever practicable, to**
12 **conduct its proceedings. Alternatively, it shall consider**
13 **conducting its proceedings on another island whenever it is more**
14 **cost efficient in consideration of the parties and the witnesses**
15 **involved."**

16 SECTION 96. Section 89-6, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§89-6 Appropriate bargaining units.(a) All employees
19 throughout the State within any of the following categories shall
20 constitute an appropriate bargaining unit:

21 (1) Nonsupervisory employees in [blue-collar] **blue collar**
22 positions;

23 (2) Supervisory employees in [blue-collar] **blue collar**

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1 positions;

2 (3) Nonsupervisory employees in [white-collar] **white collar**
3 positions;

- 4 (4) Supervisory employees in [white-collar] white collar
- 5 positions;
- 6 (5) Teachers and other personnel of the department of
- 7 education under the same [salary] pay schedule,
- 8 including part-time employees working less than twenty
- 9 hours a week who are equal to one-half of a full-time
- 10 equivalent;
- 11 (6) Educational officers and other personnel of the
- 12 department of education under the same [salary] pay
- 13 schedule;
- 14 (7) Faculty of the University of Hawaii and the community
- 15 college system;
- 16 (8) Personnel of the University of Hawaii and the community
- 17 college system, other than faculty;
- 18 (9) Registered professional nurses;
- 19 (10) Institutional, health, and correctional workers;
- 20 (11) Firefighters;
- 21 (12) Police officers; and
- 22 (13) Professional and scientific employees, [other than
- 23 registered professional nurses.] who cannot be included

1 in any of the other bargaining units.

2 (b). Because of the nature of work involved and the
3 essentiality of certain occupations that require specialized
4 training, [units (9) through (13) are designated as optional
5 appropriate bargaining units. Employees in any of these optional
6 units may vote either for separate units or for inclusion in
7 their respective units (1) through (4). If a majority of the
8 employees in any optional unit desire to constitute a separate
9 appropriate bargaining unit, supervisory employees may be
10 included in the unit by mutual agreement among supervisory and
11 nonsupervisory employees within the unit; if supervisory
12 employees are excluded, the appropriate bargaining unit for these
13 supervisory employees shall be (2) or (4), as the case may be.]
14 supervisory employees who are eligible for inclusion in units (9)
15 through (13) shall be included in units (9) through (13),
16 respectively, instead of unit (2) or (4).

17 (c). The [compensation plans for blue-collar positions
18 pursuant to section 77-5 and for white-collar positions pursuant
19 to section 77-13, the salary schedules for teachers pursuant to
20 section 302A-624 and for educational officers pursuant to section
21 302A-625, and the appointment and classification of faculty
22 pursuant to sections 304-11 and 304-13, existing on July 1,
23 1970,] classification systems of each jurisdiction shall be the

1 bases for differentiating [blue-collar] blue collar from [white-
2 collar] white collar employees, professional from institutional,
3 health and correctional workers, supervisory from nonsupervisory
4 employees, teachers from educational officers, and faculty from
5 nonfaculty. In differentiating supervisory from nonsupervisory
6 employees, class titles alone shall not be the basis for
7 determination[, but, in addition, the]. The nature of the work,
8 including whether [or not] a major portion of the working time of
9 a supervisory employee is spent as part of a crew or team with
10 nonsupervisory employees, shall [also] be considered[.] also.

11 [(b)] (d). For the purpose of [negotiations,] negotiating a
12 collective bargaining agreement, the public employer of an
13 appropriate bargaining unit shall mean the governor [or the
14 governor's designated representatives of not less than three
15 together with not more than two members of the board of education
16 in the case of units (5) and (6), the governor or the governor's
17 designated representatives of not less than three together with
18 not more than two members of the board of regents of the
19 University of Hawaii in the case of units (7) and (8), and the
20 governor or the governor's designated representatives together
21 with the mayors of all the counties or their designated
22 representatives in the case of the remaining units. The
23 designated employer representatives for units (5), (6), (7), and

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1 (8) shall each have one vote and in the case of the remaining
2 units, the governor shall be entitled to four votes and the mayor
3 of each county shall each have one vote, which may be assigned to
4 their designated representatives.] together with the following
5 employers:

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

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

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

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

23 Any decision to be reached by the applicable employer group shall

1 be on the basis of simple majority[.], except when a bargaining
2 unit includes county employees from more than one county. In
3 such case, the simple majority shall include at least one county.

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

12 [(c) No elected] (f) The following individuals shall not
13 be included in any appropriate bargaining unit or be entitled to
14 coverage under this chapter:

- 15 (1) Elected or appointed official[, member];
- 16 (2) Member of any board or commission[, representative of a
17 public employer,];
- 18 (3) Top-level managerial and administrative personnel,
19 including the department head, deputy or assistant to a
20 department head, administrative officer, director, or
21 chief of a state or county [department or] agency[,] or
22 [any] major division [thereof, as well as any first

1 top-level managerial and administrative personnel,
2 secretary];

3 (4) Secretary to top-level managerial and administrative
4 personnel[, individual] under paragraph (3)];

5 (5) Individual concerned with confidential matters
6 affecting employee-employer relations[, part-time];

7 (6) Part-time employee working less than twenty hours per
8 week, except part-time employees included in unit (5)[,
9 temporary];

10 (7) Temporary employee of three months' duration or less[,
11 employee];

12 (8) Employee of the executive office of the governor[,] or
13 a household employee at Washington Place[, employee];

14 (9) Employee of the executive office of the lieutenant
15 governor;

16 (10) Employee of the executive office of the mayor[, staff];

17 (11) Staff of the legislative branch of the State[, employee
18 of the executive office of the lieutenant governor,
19 inmate,];

20 (12) Staff of the legislative branches of the counties,
21 except employees of the clerks' offices of the

22 counties;

23 (13) Any commissioned and enlisted personnel of the Hawaii

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1 national guard;

2 (14) Inmate, kokua, patient, ward or student of a state

3 institution[, student];

4 (15) Student help[, any commissioned and enlisted personnel

5 of the Hawaii national guard, or staff of the

6 legislative branches of the city and county of Honolulu

7 and counties of Hawaii, Maui, and Kauai, except

8 employees of the clerks' offices of said city and

9 county and counties, shall be included in any

10 appropriate bargaining unit or entitled to coverage

11 under this chapter.]; or

12 (16) Staff of the Hawaii labor relations board.

13 [(d)] (g). Where any controversy arises under this section,

14 the board shall, pursuant to chapter 91, make an investigation

15 and, after a hearing upon due notice, make a final determination

16 on the applicability of this section to specific [positions and]

17 individuals, employees[.], or positions."

18 SECTION 97. Section 89-7, Hawaii Revised Statutes, is

19 amended by amending subsection (b) to read as follows:

20 "(b) In any election [in which] where none of the choices
 21 on the ballot receives a majority of the votes cast, a runoff
 22 election shall be conducted[,] with the ballot providing for a
 23 selection between the two choices receiving the largest number of

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1 valid votes cast in the election. The board shall certify the
 2 [results of the] election[, and where an] results and the
 3 employee organization [receives] receiving a majority of the
 4 votes cast[, the board] shall [certify the employee organization]
 5 be certified as the exclusive representative of all employees in
 6 the appropriate bargaining unit for the purpose of collective
 7 bargaining. The employee organization shall remain certified as
 8 the exclusive representative until it is replaced by another
 9 employee organization, decertified, or dissolved."

10 SECTION 98. Section 89-9, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "§89-9 Scope of negotiations[.]; consultation. (a) The
 13 employer and the exclusive representative shall meet at
 14 reasonable times, including meetings sufficiently in advance of
 15 the [employer's budget-making process,] April 16 impasse date
 16 under section 89-11, and shall negotiate in good faith with
 17 respect to wages, hours, [the number of incremental and longevity
 18 steps and movement between steps within the salary range,] the

19 amounts of contributions by the State and respective counties to
 20 the Hawaii public employees health fund to the extent allowed in
 21 subsection (e), and other terms and conditions of employment
 22 which are subject to [negotiations under this chapter] collective
 23 bargaining and which are to be embodied in a written agreement[,

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1 or any question arising thereunder,] as specified in section 89-
 2 10, but such obligation does not compel either party to agree to
 3 a proposal or make a concession; provided that the parties may
 4 not negotiate with respect to cost items as defined by section
 5 89-2 for the biennium 1999 to 2001, and the cost items of
 6 employees in bargaining units under section 89-6 in effect on
 7 June 30, 1999, shall remain in effect until July 1, 2001.

8 (b) The employer or the exclusive representative desiring
 9 to initiate negotiations shall notify the other party in writing,
 10 setting forth the time and place of the meeting desired and
 11 [generally] the nature of the business to be discussed, [and
 12 shall mail the notice by certified mail to the last known address
 13 of the other party] sufficiently in advance of the meeting.

14 (c) Except as otherwise provided [herein,] in this chapter,
 15 all matters affecting employee relations, including those that
 16 are, or may be, the subject of a [regulation promulgated] rule

17 adopted by the employer or any [personnel] director, [are] shall
 18 be subject to consultation with the exclusive representatives of
 19 the employees concerned. The employer shall make every
 20 reasonable effort to consult with [the] exclusive representatives
 21 and consider their input, along with the input of other affected
 22 parties, prior to effecting changes in any major policy affecting
 23 employee relations.

