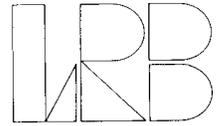


Ken H. Takayama  
Acting Director

Research (808) 587-0666  
Revisor (808) 587-0670  
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

November 3, 2004

## **MEMORANDUM**

**TO:** All Legislators

**FROM:** Shawn K. Nakama  
Senior Researcher – Special Projects

**SUBJECT:** List of Statutory References to Positions Exempted from the Civil Service

### **Introduction**

In 2004, the Legislature passed House Bill No. 1786, C.D. 1, Relating To Exempt Employees. The Governor approved House Bill No. 1786, C.D. 1, as Act 128, Session Laws of Hawaii 2004. Section 2 of Act 128, Session Laws of Hawaii 2004, directs the Legislative Reference Bureau to "compile a list of all statutory references to positions exempted from the civil service." Attached is a compilation of statutory references to positions exempted from the civil service contained in the Hawaii Revised Statutes and a compilation of references to such positions as contained in the Session Laws of Hawaii over the past decade (1995 - 2004). This memorandum also contains a discussion on:

- (1) The challenges encountered in compiling the statutory references;
- (2) How the compilation was achieved;
- (3) Other resources available on civil service exempt employees; and
- (4) Managing statutory references to such employees.

### **Challenges Encountered in Compiling the Statutory References**

In attempting to accomplish the mandate set forth in section 2 of Act 128, Session Laws of Hawaii 2004, the Bureau was charged with the task of identifying "all statutory references to positions

exempted from the civil service." In conducting a review of what the exact intent of the compilation was to achieve, little guidance was provided in legislative committee reports and earlier drafts of the measure (e.g., was it the intent of the law to identify all statutory provisions that included a reference to civil service exempt employees, however remote, or did the Legislature want a listing of only those statutory provisions that established civil service exempt positions?). Based on this lack of specific legislative intent, the Bureau conducted its review of the Hawaii Revised Statutes and the Session Laws of Hawaii in a broad manner, consistent with the plain language of the Act. This entailed including all references to positions exempted from the civil service, rather than just a listing of statutory references that established civil service exempt positions.

An example of a provision of law that contains a reference to civil service exempt employees but that does not establish such a position is section 89-10.8, Hawaii Revised Statutes. This section refers to the inapplicability of grievance procedures to civil service exempt employees and does not establish any public employee position as exempt from the civil service.

Another challenge faced by the Bureau in compiling this list relates to the various ways in which civil service exempt employees are mentioned in the Hawaii Revised Statutes. According to preferred drafting style, the proper phrasing of statutory language that establishes a civil service exempt position would include a reference to the inapplicability of chapter 76, Hawaii Revised Statutes, the State's civil service law.<sup>1</sup> However, not all statutory provisions are drafted in this manner. An example of a provision of law not containing the recommended reference to chapter 76, Hawaii Revised Statutes, can be found in section 89C-4, Hawaii Revised Statutes. In that section, rather than the preferred phrasing, ". . . without regard to chapter 76, . . ." section 89C-4's enabling language is phrased ". . . excluded employees who are exempt from civil service . . ." No mention of chapter 76, Hawaii Revised Statutes, is included in that section. Hence, if a computerized search of the Hawaii Revised Statutes was conducted utilizing the search term "chapter 76," section 89C-4, Hawaii Revised Statutes, would not have appeared on the search results. Based on this challenge, the Bureau conducted its computer searches on an elemental level, utilizing such basic terms as "76" and "civil service." The use of such elemental search terms resulted in many false positive search returns, but overall, helped ensure the accuracy of the resultant list.

Section 2, Act 128, Session Laws of Hawaii 2004, also did not specify whether repealed or expired authorizations in the uncodified provisions (i.e., not codified in the Hawaii Revised Statutes) of the Session Laws of Hawaii to hire civil service exempt employees were to be included in the compilation. However, since there were relatively few references of that kind during the decade between 1995 and 2004, the Bureau chose to include these repealed or expired authorizations for the Legislature's review.

In addition to the challenges noted above, in deference to practicality, the Bureau has limited its review of the Session Laws of Hawaii to the past decade (1995 – 2004).

---

<sup>1</sup> Legislative Reference Bureau, *Hawaii Legislative Drafting Manual*, (State of Hawaii), Ninth Edition, January 1996, p.38.

## **How the Compilation was Generated**

The statutory references were compiled by searching two separate legislative agency-operated databases utilizing various search terms, reviewing the hard copy indexes of the Hawaii Revised Statutes and the Session Laws of Hawaii from 1995 – 2004, cross referencing the results thereof, and comparing those results with pre-existing reports generated by the Department of Human Resources Development.

The search terms used for computer-based searches included "76" and "civil service."

Upon eliminating duplicate statutory references, an actual reading of each listed section of law was conducted to ensure accuracy.

