
Audit of Temporary and Emergency Staffing of State Agencies

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 99-23
December 1999

THE AUDITOR
STATE OF HAWAII

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Submitted by

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Foreword

This audit of temporary and emergency staffing of state agencies was conducted pursuant to Section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. We hope that this report will be useful to decision makers considering the subject of civil service reform.

We wish to acknowledge the cooperation and assistance of the Department of Human Resources Development, Department of Budget and Finance, Department of Human Services, Department of Business, Economic Development, and Tourism, Department of Commerce and Consumer Affairs, and other agencies that assisted us during our audit.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The State Auditor initiated this audit of temporary and emergency staffing of state agencies pursuant to Section 23-4, Hawaii Revised Statutes (HRS), which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

Some legislators and public-employee unions have expressed concern about abuses in temporary and emergency staffing. We prepared this report to assist decision makers in sorting out some of the key issues involved.

Appendix A contains a glossary defining many terms used in the report.

Background

The civil service law, Chapter 76, HRS, establishes in the State and each of the counties a system of personnel administration based on merit principles and scientific methods. These methods and principles govern the classification of positions and the employment, conduct, movement, and separation of public officers and employees. The law says that the personnel system should be administered in accordance with merit principles that include systematic classification of all positions through adequate job evaluation, competitive examinations to test the relative fitness of applicants for civil service positions, and specific guidelines for filling vacancies.

The law seeks to build a career service in government that will attract, select, and retain the best citizens on “merit,” free from coercive political influences. It also seeks to foster opportunities for promotion, eliminate unnecessary and inefficient employees, and provide technically competent and loyal personnel to serve the public.

The civil service law covers all agencies of the State and counties except groups exempted by Section 76-16, HRS, which includes administrative and instructional staff at the Department of Education and the University of Hawaii. Also, the Judiciary administers its own personnel system pursuant to Section 76-9, HRS.

The staffing process for state agencies

State agencies are staffed by persons appointed to civil service positions or positions exempt from civil service. The Department of Human Resources Development is the primary staffing agency for civil service employment in the executive branch. Three of its six divisions play an

important role. The Classification and Compensation Review Division routinely reviews classes and researches thoroughly when establishing new classes. The Recruitment and Examination Division conducts competitive recruitments, examinations, and referral activities for civil service employment. The Administrative and Audit Division processes exempt positions and audits personnel transactions of the agencies.

The Legislature authorizes permanent and temporary civil service positions. The staffing process for permanent civil service positions begins with the Legislature authorizing a position. The next step is establishing the position by preparing a position description and determining the classification and salary range. Classification groups similar positions into classes based on the kind and level of work performed and the qualifications required. Agencies cannot recruit and fill any position until it has been classified.

The Department of Budget and Finance and the governor get involved in establishing a position when (1) the position is associated with or requires an agency reorganization, or (2) the agency requests a position variance changing the class of the position. The proposed position variance must comply with state policies.

After a position is established and classified, recruitment can begin. Under a first consideration policy authorized by Section 76-22.5, HRS, state employees have the first opportunity to apply for vacant positions. Under this policy, agencies must first recruit from among their own staff by publishing an "Internal Vacancy Announcement." If no qualified internal applicants are found, the agency can obtain a list of outside eligible applicants from the Department of Human Resources Development. The agency may also consider transfers or demotions from other agencies.

The staffing process described above applies only to civil service positions. Exempt positions are not subject to the same recruitment and examination procedures. Exempted from civil service under Section 76-16, HRS, these positions do not fit into a merit system of classification. Twenty-six types of exempt positions include those in pilot or demonstration projects, those needing special expertise, and those requiring higher compensation to attract qualified candidates. Exempt employees include deputy attorneys general and employees of the Legislature and its agencies. Exempt positions are excluded from the civil service screening process. Applicants for exempt positions do not have to be formally tested, placed on an eligible list, or selected from that list.

Each agency follows its own recruitment and hiring procedures for exempt positions. Exempt recruitment is considerably faster than civil service recruitment. In some instances the agency has already chosen the person.

Temporary and emergency appointments

Under certain conditions, an agency may decide to fill a position by appointing a person on a temporary or emergency basis. A temporary appointment fills a vacant position temporarily to ensure the continuation of essential public business. An emergency appointment fills a vacant position temporarily as a last resort to prevent stoppage of essential public services, as in emergency situations where the life and safety of the public are at stake.

Some reasons why agencies use a temporary or emergency appointment include the following: the employee holding the position is on extended sick leave; no list of eligible applicants exists from which to select candidates for a vacant position; or a permanent civil service position has not been established. Temporary appointments (either a “limited term appointment” or a “temporary appointment outside the list”) and emergency appointments are described further below.

Requirements for temporary and emergency appointments in the civil service are set forth in Section 76-31, HRS, and the State of Hawaii Personnel Rules (Hawaii Administrative Rules, Title 14, Chapter 3.04).

Exempt positions may also be filled on a “temporary” or “emergency” basis. However, the Department of Human Resources Development views *all* exempt positions as temporary. Some agencies, such as the Department of Budget and Finance, define a temporary exempt position as one with a not-to-exceed or ending date. This contrasts with a permanent exempt position in which an employee works at will or at the pleasure of the agency, essentially for an indefinite period of time.