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1 (d) Excluded from the subjects of negotiations are matters
 2 of classification [and], reclassification, benefits of but not
 3 contributions to the Hawaii public employees health fund,
 4 recruitment, examination, initial pricing, and retirement
 5 benefits except as provided in section 88-8(h)[, and the salary
 6 ranges now provided by law; provided that the number of
 7 incremental and longevity steps, the amount of wages to be paid
 8 in each range and step, and movement between steps within the
 9 salary range shall be negotiable]. The employer and the
 10 exclusive representative shall not agree to any proposal which
 11 would be inconsistent with the merit [principles] principle or
 12 the principle of equal pay for equal work pursuant to [sections
 13 76-1, 76-2, 77-31, and 77-33,] section 76-1 or which would
 14 interfere with the rights and obligations of a public employer
 15 to:

- 16 (1) [~~direct~~] Direct employees;
- 17 (2) [~~determine qualification,~~] Determine qualifications,
 18 standards for work, the nature and contents of
 19 examinations[, hire,];
- 20 (3) Hire, promote, transfer, assign, and retain employees
 21 in positions [and suspend,];
- 22 (4) Suspend, demote, discharge, or take other disciplinary
 23 action against employees for proper cause; [(3)

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- 1 relieve]
- 2 (5) Relieve an employee from duties because of lack of work
 3 or other legitimate reason; [(4) maintain]
- 4 (6) Maintain efficiency [of] and productivity, including
 5 maximizing the use of advanced technology, in
 6 government operations; [(5) determine]
- 7 (7) Determine methods, means, and personnel by which the
 8 employer's operations are to be conducted; and [take]
- 9 (8) Take such actions as may be necessary to carry out the
 10 missions of the employer in cases of emergencies[;
 11 provided that the].
- 12 The employer and the exclusive representative may negotiate
 13 procedures governing the promotion and transfer of employees to

14 positions within a bargaining unit[, procedures governing]; the
 15 suspension, demotion, discharge, or other disciplinary actions
 16 taken against employees[, and procedures governing] within the
 17 bargaining unit; and the layoff of employees[; provided further
 18 that violations] within the bargaining unit. Violations of the
 19 procedures so negotiated may be [the] subject [of a] to the
 20 grievance [process agreed to by the employer and the exclusive
 21 representative.] procedure in the collective bargaining
 22 agreement.

23 (e) Negotiations relating to contributions to the Hawaii

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1 public employees health fund shall be for the purpose of agreeing
 2 upon the amounts which the State and counties shall contribute
 3 under section 87-4, toward the payment of the costs for a health
 4 benefits plan, as defined in section 87-1(8), and group life
 5 insurance benefits, and the parties shall not be bound by the
 6 amounts contributed under prior agreements; provided that section
 7 89-11 for the resolution of disputes by way of fact-finding or
 8 arbitration shall not be available to resolve impasses or
 9 disputes relating to the amounts the State and counties shall
 10 contribute to the Hawaii public employees health fund.

11 (f) The repricing of classes within an appropriate
 12 bargaining unit may be negotiated as follows:

13 (1) At the request of the exclusive representative and at
 14 times allowed under the collective bargaining
 15 agreement, the employer shall negotiate the repricing
 16 of classes within the bargaining unit. The negotiated
 17 repricing actions that constitute cost items shall be
 18 subject to the requirements in section 89-10.

19 (2) If repricing has not been negotiated under paragraph
 20 (1), the employer of each jurisdiction shall ensure
 21 establishment of procedures to periodically review, at
 22 least once in five years, unless otherwise agreed to by
 23 the parties, the repricing of classes within the

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1 bargaining unit. The repricing of classes based on the
 2 results of the periodic review shall be at the
 3 discretion of the employer. Any appropriations
 4 required to implement the repricing actions that are
 5 made at the employer's discretion shall not be
 6 construed as cost items."

7 SECTION 99. Section 89-10, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 "§89-10 Written agreements; [appropriations for
 10 implementation; enforcement.] enforceability; cost items. (a)

11 Any collective bargaining agreement reached between the employer
 12 and the exclusive representative shall be subject to ratification
 13 by the employees concerned[.], except for an agreement reached
 14 pursuant to an arbitration decision. Ratification is not
 15 required for other agreements effective during the term of the
 16 collective bargaining agreement, whether a supplemental
 17 agreement, an agreement on reopened items, or a memorandum of
 18 agreement, and any agreement to extend the term of the collective
 19 bargaining agreement. The agreement shall be reduced to writing
 20 and executed by both parties. [The agreement may contain] Except
 21 for cost items, all provisions in the agreement that are in
 22 conformance with this chapter, including a grievance procedure
 23 and an impasse procedure culminating in [final and binding] an

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1 arbitration[, and] decision, shall be valid and enforceable [when
 2 entered into in accordance with provisions of this chapter.] and
 3 shall be effective as specified in the agreement, regardless of
 4 the requirements to submit cost items under this section and
 5 section 89-11.

6 (b) All cost items shall be subject to appropriations by
 7 the appropriate legislative bodies. The employer shall submit
 8 within ten days of the date on which the agreement is ratified by
 9 the employees concerned all cost items contained therein to the

10 appropriate legislative bodies, except that if any cost items
 11 require appropriation by the state legislature and it is not in
 12 session at the time, the cost items shall be submitted for
 13 inclusion in the governor's next operating budget within ten days
 14 after the date on which the agreement is ratified. The state
 15 legislature or the legislative bodies of the counties acting in
 16 concert, as the case may be, may approve or reject the cost items
 17 submitted to them, as a whole. If the state legislature or the
 18 legislative body of any county rejects any of the cost items
 19 submitted to them, all cost items submitted shall be returned to
 20 the parties for further bargaining.

21 (c) Because effective and orderly operations of government
 22 are essential to the public, it is declared to be in the public
 23 interest that in the course of collective bargaining, the public

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1 employer and the exclusive representative for each bargaining
 2 unit shall by mutual agreement include provisions in the
 3 collective bargaining agreement for that bargaining unit for an
 4 expiration date which will be on June 30th of an odd-numbered
 5 year.

6 The parties may include provisions for [the] reopening
 7 [date] during the term of a collective bargaining agreement[,];

8 provided that [such provisions shall not allow for the reopening
9 of] cost items as defined in section 89-2[.] shall be subject to
10 the requirements of this section.

11 (d) [All existing rules and regulations adopted by the
12 employer, including civil service or other personnel regulations,
13 which are not contrary to this chapter, shall remain applicable.
14 If] Whenever there is a conflict between the collective
15 bargaining agreement and any of the rules [and regulations,]
16 adopted by the employer, including civil service or other
17 personnel policies, standards, and procedures, the terms of the
18 agreement shall prevail; provided that the terms are not
19 inconsistent with section 89-9(d).

20 Whenever there are provisions in a collective bargaining
21 agreement concerning a matter under chapter 76 or 78 that is
22 negotiable under chapter 89, the terms of the agreement shall
23 prevail; provided that the terms are not inconsistent with

1 section 89-9(d)."

2 SECTION 100. Section 89-11, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§89-11 Resolution of disputes; [grievances;] impasses.

5 (a) [A public employer shall have the power to enter into
6 written agreement with the exclusive representative of an

7 appropriate bargaining unit setting forth a grievance procedure
 8 culminating in a final and binding decision, to be invoked in the
 9 event of any dispute concerning the interpretation or application
 10 of a written agreement. In the absence of such a procedure,
 11 either party may submit the dispute to the board for a final and
 12 binding decision. A dispute over the terms of an initial or
 13 renewed agreement does not constitute a grievance.

14 (b)] A public employer [shall have the power to] and an
 15 exclusive representative may enter, at any time, into a written
 16 agreement [with the exclusive representative of an appropriate
 17 bargaining unit] setting forth an alternate impasse procedure
 18 culminating in [a final and binding] an arbitration decision[,]
 19 pursuant to subsection (f)., to be invoked in the event of an
 20 impasse over the terms of an initial or renewed agreement. The
 21 alternate impasse procedure shall specify whether the parties
 22 desire an arbitrator or arbitration panel, how the neutral
 23 arbitrator is to be selected or the name of the person whom the

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1 parties desire to be appointed as the neutral arbitrator, and
 2 other details regarding the issuance of an arbitration decision.
 3 When an impasse exists, the parties shall notify the board if
 4 they have agreed on an alternate impasse procedure. The board

5 shall permit the parties to proceed with their procedure and
6 assist at times and to the extent requested by the parties in
7 their procedure. In the absence of [such a procedure, either
8 party may request the assistance of the board by submitting to
9 the board and to the other party to the dispute a clear, concise
10 statement of each issue on which an impasse has been reached
11 together with a certificate as to the good faith of the statement
12 and the contents therein. The board, on its own motion, may
13 determine that an impasse exists on any matter in a dispute. If
14 the board determines on its own motion that an impasse exists, it
15 may render assistance by notifying both parties to the dispute of
16 its intent.] an alternate impasse procedure, the board shall
17 assist in the resolution of the impasse at times and in the
18 manner prescribed in subsection (d) or (e), as the case may be.
19 If the parties subsequently agree on an alternate impasse
20 procedure, the parties shall notify the board. The board shall
21 immediately discontinue the procedures initiated pursuant to
22 subsection (d) or (e) and permit the parties to proceed with
23 their procedure.

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1 (b) An impasse during the term of a collective bargaining
2 agreement on reopened items or items regarding a supplemental
3 agreement shall not be subject to the impasse procedures in this

4 section. The parties may mutually agree on an impasse procedure,
 5 but if the procedure culminates in an arbitration decision, the
 6 decision shall be pursuant to subsection (f).