## **Other Resources Available on Civil Service Exempt Employees**

Pursuant to section 144, Act 253, Session Laws of Hawaii 2000, the Department of Human Resources Development is required to annually submit to the Legislature a report on all permanent positions exempted from the civil service. Section 144, Session Laws of Hawaii 2000, stated:

The department of human resources shall submit, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2001, a report of the positions that were permanently exempted from the civil service prior to the effective date of this Act which it reviewed during the year. The report shall include, but not be limited to, when the position was established, the purpose of the position, the reason for the exemption from civil service, and findings and recommendations on whether the position should remain exempt or be converted to a civil service position. With respect to positions that should remain exempt, the department shall indicate whether the position should be exempted permanently and, if so, whether from civil service recruitment procedures or the classification systems, or both. With respect to positions recommended for inclusion into the civil service, the department shall submit proposed legislation to convert exempt positions to civil service positions and address the impact of the conversion on the incumbents in these positions, if any.

Most recently, on January 20, 2004, the Department of Human Resources Development submitted its annual report to the Legislature in compliance with section 144 of Act 253, Session Laws of Hawaii 2000. The annual report detailed, among other things, the number of existing civil service exempt positions and the statutory basis for the positions' establishment. In addition to the January 2004 report, the Department of Human Resources Development augmented its 2004 annual report on May 4, 2004, to include additional information that was not included in its original report.

## **Managing Statutory References to Civil Service Exempt Employees**

With specific regard to provisions of law that establish positions exempt from the civil service, as evidenced in the following list of statutory references, it is clear that the authority to establish such positions is scattered widely throughout the Hawaii Revised Statutes and, to a lesser extent, the Session Laws of Hawaii. Such a random placement of this statutory authority makes it difficult to identify these positions in a timely and expedient manner.

Sections 76-16 and 76-77, Hawaii Revised Statutes, act as the statutory lists for state and county positions that are permanently exempted from the civil service. However, as the listing contained in this report indicates, these statutory lists are not complete and do not serve as an adequate assessment of all the positions that are exempted from the civil service and established by law.

To alleviate this problem, it may be desirable to more rigorously enforce the practice of listing sections of law that establish civil service exempt positions within these "catch-all" statutes (sections 76-16 and 76-77, Hawaii Revised Statutes). An example of the logic behind this recommendation can be found in section 28-8.3, Hawaii Revised Statutes, where a list of agencies that are authorized to hire their own attorneys exists.

The Bureau hopes that this list will assist the Legislature in its efforts to develop public policy relating to public employment.

If you have any questions, please contact me by phone at 587-0666 or by email at [nakama@capitol.hawaii.gov](mailto:nakama@capitol.hawaii.gov).

APPROVED:

Ken H. Takayama  
Acting Director

Enc.

**STATUTORY REFERENCES TO POSITIONS  
EXEMPTED FROM THE CIVIL SERVICE**

<b>HHCA</b>	<b>Note</b>
HHCA 202	Subsection (b)
<b>Volume 1</b>	
6E-003	Paragraph (14)
6E-005	
6F-005	Paragraph (7)
6K-005	Subsection (e)
8-005	Subsection (d)
9-002	Subsection (c)(6)
10-010	
10-012	
10-027	Paragraph (7)
11-001.6	Subsection (a)
11-005	Subsection (a)
11-193	Subsection (a)(13)
22-004	
25-005	
25-007	
26-001	Subsection (a)
26-003	
26-009	Subsections (f), (g), (h), (l), and (o)
28-007.5	
28-008.5	
28-010.5	Subsection (b)
28-011	Subsection (b)
28-071	
28-091	
28-121	Subsection (c)
28-131	Subsection (b)
29-001	

<b>Volume 2</b>	
46-031	
46-032	
46-033	
46-034	
53-005	Paragraph (3)
53-057	
76-016	
76-075	
76-077	
78-018.3	
84-035	
88-029	
89-005	Subsection (g)
89-010.8	Subsection (a)(2)
89A-001	Subsection (d)
89C-002	Paragraph (2)
89C-004	
90D-008	
92F-041	Subsections (b) and (d)
103D-204	Subsection (d)
103F-301	Paragraph (8)
109-002	Paragraph (5)
109-009	
110-002	Paragraph (7)
<b>Volume 3</b>	
125-004	
125C-008	
128-003	Subsection (c)
128-010	Paragraph (11)
128-013	Paragraph (4)
128D-002.5	

128D-002.6	
128D-038	
128E-003	Subsection (b)
141-002.5	Subsection (b)
147-102	
155-004	Paragraph (1)
163D-003	Subsections (d) and (e)
163D-006	Subsection (b)(2)
171-019	Subsection (a)(2)
174C-005	Paragraph (8)
174C-006	Subsection (c)
174C-011	Subsection (a)
193-023	
193-033	
196D-013	
<b>Volume 4</b>	
201-005	
201-072	Subsection (b)
201-085	
201B-002	Subsections (f) and (g)
201B-003	Subsection (a)(7)
201D-002	Subsection (b)
201G-002	Subsection (b)
201G-0474	Subsection (a)
202-003	Subsection (a)
205-001	Last paragraph of section
206E-003	Subsection (c)
206E-004	Paragraph (6)
206J-004	Subsection (d)
206J-005	Paragraph (6)
206M-002	Subsection (d)
206M-003	Subsection (a)(6)