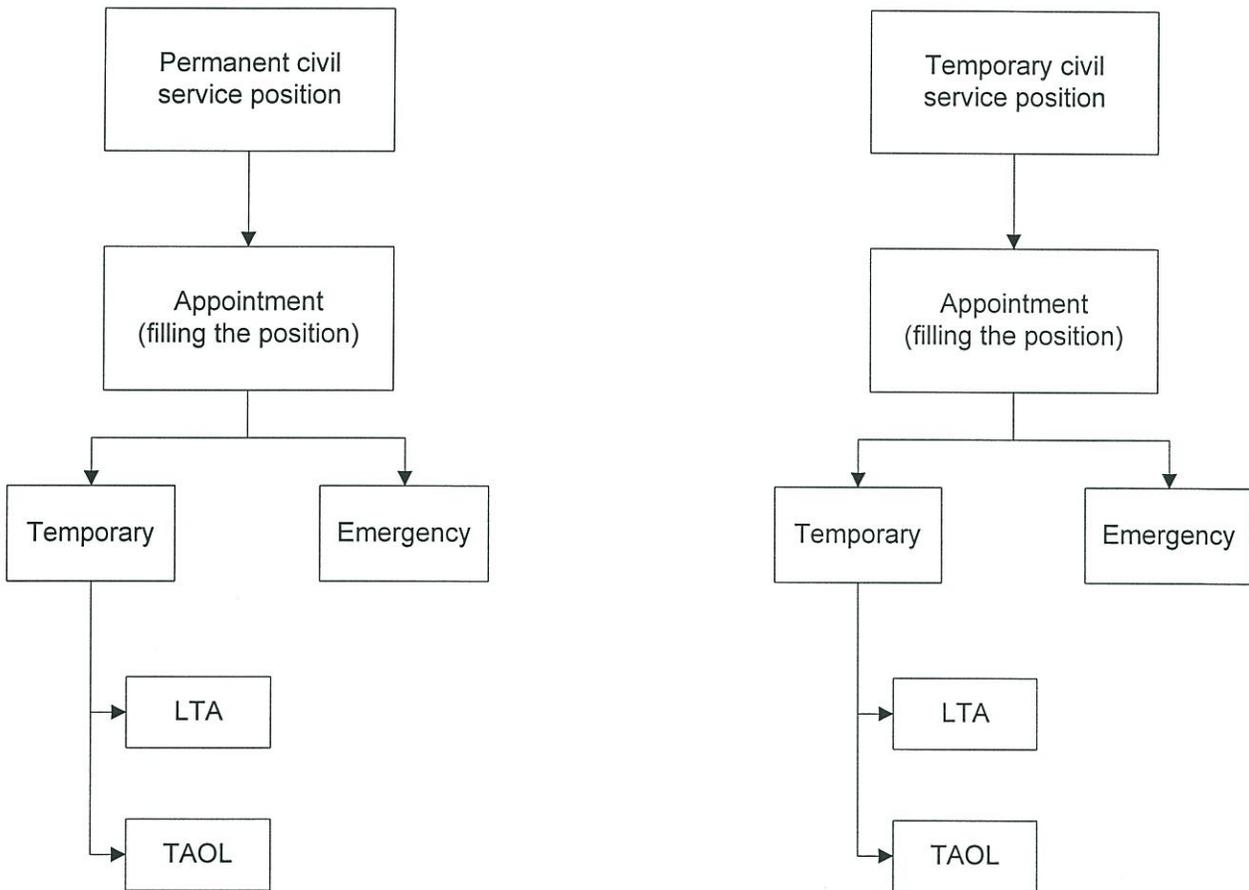
Although exempt positions were reviewed during the course of the audit, the focus of this report and Exhibit 1.1 is on the various types of appointments and positions in the civil service.

Temporary appointments

Under the statute and rules, a temporary appointment is made when a job must be completed within a specific period but an additional civil service position is not needed. These appointments can be filled by a “limited term appointment” or a “temporary appointment outside the list.”

A limited term appointment involves either: (1) appointing a regular civil service employee through a transfer, promotion, or demotion to fill a temporary position or a temporary vacancy of a permanent position, provided the employee is allowed to return to the former position held when the job is completed; or (2) appointing an employee from a certified list of *eligibles*, provided that a regular civil service employee who is appointed in this manner must, when released from the appointment, return to the former position held. Exhibit 1.2 summarizes the process for making a limited term appointment.