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

9 (1) More than ninety days after written notice by either
 10 party to initiate negotiations, either party may give
 11 written notice to the board that an impasse exists.

12 The date on which the board receives notice shall be
 13 the date of impasse;

14 (2) If neither party gives written notice of an impasse and
 15 there are unresolved issues on April 15 of an even-
 16 numbered year, the board shall declare on April 15 that
 17 an impasse exists and April 16 shall be the date of
 18 impasse.

19 (d) [The board shall render assistance to resolve the
 20 impasse according to the following schedule:] If an impasse
 21 exists between a public employer and the exclusive bargaining
 22 representative of bargaining unit (1), nonsupervisory employees
 23 in blue collar positions; bargaining unit (5), teachers and other

1 personnel of the department of education; or bargaining unit (7),

2 faculty of the University of Hawaii and the community college
3 system, the board shall assist in the resolution of the impasse
4 as follows:

5 (1) [Mediation. Assist the parties involved] Voluntary
6 mediation. During the first twenty days of the date of
7 impasse, either party may request the board to assist
8 in a voluntary resolution of the impasse by appointing
9 a mediator or mediators, representative of the
10 public[,] from a list of qualified persons maintained
11 by the board[, within three days after the date of the
12 impasse, which shall be deemed to be the day on which
13 notification is received or a determination is made
14 that an impasse exists].

15 (2) Fact-finding. If the [dispute] impasse continues
16 [fifteen] twenty days after the date of [the] impasse,
17 the board shall immediately appoint[, within three
18 days,] a fact-finding [board] panel of not more than
19 three members, representative of the public[,] from a
20 list of qualified persons maintained by the board. The
21 fact-finding [board,] panel shall, in addition to
22 powers delegated to it by the board, [have the power
23 to] make recommendations for the resolution of the

1 [dispute.] impasse pursuant to subsection (f). The
2 fact-finding [board,] panel, acting by a majority of
3 its members, shall transmit a report on its findings of
4 fact and [any] recommendations for the resolution of
5 the [dispute] impasse to both parties within [ten]
6 sixty days after its appointment[.] and notify the
7 board of the date when it transmitted the fact-finding
8 report. [If the dispute remains unresolved five days
9 after the transmittal of the findings of fact and any
10 recommendations, the board shall publish the findings
11 of fact and any recommendations for public information
12 if the dispute is not referred to final and binding
13 arbitration.]

14 (3) Arbitration. If the dispute continues thirty days
15 after the date of the impasse, the parties may mutually
16 agree to submit the remaining differences to
17 arbitration, which shall result in a final and binding
18 decision. The arbitration panel shall consist of three
19 arbitrators, one selected by each party, and the third
20 and impartial arbitrator selected by the other two
21 arbitrators. If either party fails to select an
22 arbitrator or for any reason there is a delay in the
23 naming of an arbitrator, or if the arbitrators fail to

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1 select a neutral arbitrator within the time prescribed
2 by the board, the board shall appoint the arbitrator or
3 arbitrators necessary to complete the panel, which
4 shall act with the same force and effect as if the
5 panel had been selected by the parties as described
6 above. The arbitration panel shall take whatever
7 actions necessary, including but not limited to
8 inquiries, investigations, hearings, issuance of
9 subpoenas, and administering oaths, in accordance with
10 procedures prescribed by the board to resolve the
11 impasse. If the dispute remains unresolved within
12 fifty days after the date of the impasse, the
13 arbitration panel shall transmit its findings and its
14 final and binding decision on the dispute to both
15 parties. The parties shall enter into an agreement or
16 take whatever action is necessary to carry out and
17 effectuate the decision. All items requiring any
18 moneys for implementation shall be subject to
19 appropriations by the appropriate legislative bodies,
20 and the employer shall submit all such items agreed to
21 in the course of negotiations within ten days to the
22 appropriate legislative bodies.

23 The time frame prescribed in the foregoing schedule may be

1 altered by mutual agreement of the parties, subject to the
2 approval of the board.

3 The costs for mediation and fact-finding shall be borne by
4 the board. All other costs, including that of a neutral
5 arbitrator, shall be borne equally by the parties involved in the
6 dispute.

7 (c) If the parties have not mutually agreed to submit the
8 dispute to final and binding arbitration, either party shall be
9 free to take whatever lawful action it deems necessary to end the
10 dispute; provided that no action shall involve the disruption or
11 interruption of public services within sixty days after the fact-
12 finding board has made public its findings of fact and any
13 recommendations for the resolution of the dispute. The employer]

14 (3) Mediation. If the impasse continues ten days after the
15 transmittal of the fact-finding report, the board shall
16 appoint a mediator or mediators representative of the
17 public from a list of qualified persons maintained by
18 the board, to assist the parties in a voluntary
19 resolution of the impasse. The parties shall make the
20 fact-finding report available to the mediator or
21 mediators.

22 (4) Fact-finding report made public. If the impasse

1 finding report, the parties shall make available to the
 2 board the fact-finding report which shall be released
 3 by the board for public information.

4 (5) Submission of fact-finding report and response of the
 5 parties. If the impasse continues and the parties have
 6 not mutually agreed to submit the dispute to
 7 arbitration for a decision by January 31 of an odd-
 8 numbered year, the employers shall submit on February 1
 9 to the appropriate legislative bodies the [employer's]
 10 employers' recommendations for the settlement of the
 11 [dispute] impasse on all cost items together with the
 12 [findings of fact and any recommendations made by the
 13 fact-finding board.] fact-finding report. The
 14 exclusive representative may submit to the appropriate
 15 legislative [body] bodies its recommendations for the
 16 settlement of the [dispute on all] cost items[.] in
 17 impasse.

18 [(d)] (e). If [a dispute] an impasse exists between a public
 19 employer and the exclusive representative of [appropriate]
 20 bargaining unit (2), supervisory employees in blue collar
 21 positions; [appropriate] bargaining unit (3), nonsupervisory

22 employees in white collar positions; [appropriate] bargaining
 23 unit (4), supervisory employees in white collar positions;

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1 [appropriate] bargaining unit (6), educational officers and other
 2 personnel of the department of education under the same salary
 3 schedule; [appropriate] bargaining unit (8), personnel of the
 4 University of Hawaii and the community college system, other than
 5 faculty; [optional appropriate] bargaining unit (9), registered
 6 professional nurses; [optional appropriate] bargaining unit (10),
 7 institutional, health, and correctional workers; [optional
 8 appropriate] bargaining unit (11), firefighters; [optional
 9 appropriate] bargaining unit (12), police officers; or [optional
 10 appropriate] bargaining unit (13), professional and scientific
 11 employees, [other than registered professional nurses, exists
 12 over the terms of an initial or renewed agreement more than
 13 ninety working days after written notification by either party to
 14 initiate negotiations, either party may give written notice to
 15 the board that an impasse exists and] the board shall assist in
 16 the [voluntary] resolution of the impasse [by appointing a
 17 mediator within three days after the date of impasse. If the
 18 dispute continues to exist fifteen working days after the date of
 19 impasse, the dispute shall be submitted to arbitration

20 proceedings as provided herein.

21 The board shall immediately determine whether the parties to
22 the dispute have mutually agreed upon an arbitration procedure
23 and whether the parties have agreed upon a person or persons whom

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1 the parties desire to be appointed as the arbitrator or as a
2 panel of arbitrators, as the case may be.

3 If the board determines that an arbitration procedure
4 mutually agreed upon by the parties will result in a final and
5 binding decision, and that an arbitrator or arbitration panel has
6 been mutually agreed upon, it shall appoint such arbitrator or
7 arbitration panel and permit the parties to proceed with the
8 arbitration procedure mutually agreed upon.] as follows:

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

14 (2) Arbitration. If[, after eighteen working days from the
15 date of impasse, the parties have not mutually agreed
16 upon an arbitration procedure and an arbitrator or
17 arbitration panel,] the impasse continues twenty days
18 after the date of impasse, the board shall immediately

19 notify the employer and the exclusive representative
20 that the [issues in dispute] impasse shall be submitted
21 to a three-member arbitration panel who shall follow
22 the arbitration procedure provided herein.

23 (A) Arbitration panel. [Within twenty-one working

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1 days from the date of impasse, two] Two members of
2 the arbitration panel shall be selected by the
3 parties; one shall be selected by the employer and
4 one shall be selected by the exclusive
5 representative. The [impartial] neutral third
6 member of the arbitration panel [shall be selected
7 by the two previously selected panel members and],
8 who shall chair the arbitration panel[.], shall be
9 selected by mutual agreement of the parties. In
10 the event that the [two previously selected
11 arbitration panel members] parties fail to select
12 [an impartial third arbitrator] the neutral third
13 member of the arbitration panel within [twenty-
14 four working] thirty days from the date of
15 impasse, the board shall request the American
16 Arbitration Association, or its successor in

17 function, to furnish a list of five qualified
 18 arbitrators from which the [impartial] neutral
 19 arbitrator shall be selected. Within five
 20 [calendar] days after receipt of such list, the
 21 parties shall alternately strike names [therefrom]
 22 from the list until a single name is left, who
 23 shall be immediately appointed by the board as the

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1 [impartial] neutral arbitrator and chairperson of
 2 the arbitration panel.

3 (B) Final positions. Upon the selection and
 4 appointment of the arbitration panel, each party
 5 shall submit to the panel, in writing, with copy
 6 to the other party, a final [offer] position which
 7 shall include all provisions in any existing
 8 collective bargaining agreement not being
 9 modified, all provisions already agreed to in
 10 negotiations, and all further provisions [other
 11 than those relating to contributions by the State
 12 and respective counties to the Hawaii public
 13 employees health fund] which each party is
 14 proposing for inclusion in the final agreement.

