



County of Hawai'i Department of Human Resources

Aupuni Center * 101 Pauahi Street, Suite 2 * Hilo, Hawai'i 96720 * (808) 961-8361 * Fax (808) 961-8617
TTY (808) 961-8619 * Jobs Information: Job Hotline (808) 961-8618 e-mail: jobs@co.hawaii.hi

May 20, 2009

The Honorable Edmund Haitzuka, Chair
And Members of the County of Hawai'i Charter Commission
c/o Hawai'i County Clerk-Council
333 Kilauea Avenue
Ben Franklin Building, 2nd Floor
Hilo, Hawai'i 96720

2009 MAY 20 PM 3 11
COUNTY OF HAWAII
HILLO

Dear Chair Haitzuka and Commission members:

Transmitted herewith are proposed changes to the County of Hawai'i Charter. The changes are being proposed for three primary reasons.

Reference to Civil Service

First, the State Supreme Court has ruled that the civil service laws of the State of Hawai'i, being a law of general applicability for the State, takes precedence over contrary local laws and ordinances. Thus, I recommend that those provisions referencing civil service and exemptions there from and the classification plan prescribed by state law which conflict with the Charter provisions be removed. However, considering Commission Member Alapaki Nahale-a's concern about home rule, I have proposed an amendment to Section 13-3 which I hope addresses Commission Member Nahale-a's concern. (See proposal number 12 on the enclosure.)

Removal of Certain Administrative Heads Appointed by Boards/Commissions

Second, there are five departments whose administrative head is appointed and removed by a board or commission. As these administrative heads are career executives and do not change with changes in the membership of the board or commission (unlike other department heads appointed by the mayor or the county clerk appointed by the County Council), provisions governing the appointment and removal of these administrative heads should be identical. I suggested proposed changes accordingly to reflect this.

Term of Appointments for Merit Appeals Board Members

Third, the merit appeals board is a five-member board whose purpose is to hear appeals concerning the application of certain provisions of the civil service laws. Current term limits are such that members are replaced, after five years, in the following cycle: 1 member, 2 members, 2 members. That is to say, two members will have the same term limit, and another two members will have the same term limit.

It would be much more conducive to the work that the board members provide if terms were staggered such that only one member was being replaced each year, rather than the current 1, 2, 2 cycle.

This will mean that an appellant will have four experienced board members hearing an appeal versus the current situation where in certain years an appellant will have three experienced board members hearing an appeal. This is a significant matter when considering the fact that it takes an affirmative vote of three members to decide an appeal.

The proposal, therefore, is basically a plan to eventually arrive at a one member per year replacement of board members.

I will be attending the Commission's June 5, 2009 meeting and will be happy to answer any questions you may have.

Thank you.

Sincerely,



Michael R. Ben, SPHR
Director of Human Resources

enclosure

cc: William P. Kenoi, Mayor
Darryl Oliveira, Fire Chief
Harry Kubojiri, Chief of Police
Jan Pakele, Director of Liquor Control
Milton Pavao, Manager, Department of Water Supply

Proposed County of Hawai'i Charter Amendments

Submitted by Michael R. Ben, Director of Human Resources

Deletions are in red, bracketed, and struck through (~~[deletion]~~), additions are in blue and underscored ([addition]).

1. **Amend Section 3-6(b) to read as follows:**

“ * * *

- (b) The council shall appoint the county clerk ~~[which position shall be exempt from civil service laws and classifications]~~. The county clerk shall:
- (1) Be the clerk of the council.
 - (2) Be custodian of the county seal.
 - (3) Conduct all elections held within the county.
 - (4) Appoint the deputy county clerk and the legislative auditor, with the approval of the council ~~[, and such positions shall be exempt from civil service laws and classifications]~~.
 - (5) Perform such other functions as the council may prescribe.
 - (6) Appoint necessary staff for which appropriations have been made by the council ~~[, subject to civil service laws and classifications]~~ and exercise the same power with respect to the personnel of the clerk's office as the department heads in the executive branch.”

2. **Amend Section 4-5(a) to read as follows:**

“Section 4-5. Powers and Duties of Agency Heads.