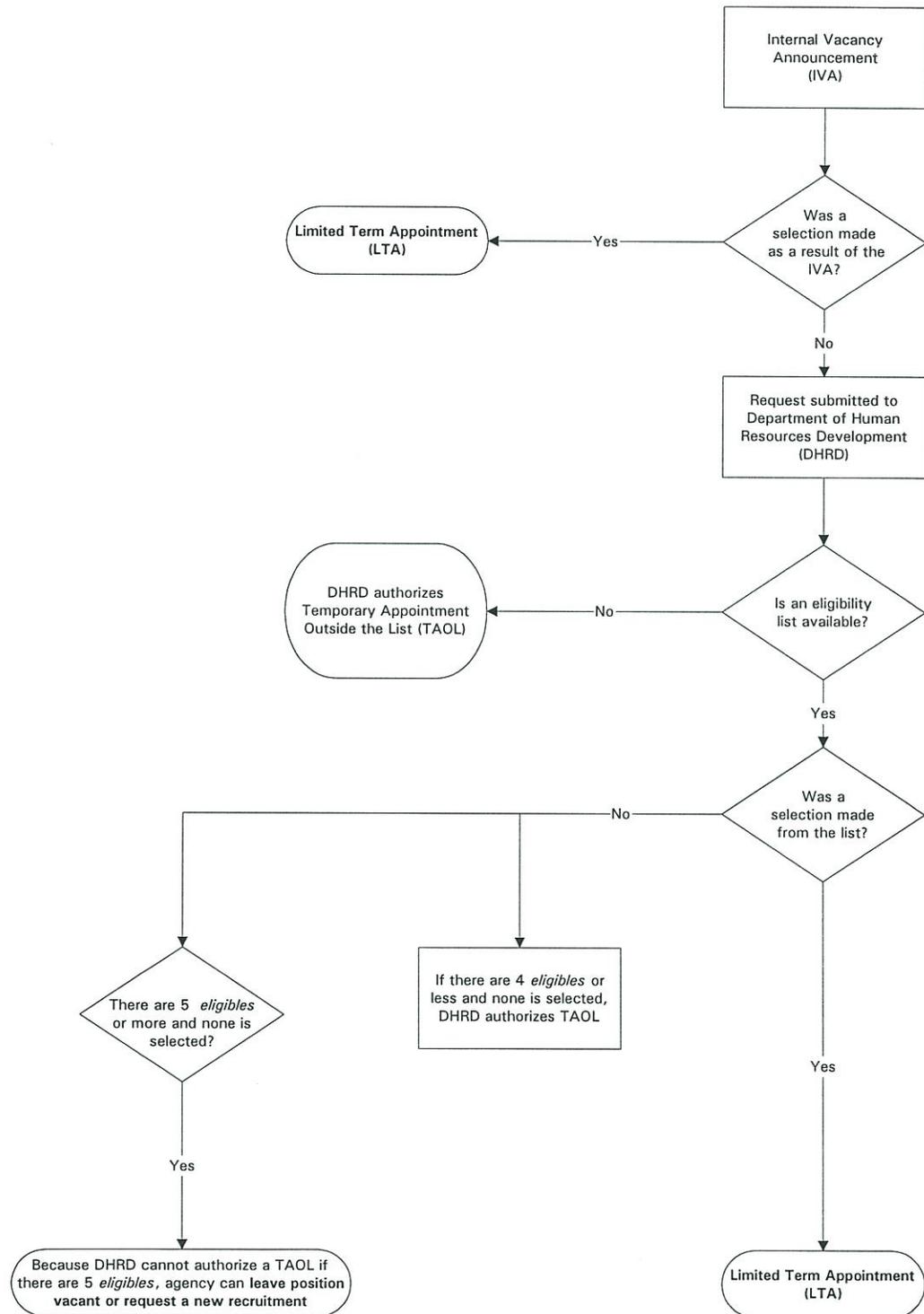
Exhibit 1.1 Filling Positions with Types of Temporary and Emergency Appointments



LTA = Limited Term Appointment
TAOL = Temporary Appointment Outside the List

Source: Department of Human Resources Development, Recruitment and Examination Division.

Exhibit 1.2
Process for Limited Term Appointment (LTA)



Source: Department of Human Resources Development, Recruitment and Examination Division.

A temporary appointment outside the list involves hiring someone when there is no available *eligible* on an appropriate list, when there is no appropriate list, or when there are less than five *eligibles* on a list and no selection was made from such a list that was certified as appropriate for filling a vacancy. This temporarily appointed person must meet the minimum qualifications. If the employee is in the regular civil service, he or she returns to the former position held when released from the temporary appointment. Exhibit 1.3 summarizes the process for making a temporary appointment outside the list.

Temporary appointments may be extended for not more than 12 months, with additional extensions for good cause.

Emergency appointments

When a position must be filled without delay, agencies have the option of hiring someone on an emergency basis (that is, an emergency appointment) as a last resort. No examination is required for an emergency appointment. An emergency appointment can last for 10 days without the approval of the director of the Department of Human Resources Development. Although the employee does not have to meet the minimum qualifications of the position, he or she must be capable of performing the emergency work. The director of human resources development may extend the appointment to 30 days for good and sufficient cause. An agency that needs the person beyond 30 days appoints the person for another 30-day cycle after a one-day break.