15 (C) Arbitration hearing. Within one hundred twenty

16 [calendar] days of its appointment, the
 17 arbitration panel shall commence a hearing at
 18 which time the parties may submit either in
 19 writing or through oral testimony, all information
 20 or data supporting their respective final [offers.
 21 Nothing in this section shall be construed to
 22 prohibit the parties from reaching a voluntary
 23 settlement on the unresolved issues, with or

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1 without the assistance of a mediator, at any time
 2 prior to the conclusion of the hearing conducted
 3 by the arbitration panel.] positions. The
 4 arbitrator, or the chairperson of the arbitration
 5 panel together with the other two members, are
 6 encouraged to assist the parties in a voluntary
 7 resolution of the impasse through mediation, to
 8 the extent practicable throughout the entire
 9 arbitration period until the date the panel is
 10 required to issue its arbitration decision.

11 (D) Arbitration decision. Within thirty [calendar]
 12 days after the conclusion of the hearing, a
 13 majority of the arbitration panel shall [issue a

14 final and binding] reach a decision[.] pursuant to
 15 subsection (f) on all provisions that each party
 16 proposed in its respective final position for
 17 inclusion in the final agreement and transmit a
 18 preliminary draft of its decision to the parties.
 19 The parties shall review the preliminary draft for
 20 completeness, technical correctness, and clarity
 21 and may mutually submit to the panel any desired
 22 changes or adjustments that shall be incorporated
 23 in the final draft of its decision. Within

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1 fifteen days after the transmittal of the
 2 preliminary draft, a majority of the arbitration
 3 panel shall issue the arbitration decision.

4 (f) [In reaching a decision, the arbitration panel] A fact-
 5 finding panel in making its report and an arbitrator or
 6 arbitration panel in reaching its decision shall give weight to
 7 the following factors [listed below] and shall include in [a
 8 written opinion] its written report or decision an explanation of
 9 how the factors were taken into account [in reaching the
 10 decision]:

11 (1) The lawful authority of the employer[.], including the
 12 ability of the employer to use special funds only for

13 authorized purposes or under specific circumstances
 14 because of limitations imposed by federal or state laws
 15 or county ordinances, as the case may be.

16 (2) Stipulations of the parties.

17 (3) The interests and welfare of the public.

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

23 (5) The present and future general economic condition of

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1 the counties and the State.

2 (6) Comparison of wages, hours, and conditions of
 3 employment of the employees involved in the arbitration
 4 proceeding with the wages, hours, and conditions of
 5 employment of other persons performing similar
 6 services, and of other state and county employees in
 7 Hawaii.

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

10 (8) The overall compensation presently received by the

11 employees, including direct wage compensation,
 12 vacation, holidays and excused time, insurance and
 13 pensions, medical and hospitalization benefits, the
 14 continuity and stability of employment, and all other
 15 benefits received.

16 (9) Changes in any of the foregoing circumstances during
 17 the pendency of the arbitration proceedings.

18 (10) Such other factors, not confined to the foregoing,
 19 which are normally or traditionally taken into
 20 consideration in the determination of wages, hours, and
 21 conditions of employment through voluntary collective
 22 bargaining, mediation, fact-finding, arbitration, or
 23 otherwise between the parties, in the public service or

1 in private employment.

2 (g). The decision of the arbitration panel shall be final
 3 and binding upon the parties on all provisions submitted to the
 4 arbitration panel. If the parties have reached agreement with
 5 respect to the amounts of contributions by the State and counties
 6 to the Hawaii public employees health fund by the tenth working
 7 day after the arbitration panel issues its decision, the final
 8 and binding agreement of the parties on all provisions shall
 9 consist of the panel's decision and the amounts of contributions

10 agreed to by the parties. If the parties have not reached
 11 agreement with respect to the amounts of contributions by the
 12 State and counties to the Hawaii public employees health fund by
 13 the close of business on the tenth working day after the
 14 arbitration panel issues its decision, the parties shall have
 15 five days to submit their respective recommendations for such
 16 contributions to the legislature, if it is in session, and if the
 17 legislature is not in session, the parties shall submit their
 18 respective recommendations for such contributions to the
 19 legislature during the next session of the legislature. In such
 20 event, the final and binding agreement of the parties on all
 21 provisions shall consist of the panel's decision and the amounts
 22 of contributions established by the legislature by enactment,
 23 after the legislature has considered the recommendations for such

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1 contributions by the parties. It is strictly understood that no
 2 member of a bargaining unit subject to this subsection shall be
 3 allowed to participate in a strike on the issue of the amounts of
 4 contributions by the State and counties to the Hawaii public
 5 employees health fund. The parties shall take whatever action is
 6 necessary to carry out and effectuate the final and binding
 7 agreement. The parties may, at any time and by mutual agreement,

8 amend or modify the panel's decision.

9 Agreements reached pursuant to the decision of an
10 arbitration panel and the amounts of contributions by the State
11 and counties to the Hawaii public employees health fund, as
12 provided herein, shall not be subject to ratification by the
13 employees concerned. All items requiring any moneys for
14 implementation shall be subject to appropriations by the
15 appropriate legislative bodies and the employer shall submit all
16 such items within ten days after the date on which the agreement
17 is entered into as provided herein, to the appropriate
18 legislative bodies.

19 (h) Any time frame provided in an impasse procedure,
20 whether an alternate procedure or the procedures in this section,
21 may be modified by mutual agreement of the parties. In the
22 absence of a mutual agreement to modify time frames, any delay,
23 failure, or refusal by either party to participate in the impasse

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1 procedure shall not be permitted to halt or otherwise delay the
2 process, unless the board so orders due to an unforeseeable
3 emergency. The process shall commence or continue as though all
4 parties were participating.

5 (i) Nothing in this section shall be construed to prohibit
6 the parties from reaching a voluntary settlement on the

7 unresolved issues at any time prior to the issuance of an
8 arbitration decision.

9 (j). The costs and expenses for mediation and fact-finding
10 services provided under subsection (d) or (e) shall be borne by
11 the board. The costs and expenses for any other services
12 performed by neutrals pursuant to mutual agreement of the parties
13 and the costs for a neutral arbitrator shall be borne equally by
14 the parties. All other costs incurred by either party in
15 complying with [these provisions,] this section, including the
16 costs of its selected member on the arbitration panel, shall be
17 borne by the party incurring them[, except that all costs and
18 expenses of the impartial arbitrator shall be borne equally by
19 the parties]."

20 SECTION 101. Section 89-12, Hawaii Revised Statutes, is
21 amended by amending subsections (a) and (b) to read as follows:

22 "(a) [Participation in a strike] It shall be unlawful for
23 any employee [who] to participate in a strike if the employee:

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- 1 (1) [is] Is not included in [an] the appropriate bargaining
- 2 unit [for which an exclusive representative has been
- 3 certified by the board,] involved in an impasse; or
- 4 (2) [is] Is included in [an] the appropriate bargaining

5 unit [for which process for resolution of a dispute is
 6 by referral to final and binding arbitration, or]
 7 involved in an impasse that has been referred to
 8 arbitration for a decision; or

9 (3) [is] Is an essential employee[.], but only when the
 10 employee is designated to fill an essential position.

11 (b) It shall be lawful for an employee, who is not
 12 prohibited from striking under [paragraph] subsection (a) and who
 13 is in the appropriate bargaining unit involved in an impasse, to
 14 participate in a strike [after] under the following conditions:

15 (1) [the] The requirements of section 89-11 relating to the
 16 resolution of disputes have been complied with in good
 17 faith[,];

18 (2) [the] The proceedings for the prevention of any
 19 prohibited practices have been exhausted[,];

20 (3) [sixty days have elapsed since the fact-finding board
 21 has made public its findings and any recommendation,]
 22 The collective bargaining agreement and any extension
 23 of the agreement has expired; and

1 (4) [the] The exclusive representative has given a ten-day
 2 notice of intent to strike to the board and to the
 3 employer."

4 SECTION 102. Section 89-15, Hawaii Revised Statutes, is

5 amended to read as follows:

6 "§89-15 Financial reports to employees. Every employee

7 organization shall keep an adequate record of its financial

8 transactions [and]. It shall make available [annually,] to [the]

9 all employees who [are members of the organization, within sixty

10 days after the end of its fiscal year, a detailed written] pay

11 the employee organization dues or its equivalent an annual

12 financial report [thereof] in the form of a balance sheet and an

13 operating statement, certified as to accuracy by a certified

14 public accountant[.], within one hundred twenty days after the

15 end of its fiscal year. In the event of failure [of compliance]

16 to comply with this section, [any] an employee [within the

17 organization] may petition the board for an order compelling

18 [such] compliance. [An] The order [of the board on such

19 petition] shall be enforceable in the same manner as other orders

20 of the board under this chapter."

21 SECTION 103. Section 89-18, Hawaii Revised Statutes, is

22 amended to read as follows:

23 "§89-18 Penalty. Any person who wilfully assaults,

1 resists, prevents, impedes, or interferes with [a mediator,

2 member of the fact-finding board, or arbitrator, or] any member
3 of the board or any of [the] its agents or employees [of the
4 board] in the performance of duties pursuant to this chapter,
5 shall be fined not more than \$500 or imprisoned not more than one
6 year, or both. The term "agent" includes a neutral third party
7 who assists in a resolution of an impasse under section 89-11."