Subject to the provisions of this charter, the administrative heads of each agency or executive agency of the county shall have the power to:

- (a) Appoint and remove a deputy or assistant and a private secretary ~~[and such positions shall be exempt from civil service laws and classifications]~~. No such appointment shall be made unless the positions have been created and appropriations therefor have been made by the council.

* * *”

3. **Amend Section 5-12.3 to read as follows:**

“Section 5-1.3. Powers, Duties and Functions.

The mayor shall be the chief executive officer of the county vested

Proposed County of Hawai'i Charter Amendments

Submitted by Michael R. Ben, Director of Human Resources

with all the executive powers of the county, except as otherwise provided by this charter. The mayor shall have the power to:

- (a) Through the managing director supervise and coordinate all executive agencies of the county, except as otherwise provided by this charter.
- (b) Appoint necessary staff for which appropriations have been made by the council. ~~[All positions in the mayor's office shall be exempt from civil service laws and classifications.]~~
- (c) Create positions, including position of deputy or assistant to each head of an agency where such position has not been created by this charter, for which appropriations have been made by the council and abolish positions with the consent of the council.
- (d) Make transfers of positions between agencies or between subdivisions of agencies ~~[subject to applicable civil service regulations]~~.
- (e) Recommend to the council a pay plan for all officers and employees of the county or any of its boards and commissions, except those whose pay is otherwise provided for; provided that the salary of any officer or employee who is exempt from the civil service laws shall be subject to approval by the council and the mayor.
- (f) Submit an operating budget, an operating program, a capital budget and a capital program annually to the council.
- (g) Sign instruments requiring execution by the county, except as otherwise provided by this charter or by ordinance.
- (h) Make periodic reports in addition to the annual report, informing the public as to county policies, programs and operations.
- (i) Call special sessions of the council.
- (j) Veto ordinances.
- (k) Enforce the provisions of this charter, the ordinances of the county and all applicable laws, and exercise such other powers and perform such other duties as may be prescribed by this charter or by ordinance."

4. Amend Section 6-8.4 to read as follows:

"Section 6-8.4. County Bands.

Proposed County of Hawai'i Charter Amendments

Submitted by Michael R. Ben, Director of Human Resources

The county bands shall be a part of the department of parks and recreation for administrative purposes [~~–The bandmasters shall be appointed by the mayor and may be removed by the mayor. The members of the bands and other employees connected therewith shall be appointed by the bandmasters and maybe removed by the bandmasters with the approval of the managing director, and all positions in the band shall be exempt from civil service laws and classifications.~~]; provided, the appointing authority for the bandmasters shall be the mayor, and the appointing authority for the band members shall be the appropriate bandmaster.”

5. **Amend section 6-10.1 to read as follows:**

“Section 6-10.1. Clerical Pool.

There may be a clerical pool consisting of such positions as the mayor may recommend and for which appropriations have been made by the council. The purpose of such pool shall be to provide periodic staff assistance to the various agencies of the county when necessitated by heavy workloads. The clerical pool shall be attached to the mayor’s office for purposes of administration, assignment and coordination [~~but the personnel of the clerical pool shall be subject to the civil service laws of the state~~].”

6. **Amend Section 7-1.2 to read as follows:**

“Section 7-1.2. Merit Appeals Board.

- (a) The merit appeals board shall consist of five members who shall be appointed by the mayor and confirmed by the council [~~in the manner prescribed in section 13-4~~].
 - (i) The new board member who will replace the board member whose term expires on December 31, 2010 shall serve a four year term ending on December 31, 2014.
 - (ii) Of the two new board members who will replace the board members whose terms expire on December 31, 2013, one shall serve a four year term ending on December 31, 2017, and the other shall serve a five-year term ending on December 31, 2018.
 - (iii) Of the two new board members who will replace the board members whose terms expire on December 31, 2012, one shall serve a 3 year term ending on

Proposed County of Hawai'i Charter Amendments

Submitted by Michael R. Ben, Director of Human Resources

December 31, 2015 and the other shall serve a four-year term ending on December 31, 2016.

Thereafter, board members shall serve five-year terms in the manner prescribed in section 13-4.