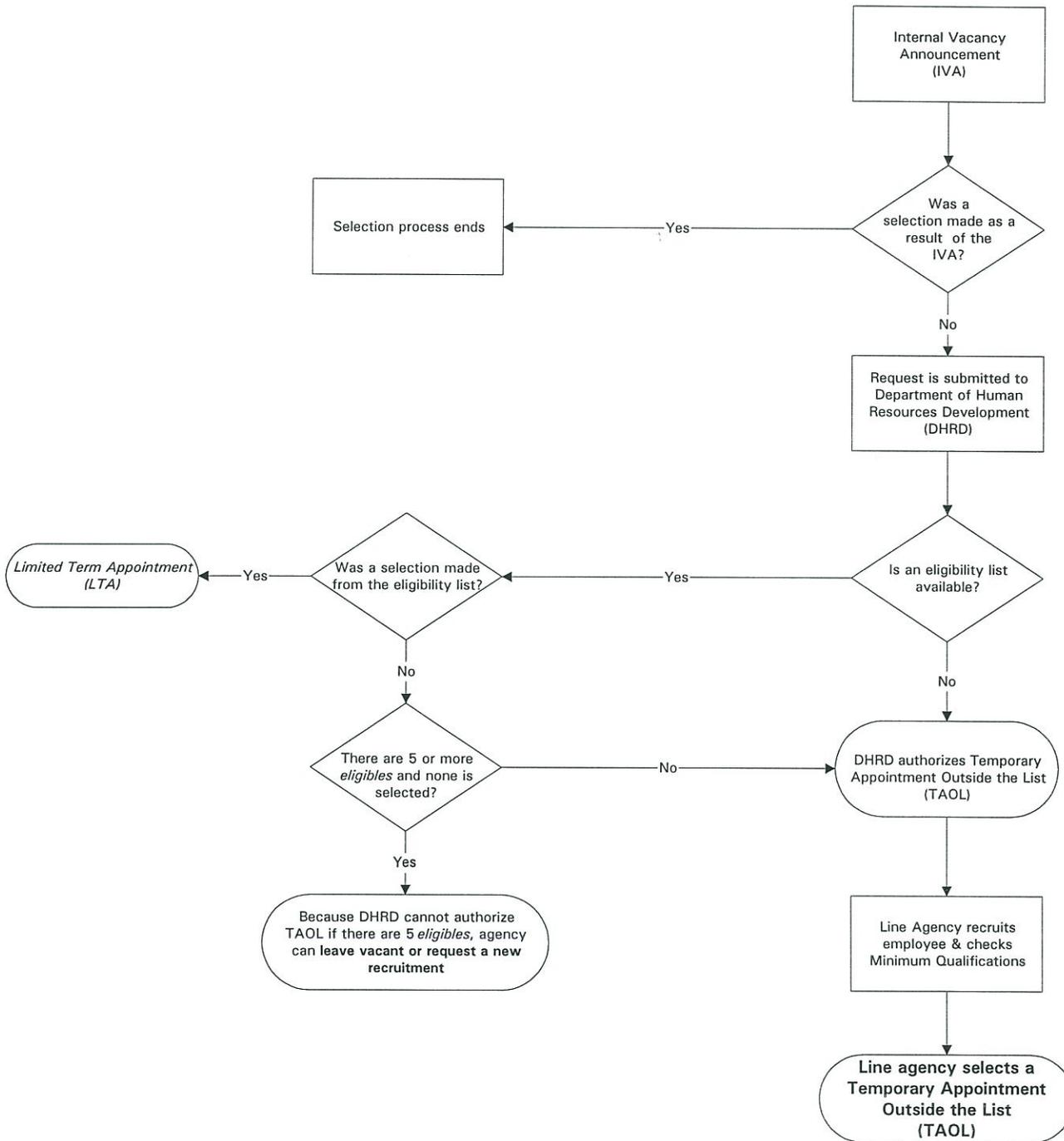
Benefits

The Department of Human Resources Development considers limited term appointments the “best” type of temporary hire from an employee’s perspective because the appointee receives benefits, such as vacation and medical, and may be eligible for a permanent position. Temporary appointees outside the list receive the same benefits as limited term appointees; however, they cannot take vacation leave until they have one year of continuous service.

Emergency appointees are paid by the hour and do not receive sick leave and vacation leave, medical benefits, or paid holidays. They do receive overtime and other pay differentials. Exhibit 1.4 summarizes the benefits received by the various types of appointees.

According to a report from the Department of Human Resources Development, as of September 30, 1998, the number of temporary appointees filling permanent civil service positions included 752 limited term appointments and 166 temporary appointments outside the list. The report also noted that there were 788 emergency hires. This represents approximately 10 percent of a total of 16,672 permanent civil service

Exhibit 1.3
Temporary Appointment Outside the List (TAOL)



Source: Department of Human Resources Development, Recruitment and Examination Division.

positions. The statistics exclude the Department of Education, the University of Hawaii, and non-civil service employees and appointed officials.

**Exhibit 1.4
Employee Benefits for Various Appointments**

Appointment Type	Medical Benefits	Term Life Insurance	Sick Leave	Vacation Leave	Jury Duty & Funeral Leave w/pay	State Holidays w/pay	State Retirement System	Overtime	Premium Pay Differentials
Limited Term Appointment	Yes ¹	Yes ¹	Yes	Yes	Yes	Yes	Yes ²	Yes	Yes
Temporary Appointment Outside the List	Yes ¹	Yes ¹	Yes	Yes ³	Yes	Yes	Yes ²	Yes	Yes
Emergency Appointment	No	No	No	No	No	No	No	Yes	Yes

¹Must be appointed for more than 3 months at 50% FTE or more; eligibility discontinues if employment discontinues or if employment drops below 50%.