8 SECTION 104. Section 89A-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§89A-1 Office of collective bargaining [in the state
11 government established.] and managed competition. (a) There
12 shall be established an office of collective bargaining and
13 managed competition in the office of the governor to assist the
14 governor in [negotiating with and entering into written
15 agreements between the public employers] implementation and
16 review of the managed process of public-private competition for
17 particular government services through the managed competition
18 process and negotiations between the State and the exclusive
19 representatives on matters of wages, hours, and other negotiable
20 terms and conditions of employment.

21 (b). The position of chief negotiator for the State is
22 hereby established to head the office. The chief negotiator
23 shall be experienced in labor relations. [The governor shall

1 appoint and remove the chief negotiator and the deputy
2 negotiators, who shall not be subject to chapters 76, 77, and 89.
3 Effective January 1, 1989, and January 1, 1990, the salary of the
4 chief negotiator shall be set by the governor within the range
5 from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year,
6 respectively. The chief negotiator and deputy negotiators shall
7 be included in any benefit program generally applicable to the
8 officers and employees of the State. All other employees shall
9 be appointed in accordance with chapters 76 and 77. The chief
10 negotiator shall serve as one of the governor's designated
11 representatives as set forth in section 89-6(b).] The governor
12 shall appoint the chief negotiator and may also appoint deputy
13 negotiators to assist the chief negotiator. The governor, at
14 pleasure, may remove the chief negotiator and any deputy
15 negotiator. All other employees shall be appointed by the chief
16 negotiator. All employees in the office of collective bargaining
17 shall be included in any benefit programs generally applicable to
18 employees of the State.

19 (c) Subject to the approval of the governor, the office of
20 collective bargaining and managed competition shall:

21 (1) Assist the governor in formulating the State's
22 philosophy for public collective bargaining and for the
23 managed process for public-private competition for

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1 government services, including which particular service
2 can be provided more efficiently, effectively, and
3 economically considering all relevant costs; and
4 (2) Coordinate the managed competition process to ensure
5 the negotiations of subject matters that are negotiable
6 under the collective bargaining laws in the public
7 sectors;

8 (d) No employee of the office of collective bargaining
9 shall be included in the civil service, any civil service
10 classification system, or any appropriate bargaining unit;
11 provided that any civil service position on the effective date of
12 this Act shall not be exempted from civil service until the
13 incumbent in that position on the effective date of this Act
14 vacates that position."

15 SECTION 105. Chapter 89C, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§89C- Definitions. As used in this chapter:

19 "Adjustment" means a change in wages, hours, benefits, or
20 other term and condition of employment.

21 "Appropriate authority" means the governor, the respective
22 mayors, the chief justice of the supreme court, the board of
23 education, the board of regents, the Hawaii health system

1 corporation board, the auditor, the ombudsman, and the director
2 of the legislative reference bureau. These individuals or boards
3 may make adjustments for their respective excluded employees.

4 "Excluded employee" or "employee" means any individual who
5 is employed by an appropriate authority and is not included in an
6 appropriate bargaining unit under section 89-6 and, therefore, is
7 not entitled to collective bargaining coverage under chapter 89."

8 SECTION 106. Section 89C-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§89C-1 Purpose. [The legislature finds that existing
11 statutes do not permit the chief executives of the State and
12 counties, the board of education, the board of regents, the
13 auditor, the director of the legislative reference bureau, the
14 ombudsman, and the chief justice of the supreme court sufficient
15 flexibility to make appropriate and timely adjustments in the
16 compensation, hours, terms, and conditions of employment, amounts
17 of contributions by the State and respective counties to the
18 Hawaii public employees health fund, and other benefits for
19 public officers and employees who are excluded from collective
20 bargaining coverage under chapter 89. To this end, the
21 legislature grants to the respective chief executives, the board
22 of education, the board of regents, the auditor, the director of

23 the legislative reference bureau, the ombudsman, and the chief

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1 justice, the authority to make such adjustments for officers and
2 employees excluded from collective bargaining in conformance with
3 this chapter.

4 Nothing in this chapter shall be construed to interfere with
5 or diminish any authority already provided by statutes to the
6 chief executives, the board of education, the board of regents,
7 the auditor, the director of the legislative reference bureau,
8 the ombudsman, or the chief justice.] The legislature finds that
9 the appropriate authorities do not have sufficient flexibility to
10 adjust the wages, hours, benefits, and other terms and conditions
11 of employment for their respective excluded public officers and
12 employees. The organizational status and employment conditions
13 of these individuals in the excluded group are diverse and
14 include: cabinet members, board and commission members,
15 managerial employees, and non-managerial employees; appointees,
16 civil service employees, and employees exempt from civil service;
17 permanent and temporary employees; and full-time, part-time,
18 seasonal, casual, and intermittent employees. Sufficient
19 flexibility must be provided so that timely and relevant
20 adjustments can be made. To this end, the legislature grants
21 appropriate authorities the necessary flexibility to make

22 adjustments as provided in this chapter; provided that nothing in
23 this chapter shall be construed to interfere with or diminish

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1 authority already provided to them."

2 SECTION 107. Section 89C-2, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§89C-2 Adjustments authorized; limitations, restrictions.

5 [Any provision of law to the contrary notwithstanding, the
6 compensation, hours, terms, and conditions of employment, amounts
7 of contributions by the State and respective counties to the
8 Hawaii public employees health fund, and other benefits for
9 public officers and employees who are excluded from collective
10 bargaining shall be adjusted by the chief executives of the State
11 or counties, the board of education, the board of regents, the
12 auditor, the director of the legislative reference bureau, the
13 ombudsman, or the chief justice, as applicable. The chief
14 executives, the board of education, the board of regents, the
15 auditor, the director of the legislative reference bureau, the
16 ombudsman, and the chief justice, or their designated
17 representatives, shall determine the adjustments to be made and
18 which excluded officers or employees are to be granted
19 adjustments under this chapter, in accordance with the following

20 guidelines and limitations:

21 (1) For excluded officers and employees under the same
 22 compensation plans as officers and employees within
 23 collective bargaining units, such adjustments shall be

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1 not less than those provided under collective
 2 bargaining agreements for officers and employees hired
 3 on a comparable basis.

4 (2) For excluded officers and employees in the excluded
 5 managerial compensation plan, such adjustments shall be
 6 not less than those provided under collective
 7 bargaining to officers and employees in the
 8 professional and scientific employees bargaining unit.

9 Alternate adjustments may be granted to officers and
 10 employees whose work is related to that of officers and
 11 employees in the other optional bargaining units in
 12 order to maintain appropriate pay relationships with
 13 such officers and employees.

14 (3) No adjustment in compensation, hours, terms, and
 15 conditions of employment, amounts of contributions by
 16 the State and respective counties to the Hawaii public
 17 employees health fund, or other benefits shall be
 18 established which is in conflict with the system of

19 personnel administration based on merit principles and
 20 scientific methods governing the classification of
 21 positions and the employment conduct, movement, and
 22 separation of public officers and employees.

23 (4) The compensation of officers or employees whose

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1 salaries presently are limited or fixed by legislative
 2 enactment shall not be adjusted under this chapter, but
 3 shall continue to be adjusted by the appointing
 4 authority within limits established by law or by
 5 legislative enactment.

6 (5) The compensation of officers or employees, who are not
 7 covered under the same compensation plans as officers
 8 and employees within collective bargaining units and
 9 whose salaries presently are authorized to be fixed by
 10 the appointing authority, need not be adjusted under
 11 this chapter. The appointing authority may continue to
 12 make specific adjustments in the salaries of individual
 13 officers or employees from available funds
 14 appropriated.

15 (6) Adjustments to the amounts of contributions by the
 16 State and respective counties to the Hawaii public

17 employees health fund on behalf of officers or
 18 employees who are not covered by adjustments made under
 19 this chapter shall be made by legislative enactment.]

20 Each appropriate authority may make adjustments for their
 21 respective excluded employees subject to the following guidelines
 22 and limitations:

23 (1) The compensation of excluded employees, whose pay is

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1 presently limited or fixed by legislative action, shall
 2 not be adjusted under this chapter and shall continue
 3 to be limited or fixed by the respective legislative
 4 body;

5 (2) The compensation of excluded employees exempt from
 6 civil service coverage, whose pay is set at the
 7 discretion of the appointing authority, shall continue
 8 to be adjusted at the discretion of the appointing
 9 authority from funds allowed for this purpose;

10 (3) Any adjustment made for excluded civil service
 11 employees shall be consistent with the merit principle
 12 and shall not diminish any rights provided under
 13 chapter 76;

14 (4) For excluded employees under the same classification
 15 systems as employees within collective bargaining

16 units, adjustments shall be not less than those
 17 provided under collective bargaining agreements for
 18 employees hired on a comparable basis;
 19 (5) For excluded employees other than those under paragraph
 20 (4), adjustments shall, to the extent practicable,
 21 uniformly apply to every excluded employee within a
 22 homogeneous grouping, such as, cabinet members or
 23 managerial employees, to ensure fairness. This does

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1 not preclude variable adjustments based on performance
 2 or other job criteria and specific adjustments
 3 warranted based on the nature of work performed or
 4 working conditions; and
 5 (6) No adjustment shall be made in benefits provided under
 6 chapter 88 unless specifically authorized by that
 7 chapter, or with respect to any other matter that the
 8 legislature may specifically prohibit or limit by law."