211F-003	Subsection (d)
211F-004	Subsection (a)(22)
222-003	
225M-002	Subsection (a)
227D-002	Subsection (d)
227D-003	Paragraph (4)
231-004.3	
231-004.5	
232E-001	
255-001	Article VI, section (1)(g)
<b>Volume 5</b>	
261-006	Subsection (c)
268-004	Last paragraph of section
269-002	Subsection (b)
269-003	Subsection (a)
269-006	Second paragraph of section
269-052	
269-053	
279A-004	Second paragraph
279E-005	First paragraph
302A-1187	Subsection (a)
302A-408	
302A-473	
302A-604.5	Subsection (a)
302A-633.5	Subsection (b)
302A-1502.6	Subsection (b)
304-034	
304-004.3	Subsection (a)
304-008.41	Subsection (b)
304-008.911	Subsection (a)
304-010.5	Subsection (b)
304-011	

304-120	Paragraph (5)
306-005	Paragraph (7)
307-004	Paragraph (3)
307-005	
311-001	Article III, paragraph E
312-002.1	Subsection (a)
312-002.2	
<b>Volume 6</b>	
321-005	Paragraph (8)
323F-008	Subsections (a) and (c)
334-004	
339-002	Subsection (c)
342B-003	Subsection (c)
342B-017	
342B-063	Subsection (a)
342D-057	
342F-003	Subsection (b)
342G-012	
342G-012.5	
342H-003	Subsection (b)
342J-004	Subsection (b)
342J-038	
342L-003	Subsection (b)
342P-003	Subsection (c)
<b>Volume 7</b>	
346-102	Subsection (a)
346D-008	
348F-005	
349-002	Subsection (b)
352D-005	Subsections (a) and (b)
352D-010	
353B-001	Article VI, section A(6)

353C-003	
353F-006	
354D-003	
363-002	Subsection (b) and subsection (c)(7)
367-002.5	
368-003	Paragraph (8)
371-004	Subsection (f)
371-015	
371-018	
371K-002	Subsection (b)
371K-003	Paragraph (8)
373C-033	
377-003	Second paragraph
382-004	
383-091	Subsection (c)
383-128	Subsection (k)
396-019	Subsection (b)
<b>Volume 8</b>	
412:002-100	Subsection (a)
412:002-109	Subsection (b)
<b>Volume 9</b>	
431:002-105	
431:002-105.5	
431:002-107	
431:002-215	Subsection (b)
431:002-216	Subsection (b)
431:010C-307.8	Subsection (b)
431:019-101.5	Subsection (a)
431:022-102	Subsection (b)
431P-003	Subsection (h)
432E-006	Subsection (a)(2)(A)

<b>Volume 10</b>	
436B-007	Paragraph (9)
440G-012	Subsection (d)
453-005	Subsection (b)
467-016	Subsection (c)(3)
467-019	Subsection (b)
<b>Volume 11</b>	
484-010	Subsections (h) and (i)
485-002	Subsection (a)
487-002	
487-003	
<b>Volume 12</b>	
514A-007	
514A-133	Subsection (b)
514E-001.5	
516-007	Paragraph (3)
576D-011	
576E-010	Subsection (a)
<b>Volume 13</b>	
601-003	Subsections (a) and (c)
601-020	Subsection (c)
612-051	
613-002	Subsection (b)
674-008	Subsection (d)
<b>Volume 14</b>	
802-011	
802-012	
<b>1995 SLH</b>	
Act 11 (Sp Sess)	Sections 5 (HRS section established) and 10 (1994 session law amended)
Act 218	Sections 10, 11, 79, 80, 81, 168
<b>1996 SLH</b>	
Act 302	Section 5 (repealed in 1999) - Act 116 SLH 1999 extended program to 2002

<b>1997 SLH</b>	
Act 255	Section 3 (repealed in 2000)
Act 315	Section 4
Act 350	Section 19
Act 328	Sections 21, 24, 27, 34, 35, 36, 37, 38
<b>1998 SLH</b>	
Act 159	Section 4
<b>1999 SLH</b>	
Act 116	Section 4 (repealed 2001)
<b>2000 SLH</b>	
Act 213	Section 3
<b>2001 SLH</b>	
Act 88	Section 4 (second paragraph)
Act 309	Section 6
<b>2002 SLH</b>	
Act 88	Section 2 (second and third paragraphs)
<b>2003 SLH</b>	
Act 204	Section 2 (second paragraph)
Act 214	Section 4
<b>2004 SLH</b>	
Act 57	Section 6 (HRS Section 11-B(4))
Act 58	Sections 1 and 6 (HRS 201B- (b); 201B-2(f) (second paragraph))
Act 104	Section 2 (HRS Section 431: -106(c)(6))
Act 128	Sections 1 through 3
Act 209	Section 4
Act 213	Section 4 (HRS Section 302A-1502.6(b))
Act 217	Section 2 (HRS Section 304- (c ))
Act 242	Section 8