²Employee must be appointed for more than 3 months at 50% FTE or more to be eligible for retirement system membership.

³Vacation leave is granted only after one year of continuous service.

Source: Department of Human Resources Development, Recruitment and Examination Division.

Perspectives on potential abuse of temporary and emergency staffing

There are two perspectives which may explain why a state agency chooses to use temporary and emergency appointments. From an agency perspective, these appointments help to cope with a rather inflexible and cumbersome hiring process. In fact, a February 1999 survey of state management practices by the Maxwell School of Citizenship and Public Affairs at Syracuse University rated Hawaii’s personnel system as one of the most rule-bound in the country. Agencies have also cited uncertainty of future funding as another reason why positions are kept temporary or filled on a temporary basis.

From a labor union perspective, filling positions with a temporary or emergency appointment for an extended period allows agencies to evade the civil service system including the merit principle. Unions perceive that individuals are temporarily hired to gain experience and eventually meet the minimum qualifications for the position. Also, due to fiscal constraints, agencies may prefer to keep positions as temporary or emergency appointments in case budget cuts are needed. These types of appointments are easier to eliminate. However, they eliminate the job security that comes with permanent civil service positions. Furthermore, emergency hires are not entitled to any medical or vacation benefits

other than participation in a special deferred compensation plan. The unions perceive this type of appointment as an attempt by the line agencies to “save” money.

Concerns with staffing were raised in previous audits

Our office raised concerns with staffing in our 1994 *Audit of the Process of Staffing State Programs*, Report No. 94-23. We recommended the Department of Human Resources Development issue guidelines to govern the process for exempt positions. We had found that Chapter 76, HRS, neither stated the rationale for exempting certain positions nor provided clear definitions for agencies to follow. Because the statute does not define “special,” “unique,” or “essential to the public interest,” agencies have wide discretion in deciding what is special or unique.

The 1994 audit also found that the department’s administrative rules did not specify how the line agencies should ensure that exempt employees meet the criteria as stated in the statute. We concluded that without administrative oversight and clear definitions, decision making may appear arbitrary, and agencies’ hiring practices are subject to abuse.

Objectives of the Audit

1. Describe and assess the State’s practices for temporary and emergency staffing.
2. Assess the Department of Human Resources Development’s oversight of these practices.
3. Make recommendations as appropriate.

Scope and Methodology

The scope of our review was from FY1996-97 to the present. Our work focused on temporary and emergency appointments in the civil service although we did look at some exempt positions. We did not include provisional hires because of their small numbers (statewide there were 11 as of September 30, 1998) and because they are appointed with the expectation that they will be hired on a permanent basis in a civil service position. Permanent employment is not a promise or expectation of limited term appointments, temporary appointments outside the list, and emergency appointments.

We examined the oversight role of the Department of Human Resources Development as the lead staff agency. We also selected three line agencies for review of their appointment practices and files: the Department of Human Services, the Department of Business, Economic Development, and Tourism, and the Department of Commerce and

Consumer Affairs. They were selected because of their varying budget size, number of staff (large, medium, small, respectively), the type of staff recruited, and the various means of financing used to fund positions. Each of these agencies uses a combination of general, federal, and special funds.

Our samples consisted of 109 employee files from the three line agencies: 51 files from the Department of Human Services, 38 from the Department of Business, Economic Development, and Tourism, and 20 from the Department of Commerce and Consumer Affairs. We selected files based on two samples. In our first sample, we pulled a random statistical sample from a January 31, 1999 listing of temporary and emergency hire and temporary exempt positions. In our second sample, we pulled a judgmental sample from June 30, 1997; June 30, 1998; and January 31, 1999 listings of all temporary appointments (“limited term appointment” and “temporary appointment outside the list”), emergency appointments, and temporary exempt positions. The judgment was based on appointments that we deemed to have been extended for lengthy periods. We based this decision on guidelines set forth in state law. Guidelines state that the initial period for a temporary appointment is 12 months and for an emergency appointment is 30 days. Guidelines allow extensions for good cause with the approval of the director of the Department of Human Resources Development.

We also reviewed applicable state statutes, rules, and policies and procedures. We reviewed legislative testimony, memoranda, letters, statistical reports, and other documents. We conducted interviews with staff of the Department of Human Resources Development, Department of Budget and Finance, Department of Human Services, Department of Business, Economic Development, and Tourism, and the Department of Commerce and Consumer Affairs.

Our work was performed from December 1998 through October 1999 in accordance with generally accepted government auditing standards.

Chapter 2

The Department of Human Resources Development Should Re-Examine the Use of Temporary Appointments and Emergency Appointments

This chapter contains the findings and recommendations of our audit of temporary and emergency staffing of state agencies.

State agencies constantly face the challenge of staffing their programs effectively. Temporary appointments and emergency appointments can be useful in meeting this challenge.

However, we found that these appointments also entail significant problems. Any efforts to reform civil service in Hawaii should address the State's use of temporary and emergency staffing.

Summary of Findings

1. Temporary appointments in state agencies, while useful for certain purposes, can also pose problems for staff recruitment, retention, and productivity. Key problems include the lack of job security and the "right of return."
2. The State's use of emergency appointments is sometimes questionable. The problems include situations where people serve in emergency appointments for lengthy periods and situations where emergency appointments may be used for other purposes.
3. The Department of Human Resources Development needs to more closely examine agencies' use of temporary and emergency appointments. More attention to problems and alternatives and better monitoring and reporting on current practices are needed.