9 SECTION 108. Section 89C-3, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "§89C-3 Adjustments for [officers and] excluded civil
 12 service employees [covered by chapter 77]. [The state director
 13 of human resources development and the directors of personnel

14 services of the counties who shall serve as representatives of
15 their respective chief executives, and the administrative
16 director of the courts who shall serve as the representative of
17 the chief justice, shall decide by majority vote on the
18 adjustments to be made under this chapter for officers and
19 employees covered under chapter 77. Any adjustments and their
20 effective dates shall be uniform among the jurisdictions.] (a)
21 Each jurisdiction shall determine the adjustments that are
22 relevant for its respective excluded civil service employees
23 based on recommendations from its respective personnel director.

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1 (b) In formulating recommendations to the appropriate
2 authority, the respective director shall:

3 (1) Establish procedures that allow excluded civil service
4 employees and employee organizations representing them
5 the opportunity to provide input on the kinds of
6 adjustments that are relevant and important to them for
7 the director's consideration;

8 (2) Ensure that adjustments for excluded civil service
9 employees result in compensation and benefit packages
10 that are appropriate for what they do and the
11 contribution they make in consideration of the
12 compensation and benefit packages provided under

13 collective bargaining agreements for counterparts and
 14 subordinates within the jurisdiction; and
 15 (3). Confer with other directors on proposed adjustments to
 16 ensure adjustments are consistent with chapter 76."

17 SECTION 109. Section 89C-4, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "§89C-4 Adjustments for [other officers and employees.(a)
 20 The respective representatives of the State, counties, and the
 21 judiciary shall submit to their respective chief executives and
 22 to the chief justice, recommendations on the adjustments to be
 23 made under this chapter for other officers and employees within

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1 their respective personnel systems. The conference of personnel
 2 directors shall confer prior to the submittal of any recommended
 3 adjustment by each director to the director's chief executive or
 4 by the administrative director of the courts to the chief
 5 justice. Any adjustments and their effective dates shall be
 6 uniform, if practicable, among the jurisdictions.

7 (b) The superintendent of education and the president of
 8 the University of Hawaii shall submit to the board of education
 9 and the board of regents, respectively, recommendations on the
 10 adjustments to be made under this chapter for officers and

11 employees within their respective personnel systems. The
 12 superintendent and the president shall confer with the state
 13 director of human resources development prior to the submittal of
 14 any recommended adjustment. Any adjustments adopted by the board
 15 of education or the board of regents which presently require the
 16 approval of the governor shall remain subject to the approval of
 17 the governor.

18 (c) The auditor, the director of the legislative reference
 19 bureau, and the ombudsman shall decide by majority vote on the
 20 adjustments to be made under this chapter for officers and
 21 employees within their respective offices, including employees of
 22 the state ethics commission which is administratively within the
 23 office of the auditor. The auditor, the director of the

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1 legislative reference bureau, and the ombudsman shall confer with
 2 the state director of human resources development prior to voting
 3 on any adjustment. Any adjustments and their effective dates
 4 shall be uniform for employees under sections 23-8, 23G-2, 84-35,
 5 and 96-3.] excluded employees exempt from civil service. Each
 6 appropriate authority shall determine the adjustments that are
 7 relevant for their respective excluded employees who are exempt
 8 from civil service in consideration of the compensation and
 9 benefit packages provided for other employees in comparable

10 agencies."

11 SECTION 110. Section 89C-5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§89C-5 [Implementation; effective date, appropriations,
14 approval.(a) Adjustments made under this chapter which do not
15 exceed those for officers and employees in collective bargaining
16 units shall take effect on the same dates as appropriate
17 collective bargaining agreements. Any such adjustments which
18 constitute cost items shall be subject to appropriations by the
19 appropriate legislative bodies. Such cost items shall be
20 submitted separately from any cost items under collective
21 bargaining to the appropriate legislative bodies, except that if
22 appropriation by the state legislature is required, and it is not
23 in session at the time, such cost items shall be submitted for

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1 inclusion in the governor's next operating budget. The state
2 legislature or the legislative bodies of the counties acting in
3 concert, as the case may be, may approve or reject the cost items
4 submitted to them, as a whole. If the state legislature or the
5 legislative body of any county rejects any of the cost items
6 submitted to them, all cost items shall be returned for revision.

7 (b) Any other adjustments made under this chapter which

8 constitute cost items or which were specifically provided for by
 9 legislative enactment shall be subject to approval or rejection
 10 as a whole by the appropriate legislative body. Such adjustments
 11 for officers and employees covered under chapter 77 shall be
 12 subject to the approval or rejection as a whole by all
 13 appropriate legislative bodies acting in concert. If the state
 14 legislature or the legislative body of any county rejects any of
 15 the adjustments submitted to it, all adjustments for officers and
 16 employees covered under chapter 77 or all adjustments for other
 17 officers and employees, as the case may be, shall be returned for
 18 revision.

19 (c) The chief executives of the State or counties, the
 20 board of education, the board of regents, the auditor, the
 21 director of the legislative reference bureau, the ombudsman, or
 22 the chief justice, shall not make any adjustments nor use funds
 23 for purposes of this chapter without the prior approval of the

1 appropriate legislative bodies as required in this section.]

2 Implementation; approval and appropriations. (a) Adjustments
 3 that do not require appropriations by the respective legislative
 4 bodies may be implemented without legislative action.

5 (b) All other adjustments requiring appropriations shall be
 6 submitted to the respective legislative body for appropriations,

7 at such time and in such manner as the legislative body may
 8 require. The legislative body shall appropriate funds of the
 9 amount requested or funds of a different amount after discussing
 10 the reasons with the appropriate authority.

11 (c) No adjustment shall be made and no funds shall be used
 12 for purposes of this chapter unless the legislative body has
 13 appropriated the funds necessary to implement the adjustment."

14 SECTION 111. Section 89C-6, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "§89C-6 Chapter takes precedence, when. Adjustments made
 17 in accordance with this chapter shall take precedence over all
 18 contrary local ordinances, executive orders, legislation, or
 19 rules adopted by the State or a county, or any department,
 20 agency, board, or commission thereof, including the personnel
 21 departments [of human resources development or of personnel
 22 services or the civil service commissions.] or the merit appeals
 23 boards."

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1 PART V. SEPARATION INCENTIVES

2 SECTION 112. The purpose of this part is to provide the
 3 tools necessary to facilitate the restructuring of government.
 4 Specifically, this part authorizes the state executive branch to

5 offer a voluntary severance or a special retirement incentive
 6 benefit to state employees who elect to voluntarily separate from
 7 service when their positions are identified for abolishment or
 8 when they are directly affected by a reduction-in-force or a
 9 workforce restructuring plan.

10 This part also extends to other jurisdictions the option to
 11 provide a special retirement incentive to their respective
 12 employees under a reduction-in-force or a workforce restructuring
 13 plan.

14 SECTION 113. As used herein:

15 "Directly affected" means an employee who receives official
 16 reduction-in-force notification of displacement from the
 17 employee's position as a result of a senior employee exercising
 18 reduction-in-force rights.

19 "Employee" means an individual in a position covered by
 20 chapter 88, Hawaii Revised Statutes, that has been identified for
 21 abolishment or directly affected as a result of a reduction-in-
 22 force or workforce restructuring plan, but excludes any elected
 23 or appointed official and school level personnel with the

1 department of education engaged in administrative or
 2 instructional work, such as, principals and teachers.

3 "Jurisdiction" means the city and county of Honolulu, the

4 county of Hawaii, the county of Maui, the county of Kauai, the
 5 judiciary, the Hawaii health systems corporation, the office of
 6 Hawaiian affairs, and the legislative branches of the State and
 7 county governments.

8 "Reduction-in-force" includes layoff under chapter 76,
 9 Hawaii Revised Statutes.

10 "State executive branch" includes the department of
 11 education and the University of Hawaii, but excludes the Hawaii
 12 health systems corporation which is considered a separate
 13 jurisdiction under this part.

14 SECTION 114. Voluntary severance benefits. (a) Any civil
 15 service employee entitled to reduction-in-force rights under
 16 chapter 76, Hawaii Revised Statutes, and who receives official
 17 notification that the employee's position is being abolished or
 18 who is directly affected by a reduction-in-force or workforce
 19 restructuring plan proposed by a department, may elect to receive
 20 a voluntary severance benefit provided under this section in lieu
 21 of exercising any reduction-in-force rights under chapter 89 or
 22 89C, Hawaii Revised Statutes, as applicable, and in lieu of
 23 receiving any special retirement incentive benefit under section

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1 115.

2 (b) A one-time lump sum cash bonus voluntary severance
3 benefit shall be calculated at five per cent of the employee's
4 base salary for every year of service worked, up to ten years,
5 and shall not exceed fifty per cent of the employee's annual base
6 salary.

7 For the purposes of this section, "base salary" means an
8 employee's annual salary for the position from which the employee
9 is to be separated, excluding all other forms of compensation
10 paid or accrued, whether a bonus, allowance, differential, or
11 value of leave or compensatory time off credits. Compensation
12 excluded from base salary includes but is not limited to:
13 shortage category differential, night shift differential,
14 overtime, compensatory time off credits, vacation or sick leave
15 credits, and workers' compensation benefits.

16 (c) A voluntary severance benefit shall be in addition to
17 any payment owing to the employee upon separation from service,
18 including accumulated unused vacation allowances or compensatory
19 time credits.

20 (d) All voluntary severance benefits paid under this
21 section shall be subject to applicable state income tax laws and
22 rules.