- (b) Board membership shall be representative of the community, and the members shall all be in sympathy with and believe in the principles of the merit system in public employment."

7. Amend Section 7-1.3 to read as follows:

"Section 7-1.3. Director.

The director of human resources shall be appointed by the merit appeals board and may be removed by the merit appeals board. Any motion for removal of the director of human resources must contain a statement of reasons, and the board shall not vote to remove the director of human resources unless the director of human resources has been given an opportunity to respond to the statement of reasons at a hearing before the board."

8. Delete Section 7-1.5 in its entirety.

~~"[Section 7-1.5. Position Classification Plan; Compensation.~~

~~Except as otherwise provided by law or this charter, all positions in the service of the county shall be classified within a position classification plan, and all persons holding such positions shall be compensated as provided by the compensation law of the state.]"~~

9. Delete Section 7-2.5 in its entirety.

~~"[Section 7-2.5. Dismissal, Suspension, Demotion, or Grievance.~~

~~The dismissal, suspension, demotion, or grievance of any police officer or employee in the police department shall be under procedures set forth by civil service laws and regulations.] "~~

10. Amend Section 7-3.4 to read as follows:

- (a) The director of the department of liquor control shall be appointed by the liquor commission and may be removed by the liquor commission. Any motion for removal of the director of the

Proposed County of Hawai'i Charter Amendments

Submitted by Michael R. Ben, Director of Human Resources

department of liquor control must contain a statement of reasons, and the commission shall not vote to remove the director of the department of liquor control unless the director of the department of liquor control has been given an opportunity to respond to the statement of reasons at a hearing before the commission.

- (b) The director of the department of liquor control shall:
- ~~[(a)]~~ (i) Be the administrative head of the department.
 - ~~[(b)]~~ (ii) Provide clerical and administrative services for the liquor commission and the liquor control adjudication board, including the submission of budget for the operation of the department.
 - ~~[(c)]~~ (iii) Investigate complaints regarding violations of the liquor control laws of the state or complaints regarding violations of rules and regulations established by the liquor commission and report such violations to the prosecuting officer of the county."

11. Amend Section 7-4.3 to read as follows:

"Section 7-4.3. Fire Chief.

- (a) The fire chief shall be appointed by the fire commission and may be removed by the fire commission at its sole discretion. Any motion for removal of the fire chief must contain a statement of reasons, and the commission shall not vote to remove the fire chief unless the fire chief ~~[must be allowed]~~ has been given an opportunity to respond to the statement of reasons ~~[before being removed]~~ at a hearing before the commission.
- (b) The fire chief shall have had a minimum of five years' training and experience in fire control, including at least three years' experience in a responsible administrative capacity."

12. Amend Section 8-3 to read as follows:

"Section 8-3. Manager and Deputy.

- (a) The manager of the department of water supply shall be appointed by the water board and may be removed by the water board. Any motion for removal of the manager of the department of water supply must contain a statement of reasons, and the board shall not vote to remove the manager of the department of water supply unless the manager of the department of water

Proposed County of Hawai'i Charter Amendments

Submitted by Michael R. Ben, Director of Human Resources

supply has been given an opportunity to respond to the statement of reasons at a hearing before the board.

- (b) The deputy shall be appointed by the manager with the confirmation of the water board and may be removed by the manager with the approval of the water board.
- (c) The manager shall be a registered engineer and shall have had a minimum of five years' experience in an administrative capacity."

12. Amend section 13-3 to read as follows:

"Section 13-3. Appointments, civil service, exemptions.

(a) All appointments to positions prescribed in this charter shall be subject to applicable provisions of the civil service laws of the State. Where civil service laws are not applicable, a position shall be considered exempt from civil service, provided, civil service laws may exempt certain positions yet require such position to be included in the position classification plan prescribed by such civil service laws.

(b) No appointing authority shall appoint any person to any office or position which is exempt from the civil service laws until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of that office or position."

13. Delete Section 13-9 in its entirety.

~~"[Section 13-9. Non-Civil Service Status and Classification.~~

~~From and after the full effective date of this charter, no employees or officers of the county who are exempt from the civil service laws shall have their positions included in a position classification plan established under the civil service laws.]"~~