Temporary Appointments Can Have Negative Effects on Agencies' Recruitment, Retention, and Productivity

When a department has a “need for temporary employment,” Section 76-31 of the Hawaii Revised Statutes (HRS) permits the director of human resources development to authorize the department concerned to make or extend temporary appointments limited to a definite time period, but not to exceed one year, except as otherwise specifically permitted by law or regulations.

We found that line agencies make temporary appointments for a variety of reasons, such as the need to staff pilot or demonstration projects. While useful for certain purposes, however, temporary appointments lack job security and can pose problems for agencies' recruitment, retention, and productivity. One dilemma is the legal right of a permanent civil service employee to return to his or her original position following a temporary appointment to another position.

Temporary appointments lack job security

Lacking job security, temporary appointments are not always popular with job seekers, which can result in recruiting difficulties.

Furthermore, without job security, retaining temporary employees for the full length of the appointment can be difficult. People frequently take temporary appointments as an interim step while seeking a permanent position.

The QUEST demonstration project, under the Med-QUEST Division of the Department of Human Services, provides an example of such an impact. Temporary income maintenance workers in QUEST learn detailed knowledge of state and federal rules at a substantial cost in training time, effort, and resources. Quite often, once competence is reached, the newly trained employee will leave for a permanent position in another division, department, or even the private sector.

The continual departure of temporary staff for permanent positions places heavy burdens on a program. In some instances, supervisors and other staff must set aside their normal duties and take over the departed employee's work until someone can be hired. This hinders staff productivity and could delay report processing, such as requests for federal reimbursements to the State.

The program may resort to employing less qualified staff (possibly including emergency appointees). Agency staff noted that temporary appointments divert resources for training, require increased supervision during training, and result in all-around lower productivity.

For example, income maintenance workers are saddled with additional cases whenever a temporary employee leaves. Their workload increases until a replacement is found and trained. Then cases are reassigned again.

Disruptions in case assignments affect delivery of services. Clients complain about caseworkers giving inaccurate information or not being familiar with their cases. An increase in complaints evidences loss of casework continuity for clients receiving public services.

***“Return rights”
aggravate the
problems***

Temporary appointments of regular (that is, someone who has been hired on a permanent basis) civil service employees to other government positions are supposedly short term for specified time periods. However, these appointments are commonly extended, even beyond five years and sometimes over 15 years.

Long-term “temporary” appointments of permanent civil service employees can have negative results linked to “return rights.” That is, a regular civil service employee serving in a temporary appointment has the right to return to his or her permanent position once the temporary appointment is over. The temporary appointment can last for many years; in the meantime, the original permanent position can be filled only with a temporary employee until the “incumbent” returns.

In effect, then, two temporary appointments are created. Holding the permanent position open due to return rights, and offering only temporary status to fill the permanent position in the meantime, contribute to staffing problems.

We found one employee who still has return rights to a permanent position after 16 years in a limited temporary appointment. Meanwhile, her position can be filled only on a temporary basis.

Right to return appears unlimited

A permanent civil service employee’s right to return to his or her original position can be unlimited depending on the circumstances.

On the one hand, under the Hawaii Administrative Rules (Title 14, Chapter 3.04-5) a program losing a permanent employee to a temporary position through a transfer between departments can require that the employee return to the original position when the limited term appointment expires, or forfeit the right to return.

On the other hand, this provision does not apply to transfers *within* departments. Furthermore, requests to extend the limited term appointments (in effect continuing the right to return) have been granted for some of the interdepartmental transfers.

For example, a department head may justify an extension of an employee's temporary appointment if the person is perceived to be providing critical expertise on a special project. This in turn leads to extending the right to return. Furthermore, as long as the need for the employee's expertise exists, the appointment and the return rights can be extended indefinitely.

Problems may occur among a department's divisions

A large department with many temporary positions requiring critical, hard-to-recruit levels of skill can be particularly vulnerable to extended temporary appointments. The department would be reassigning permanent civil service employees at the expense of one division to help another division. These internal reassignments have created temporary appointments in other divisions of the Department of Human Services due to the reassigned employees' return rights.

For example, some permanent staff of the Benefit, Employment, and Support Services Division have been temporarily reassigned to the Med-QUEST Division. This situation has led to problems with recruitment, retention, and productivity in the other divisions. In the Benefit, Employment, and Support Services Division, of the 334 income maintenance worker positions 12 percent are being filled through temporary appointments because the positions are subject to return rights.

Temporary appointments contribute to high turnover in the division, costing the State three days each month in managerial time for recruitment. Furthermore, new staff are not immediately productive, as they must first undergo six weeks of training. Also, once these temporary staff are trained and productive, they often leave within two to three months for a permanent position, compounding the cost and productivity problem.

In another example, a permanent clerical employee was on loan to another office for two years. The lending office reported difficulties attracting and retaining staff for this position due to the return rights of the employee on loan. During the second year, seven different temporary people occupied this position. The entire lending office's productivity was affected because coworkers needed to "pick up the slack" during the training phase for each turnover.