23 (e) A voluntary severance benefit provided under this

1 section shall not be considered as a part of a discharged
2 employee's salary, service credit, or a cost item under section
3 89-2, Hawaii Revised Statutes, when calculating retirement
4 benefits or sick and vacation leave.

5 SECTION 115. Special retirement incentive benefit. (a)

6 Any employee who receives official notification that the
7 employee's position is being abolished or who is directly
8 affected by the result of a reduction-in-force or workforce
9 restructuring plan proposed by a department may elect, if the
10 employee is a vested member of the employees' retirement system
11 and meets any of the criteria specified in subsection (c), the
12 special retirement benefit provided by this section in lieu of
13 exercising any reduction-in-force rights under chapter 89 or 89C,
14 Hawaii Revised Statutes, as applicable, and in lieu of receiving
15 any voluntary severance benefits under section 114. To receive
16 the special retirement incentive benefit offered under this
17 section, the employee shall comply with the application and time
18 frame requirements specified in subsection (b).

19 (b) Any employee who elects to retire and receive the
20 special retirement incentive benefit under this section shall
21 notify the employee's employing department and file a formal
22 application for retirement with the employees' retirement system
23 not less than thirty days nor more than ninety days prior to the

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1 date of retirement.

2 (c) Notwithstanding the age and length of service
3 requirements of sections 88-73 and 88-281, Hawaii Revised
4 Statutes, an employee member shall qualify for the special
5 retirement incentive benefit if, on the employee's retirement
6 date, the employee meets any one of the following criteria:

7 (1) Has at least ten years of credited service as a
8 contributory class A or B member and is at least fifty
9 years of age;

10 (2) Has at least twenty years of credited service as a
11 contributory class A or B member, irrespective of age;

12 (3) Has at least ten years of credited service as a
13 noncontributory class C member and is at least fifty-
14 seven years of age; or

15 (4) Has at least twenty-five years of credited service as a
16 noncontributory class C member, irrespective of age.

17 (d) Any employee who exercises the option of the special
18 retirement incentive benefit under this section because the
19 employee does not qualify with respect to the age and length of
20 service requirements under sections 88-73 and 88-281, Hawaii
21 Revised Statutes, to receive a retirement benefit without
22 penalty, shall not have the retirement benefit reduced in
23 accordance with the actuarial formula normally used by the

1 employees' retirement system for the calculation of early
2 retirement benefits.

3 (e) The head of each affected department shall transmit a
4 list of employees who elected and received the special retirement
5 incentive benefit to the board of trustees of the employees'
6 retirement system not less than thirty days but not more than
7 ninety days prior to the employee's retirement date. The head of
8 each affected department shall certify that the employees on the
9 list have in fact selected the special retirement incentive
10 benefit in lieu of receiving the voluntary severance benefit and
11 exercising any reduction-in-force rights under chapter 89 or 89C,
12 Hawaii Revised Statutes, as applicable.

13 (f) The board of trustees of the employees' retirement
14 system shall make payments with respect to all eligible employees
15 who retire pursuant to this section. The board shall determine
16 the portion of the additional actuarial present value of benefits
17 to be charged to the State based on retirements authorized under
18 this section. If necessary, the State shall make additional
19 payments to the employee's retirement system in the amounts
20 required to amortize the additional actuarial present value of
21 benefits over a period of five years. The unfunded actuarial
22 present values of benefits payable under this section are part of

23 the unfunded accrued liability of the employees' retirement

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1 system under sections 88-122 and 88-123, Hawaii Revised Statutes.

2 SECTION 116. No voluntary severance or special retirement
3 incentive benefit shall be payable to an employee discharged for
4 disciplinary reasons or for reasons other than a reduction-in-
5 force or workforce restructuring plan.

6 SECTION 117. No employee who has received any benefit under
7 this part shall be reemployed by the State in any capacity as
8 follows:

- 9 (1) For an employee receiving a voluntary severance benefit
10 under section 114, unless the gross amount of the
11 voluntary severance benefit paid under section 114 is
12 returned to the appropriate fund prior to the
13 commencement of reemployment if the employee is
14 reemployed within five years from the date of
15 separation; or
- 16 (2) For an employee receiving a special retirement
17 incentive benefit under section 115, unless all
18 benefits derived from the specific retirement incentive
19 benefit under section 115, as determined by the board
20 of trustees of the employees' retirement system, are
21 forfeited prior to the commencement of reemployment.

22 SECTION 118. After payments of all costs associated with
23 the voluntary severance and special retirement incentive
24 benefits, the remaining payroll balances shall not be expended

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1 for any purpose and shall be lapsed into the appropriate fund.

2 SECTION 119. The head of each affected state department who
3 provided benefits under this part shall:

4 (1) Transmit a report of the every position identified for
5 abolishment and vacated under this part to the
6 directors of finance and human resources development
7 who shall abolish these positions from the appropriate
8 budget and personnel files. The governor shall report
9 this information to the legislature no later than
10 twenty days prior to the convening of each regular
11 session beginning with 2001;

12 (2) Reduce its personnel count by every position identified
13 for abolishment and vacated under this part, whether
14 the former incumbent vacated the position as a result
15 of accepting a voluntary severance benefit or special
16 retirement incentive benefit authorized under this part
17 or of exercising reduction-in-force rights; and

18 (3) Transmit a list that includes each employee who

19 received benefits under this part and the benefit
 20 received by the employee to the directors of finance
 21 and human resources development.

22 SECTION 120. The departments of human resources development

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1 and budget and finance shall develop and administer guidelines
 2 and timeframes for participating agencies to implement the
 3 voluntary separation and special retirement incentive benefits
 4 under this part.

5 The department of human resources development, the
 6 employees' retirement system, and the public employees health
 7 fund shall work cooperatively to ensure briefings are provided
 8 prior to the implementation of any workforce restructuring plan
 9 to educate the employees whose positions are being abolished or
 10 who are directly affected by a reduction-in-force or workforce
 11 restructuring plan.

12 The department of human resources development shall report
 13 to the legislature on any restructuring or reengineering
 14 activities initiated as a consequence of this part within the
 15 various departments of the state executive branch no later than
 16 twenty days prior to the convening of each regular session
 17 beginning with the 2001 regular session.

18 The report shall include but not be limited to a description
 19 of the abolished positions and how the new workforce structure
 20 will more efficiently serve the needs of the agency's clients and
 21 appropriate criteria by which to measure the new workforce
 22 structure's effectiveness.

23 SECTION 121. The governor is authorized to provide funds to

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1 obtain matching federal moneys to retrain employees in the state
 2 executive branch who separated from service under this part.

3 SECTION 122. Optional participation by a county, the
 4 judiciary, the Hawaii health systems corporation, the office of
 5 Hawaiian affairs, or the legislative branch of the State or a
 6 county. The city and county of Honolulu, the county of Hawaii,
 7 the county of Kauai, the county of Maui, the judiciary, the
 8 Hawaii health systems corporation, the office of Hawaiian
 9 affairs, or the legislative branch of the State or a county may
 10 opt to provide the special retirement incentive benefit under
 11 section 115 to their respective employees under a workforce
 12 restructuring plan; provided that the special retirement
 13 incentive is in lieu of any voluntary severance benefit that may
 14 be offered under its plan and is consistent with all of the
 15 provisions in section 115. All references to the State in

16 section 115 shall include the a jurisdiction opting to provide
 17 the special retirement incentive benefit. The chief executive or
 18 other appropriate authority of the respective jurisdictions shall
 19 ensure that approval of its respective legislative body is
 20 obtained, if required, before offering the special retirement
 21 incentive under section 115.

22 SECTION 123. The auditor shall conduct a study on the
 23 effects on state government caused by this part and shall submit
 24 a report to the legislature and the governor not later than

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1 twenty days prior to the convening of the 2004 regular session.

2 SECTION 124. This part shall be repealed on June 30, 2003.

3 PART VI

4 SECTION 125. Chapter 302A, part III, Hawaii Revised
 5 Statutes, is amended by adding a new section to be appropriately
 6 designated and to read as follows:

7 "§302A- School personnel engaged in instructional work,
 8 other than teachers and educational officers. (a) The board of
 9 education shall appoint teaching assistants, educational
 10 assistants, bilingual/bicultural school-home assistants, school
 11 psychologists, psychological examiners, speech pathologists,
 12 athletic health care trainers, alternative school work/study
 13 assistants, alternative school educational/supportive services

14 specialists, and alternative school project coordinators as may
15 be required to carry out the purposes of this chapter. The
16 board, in consultation with the department of human resources
17 development, shall prescribe the duties and qualifications for
18 positions, adopt classification systems, classify and fix the
19 compensation of positions accordingly, provide a classification
20 appeals procedure, and establish probationary and other
21 requirements for tenure that protects employees from being
22 disciplined without proper cause.

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1 (b) Employees in positions under subsection (a) shall be
2 board of education appointees exempt from chapter 76, but the
3 application of section 89-6 with respect to collective bargaining
4 coverage and the employer for purposes of collective bargaining
5 shall not be affected. Except for rights or benefits
6 specifically conditioned upon membership in the civil service,
7 the wages, hours, benefits, and other terms and conditions of
8 employment for these employees in existence on the effective date
9 of this Act shall remain in effect, but may be changed as
10 provided in chapter 89 or 89C, as applicable. Any employee who
11 is a member of the civil service on the effective date of this

12 Act shall be granted tenure by the board of education without the
13 necessity of meeting any probationary or other requirements for
14 tenure that the board of education establishes."