Emergency Appointments Are Sometimes Questionable

To prevent the stoppage of essential public business, Section 76-31, HRS, authorizes emergency appointments to fill positions temporarily in a serious emergency when it is not practicable to determine whether there is an *eligible* list. Emergency appointments are not to exceed ten working days. However, the director of human resources development may extend the appointment for a period not to exceed 30 calendar days for good and sufficient cause and for reasons written by the department concerned.

We found that the State's use of emergency appointments is sometimes questionable. The problems include situations where people serve in emergency appointments for lengthy periods and situations where emergency appointments may be used for other purposes.

Some employees serve in emergency appointments for lengthy periods

As with temporary appointments, Section 76-31, HRS, describes emergency appointments as a type of short-term appointment. Nevertheless, we found two situations in which employees have been appointed on an "emergency" basis for months or years in either the same position or numerous positions. Some individuals have been in both situations.

In the first situation, the person receives emergency appointments to the same position repeatedly. Ten of the 109 employees in our sample (9 percent) had served as emergency appointees in the same position for more than one year. In the most extreme case, the emergency appointment of a Foreign Trade Zone Specialist was extended 43 times over a period of 3.5 years.

These lengthy emergency appointments were accomplished by repeatedly extending the original appointment with short breaks between extensions, a practice that pushes the law to its limits if it does not violate it. The law does not explicitly provide for extensions beyond 30 days. However, in June 1984 the Department of Human Resources Development issued guidelines allowing this practice. While stating that emergency appointments are intended to be short term (10 days, maximum 30 days), the rules allow repeated extensions of up to 30 days each, if a justification is provided and a break of at least one working day occurs between extensions.

In the second situation, the person is selected for emergency appointments to various positions successively, becoming a sort of "career emergency hire" who moves from one emergency appointment to the next. For example, three of the ten emergency appointees described above worked as emergency appointees in a number of different positions prior to their most current, extended emergency appointment:

- A Pre-Audit Clerk I worked in eight different positions prior to August 1997;
- A Secretary I worked in two different positions prior to October 1997; and
- The Foreign Trade Zone specialist worked in four different positions prior to October 1995.

We found other examples: two individuals, currently serving as emergency appointees to Income Maintenance Worker I positions, previously served as emergency appointees to several different positions. One worked as an emergency appointee in twelve different positions for more than five years. The other worked as an emergency appointee in seven different positions over the past two years.

Both situations—repeated extensions and multiple appointments—raise questions as to whether emergency appointments are being used appropriately.

Emergency appointments may be used for other purposes

According to June 1984 guidelines of the Department of Human Resources Development, “essential public business” includes work as required by federal or state law, by court order, or where public health or safety is affected. A “serious emergency” exists when “there is a pressing need and/or unforeseen circumstances requiring immediate services of an employee.” Consequently, emergency appointments are to be used as a last resort when all other types of appointments are either impractical or unavailable.

However, it appears that line agencies have sometimes stretched these guidelines to apply to non-emergencies and to serve other purposes. While assessing agencies’ motivation can be difficult, we found evidence strongly suggesting that agencies sometimes distort or misuse the emergency appointment process because of factors either within or outside the agencies’ control.

First, agencies may use emergency appointments simply to retain employees. When there is a pattern of frequent extensions near or at the end of a 30-day appointment, the likely intent is to extend the individual’s employment and not to respond to an emergency situation. We found this hiring pattern in 4 of the 109 files we reviewed.

Second, agencies may use emergency appointments to circumvent non-emergency hiring procedures viewed as cumbersome or unlikely to deliver the person needed. In October 1998, the personnel officer of the Department of Human Services issued a department-wide memo expressing concern that supervisors were not making an effort to recruit

from *eligible* lists but rather continued to extend the emergency appointee. However, personnel officers in agencies have commented on the months-long wait for lists of *eligibles* from the Department of Human Resources Development.

In some cases, an agency may choose the same person for various emergency appointments because the person is already familiar with the tasks required for the position. Agencies may use emergency appointments to fill positions on a long-term basis with those the agency feels can do the job best but who do not meet the official minimum qualifications for the position.

Third, agencies may use emergency appointments to enable individuals to acquire experience helpful in obtaining a more permanent position. In guidelines issued in 1984, the Department of Human Resources Development stated that agencies should not be using emergency appointments to allow individuals to gain experience toward meeting minimum qualifications for more permanent positions.

We found strong indications that this practice continues. In our sample, more than 20 emergency appointees ended up with more permanent appointments. Of these, 10 obtained temporary appointments outside the list, 7 obtained limited term appointments, 2 obtained permanent civil service positions, and 3 obtained exempt positions. In some of these cases, the previous emergency appointment had been extended up to two years.

Furthermore, persons holding extended emergency appointments gain familiarity working with the staff who do the hiring for the more permanent position. They have an advantage over similarly qualified persons who apply for the position through the regular hiring process. In a way, extended emergency appointees have already served a probationary period that demonstrates whether they can do the work.