15 PART VII

16 SECTION 126. Section 88E-3, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§88E-3 Board of trustees. (a). The authority to establish
19 the plan and [make] implement this chapter [effective] is vested
20 in the board of trustees. The board shall be placed within the
21 department of human resources development for administrative
22 purposes.

23 (b). The board shall adopt such rules to carry out this

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1 chapter in accordance with chapter 91[.]; provided that rules
2 necessary for the plan to be in compliance with federal laws or
3 regulations may be adopted without regard to chapter 91. The
4 board may engage services, as necessary, to establish,
5 administer, or maintain the plan under its direction. An
6 administrator may be engaged only after a solicitation of
7 proposals from interested persons in accordance with
8 specifications deemed appropriate by the board."

9 SECTION 127. Section 88E-8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§88E-8 Deferred funds. Sums deferred under the plan, as
 12 well as property and rights purchased with such amounts and
 13 income attributable to such amounts, shall be held in trust
 14 outside the state treasury in accordance with section 457 of the
 15 Internal Revenue Code of 1986, as amended, for the exclusive
 16 benefit of participants and their beneficiaries."

17 SECTION 128. Section 88F-3, Hawaii Revised Statutes, is
 18 amended by amending subsection (b) as follows:

19 "(b) The board shall adopt, in accordance with chapter 91,
 20 rules [as are] necessary to implement this chapter[.]; provided
 21 that rules necessary for the plan to be in compliance with
 22 federal laws or regulations may be adopted without regard to
 23 chapter 91. The board may engage services, as necessary, to

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1 establish, administer, or maintain the plan under its direction.
 2 An administrator may be engaged only after a solicitation of
 3 proposals from interested persons in accordance with
 4 specifications deemed appropriate by the board."

5 SECTION 129. Section 88F-6, Hawaii Revised Statutes, is
 6 amended to read as follows:

7 "§88F-6 Deferred funds. Sums deferred under the plan, as
 8 well as property and rights purchased with the amounts and income

9 attributable to the amounts, shall be held in trust outside the
10 state treasury in accordance with section 457 of the Internal
11 Revenue Code of 1986, as amended, for the exclusive benefit of
12 participants and their beneficiaries."

13 SECTION 130. Section 398-1, Hawaii Revised Statutes, is
14 amended by amending the definition of "employer" to read as
15 follows:

16 ""Employer" means any individual or organization, [including
17 the State, any of its political subdivisions, any instrumentality
18 of the State or its political subdivisions,] any partnership,
19 association, trust, estate, joint stock company, insurance
20 company, or corporation, whether domestic or foreign, or receiver
21 or trustee in bankruptcy, or the legal representative of a
22 deceased person, who employs one hundred or more employees for
23 each working day during each of twenty or more calendar weeks in

1 the current or preceding calendar year."

2 PART VIII

3 SECTION 131. Chapter 77, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 132. Chapter 79, Hawaii Revised Statutes, is
6 repealed.

7 SECTION 133. Chapter 80, Hawaii Revised Statutes, is

8 repealed.

9 SECTION 134. Chapter 81, Hawaii Revised Statutes, is
10 repealed.

11 SECTION 135. Chapter 82, Hawaii Revised Statutes, is
12 repealed.

13 SECTION 136. Chapter 83, Hawaii Revised Statutes, is
14 repealed.

15 SECTION 137. Section 88E-10, Hawaii Revised Statutes, is
16 repealed.

17 ["[§88E-10] Custodian of the funds. The state director of
18 finance shall be the custodian of the funds created under the
19 plan. All payments from the fund shall be made by the director
20 only upon vouchers signed by the chairperson of the board and
21 countersigned by other persons designated by the board."]

22 SECTION 138. Section 88F-8, Hawaii Revised Statutes, is
23 repealed.

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1 ["[§88F-8] Custodian of the funds. The state director of
2 finance shall be the custodian of the funds created under the
3 plan. All payments from the fund shall be made by the director
4 only upon vouchers signed by the chairperson of the board and
5 countersigned by other persons designated by the board."]

6 SECTION 139. Section 302A-634, Hawaii Revised Statutes, is
7 repealed.

8 ["[§302A-634] Noncertificated personnel.(a) All
9 noncertificated administrative, professional, and technical
10 personnel not engaged in instructional work shall be placed by
11 the department in the appropriate salary ranges within the
12 educational officers' schedule.

13 (b) Beginning with the 1997-1998 school year, this section
14 shall be interpreted as though the term "certificate" read
15 "license" or "credential", as the latter terms are used in
16 subpart D, and as circumstances require."]

17 SECTION 140. Section 302A-635, Hawaii Revised Statutes, is
18 repealed.

19 ["[§302A-635] Educational assistants. All educational
20 assistants employed in the department shall be employed under the
21 provisions of chapter 76 and shall have their compensation fixed
22 in accordance with chapter 77; provided that:

23 (1) The monthly rate of compensation so determined shall be

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1 multiplied by ten and then divided by twelve and the
2 resulting amount shall be the employee's monthly salary
3 payable over a twelve-month period;

4 (2) Weekly working hours for educational assistants shall

5 be established in the same manner as working hours for
6 teachers; and

7 (3) Educational assistants shall have the same vacation and
8 sick leave allowances as teachers."]

9 PART IX

10 SECTION 141. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$600,000, or so much
12 thereof as may be necessary for fiscal year 2000-2001, to be paid
13 into the special fund created in section 2 of this Act, section
14 26-5(f), Hawaii Revised Statutes. The sum appropriated shall be
15 expended by the department of human resources development for the
16 purposes of the fund.

17 SECTION 142. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$128,000, or so much
19 thereof as may be necessary for fiscal year 2000-2001, for the
20 REACH (Resource for Employee Assistance and Counseling Help)
21 program that provides short-term counseling for troubled state
22 employees who need help in dealing with personal problems
23 affecting their work performance. The sum appropriated shall be

1 expended by the department of human resources development.

2 SECTION 143. There is appropriated out of the employees'

3 retirement system's investment earnings the sum of \$150,000, or
4 so much thereof as may be necessary for fiscal year 2000-2001,
5 and the same sum, or so much as may be necessary for fiscal year
6 2001-2002, for the employees' retirement system to process the
7 special retirement incentive benefit provided to state employees
8 in the executive branch whose positions are being eliminated as
9 authorized in section 115 of this Act. The sum appropriated
10 shall be expended by the employees' retirement system.

11 SECTION 144. The department of human resources shall
12 submit, no later than twenty days prior to the convening of each
13 regular session beginning with the regular session of 2001, a
14 report of the positions that were permanently exempted from the
15 civil service prior to the effective date of this Act which it
16 reviewed during the year. The report shall include, but not be
17 limited to, when the position was established, the purpose of the
18 position, the reason for the exemption from civil service, and
19 findings and recommendations on whether the position should
20 remain exempt or be converted to a civil service position. With
21 respect to positions that should remain exempt, the department
22 shall indicate whether the position should be exempted
23 permanently and, if so, whether from civil service recruitment

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1 procedures or the classification systems, or both. With respect

2 to positions recommended for inclusion into the civil service,
3 the department shall submit proposed legislation to convert
4 exempt positions to civil service positions and address the
5 impact of the conversion on the incumbents in these positions, if
6 any.

7 SECTION 145. All acts passed by the legislature during the
8 regular session of 2000, whether enacted before or after the
9 effective date of this Act, shall be amended to conform to this
10 Act unless such acts specifically provide that this Act is being
11 amended.

12 SECTION 146. If any part of this Act is found to be in
13 conflict with federal requirements that are a prescribed
14 condition for the allocation of federal funds to the State or a
15 county, the conflicting part of this Act is inoperative solely to
16 the extent of the conflict and with respect to the agencies
17 directly affected, and this finding does not affect the operation
18 of the remainder of this Act in its application to the agencies
19 concerned. The rules prescribed to implement this Act shall meet
20 federal requirements that are a necessary condition to the
21 receipt of federal funds by the State.

22 SECTION 147. If any provision of this Act, or the
23 application thereof to any person or circumstance is held
24 invalid, the invalidity shall not affect other provisions or

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1 applications of the Act which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 148. On or before July 1, 2002, any existing rule,
5 ordinance, executive order or directive, or provision in a
6 collective bargaining agreement, that is not consistent with this
7 Act shall be amended to conform with this Act. Any new or
8 amended rule, ordinance, executive order or directive that must
9 be adopted, enacted, or negotiated to carry out this Act shall
10 take effect no later than July 1, 2002.

11 SECTION 149. The provisions of sections 131, 132, 133, 134,
12 135, and 136 of this Act notwithstanding, the rights, benefits,
13 and privileges currently enjoyed by civil servants under chapters
14 77, 79, 80, 81, 82, and 83 shall not be diminished or impaired,
15 unless comparable rights, benefits, and privileges are either
16 negotiated into collective bargaining agreements or established
17 by executive order for civil servants.

18 SECTION 150. Upon the repeal of chapter 77, Hawaii Revised
19 Statutes, wherever the words "chapters 76 and 77" appear in the
20 Hawaii Revised Statutes, the revisor of statutes shall substitute
21 the words "chapter 76" as the context requires.

22 SECTION 151. Statutory material to be repealed is
23 bracketed. New statutory material is underscored.

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1 SECTION 152. This Act shall take effect on July 1, 2002;
2 provided that section 26-5(f), Hawaii Revised Statutes, in
3 Section 2 and Parts V and IX of this Act shall take effect on
4 July 1, 2000.