Fourth, we found some dubious justifications for extending emergency appointments. In its December 1996 *Extension of Temporary Appointment Manual*, the Department of Human Resources Development listed 13 reasons justifying a line agency making a 30-day extension of an emergency appointment without the approval of the director of human resources development. The reasons imply that the line agency is actively attempting to remedy the emergency condition. The reasons include pending recruitment/appointment of a replacement, finalization of classification/reorganization, and fiscal/budgetary constraints. Emergency appointments for reasons other than the 13 listed require approval from the Department of Human Resources Development.

In our sample, we found several emergency appointments for general laborers that exceeded one year, with “pending reorganization” given as the reason for the extension. However, this reason suggests less of an emergency and more a problem of poor planning or management.

We also found a number of emergency appointments being justified with a “pending selection from eligible list” reason. However, many of these positions were common, nontechnical classifications—such as clerk and secretary—that should have *eligibles* available for recruitment without the need for emergency appointments. Also, the positions did not appear to meet the “emergency” criteria of providing essential public services.

Department of Human Resources Development Should Pursue Improvements

The Department of Human Resources Development acknowledges the problems that we have identified with temporary and emergency appointments. As the State’s personnel department, it should take the lead in making improvements.

The governor and the director of human resources development have declared that the civil service system needs reform. The director is now coordinating reform efforts (sometimes called “modernization”). This interest in reform provides an opportunity for the Department of Human Resources Development to re-examine—and modify as appropriate—the use of temporary appointments and emergency appointments in state agencies.

In pursuing improvements, the department should emphasize examining problems and alternatives, and monitoring and reporting on agencies’ use of temporary and emergency appointments.

Attention to problems and alternatives is needed

The Department of Human Resources Development—in its multiple roles as protector of the merit system, personnel office to the executive branch, and leader of civil service reform—needs to re-examine how problems with temporary and emergency appointments are connected to civil service constraints and other issues.

Line agencies have resorted to extending temporary and emergency appointments for a number of reasons, which include not being able to find the best-qualified candidate within the constraints of the civil service system. Civil service rules and requirements, while well-intentioned, can stifle a line agency’s ability to recruit and retain staff.

For example, some applicants who are capable of doing the job may not meet all the civil service’s requirements that deem an individual “qualified.” Thus the hiring agency may see little recourse but to “skirt”

the civil service system in order to fill the position. In some cases, line agencies resort to continuously extended appointments of individuals who do not meet minimum qualifications so that they can eventually qualify for a permanent civil service position. This approach runs counter to Section 76-1, HRS, which states that the civil service system was established to create a career service in government that would attract, select, and retain the best qualified individuals based on merit principles.

In addition to examining the broad issues, the department should consider specific alternative approaches such as the following:

- Seeking legislative classification as permanent positions those temporary positions now being filled by employees holding very lengthy temporary appointments;
- Broad-banding, that is, adopting fewer job classes with broader requirements as an alternative to the more numerous existing classifications, with their highly detailed, specific, and potentially constraining duties and qualifications;
- Imposing limits on return rights if their negative impact outweighs their benefits; and
- Ensuring that line agencies determine whether a temporary appointment would be more appropriate than an emergency appointment if the employee will be needed for an extended period of time.

Forming an employee pool for all non-permanent employment offers another option. An example of such a pool is Nebraska's "Specialized Services Office," which serves as a clearinghouse for all temporary employment within the state. The office recruits and screens all candidates and is typically able to respond within 24 hours to a department's request for an employee. For hard-to-fill positions, private sector employment agencies may be contacted. The program accommodates individuals who prefer working on an intermittent basis and those who wish to gain experience to meet the civil service's minimum qualifications.

Monitoring and reporting on line agencies need improvement

The Department of Human Resources Development should more effectively monitor and report on the line agencies' use of temporary and emergency appointments. Our audit simply identified some of the trouble spots; the department should pursue the matter in detail.

The department has produced extensive guidelines for these appointments. Two manuals were issued in December 1996: the *Appointment Approval Manual* and the *Extension of Temporary Appointment Manual*. The appointment manual lists the initial reasons for appointments and the extension manual spells out 12 reasons/conditions for extensions for temporary appointments and 13 reasons/conditions for extensions for emergency appointments. However, there have been indications by the department that these guidelines do not necessarily meet the needs of the line agencies.

Department staff assert that agencies need a little more leeway and adopt a “hands off” approach regarding agencies’ utilization and adherence to these manuals. Staff at the Recruitment and Examination Division feel that line agencies should be “trusted” and are of the opinion that instances of abuse have been minimal. This stance is further supported by the director’s announcement that the audit branch should not take on an “internal auditor” type role. The department does not want a punitive “watchdog” function but prefers a consultative one by providing assistance to agencies when asked. In addition, the department has been focusing on the implementation of a new computer system and has not been able to conduct many reviews.

Nevertheless, we believe that the department has been remiss in not better monitoring agencies’ use of temporary and emergency appointments after delegating much of that responsibility to them. Although the department has decided to emphasize a more consultative role with the line agencies, it still must address legal compliance. Section 26-5, HRS, requires the director to maintain a system of inspection to determine that the personnel laws are applied and administered by the departments consistently with the civil service law. Noncompliance can result in revocation of any delegated authority. The department can also enhance reform efforts by ensuring the availability of accurate information on the number and nature of temporary and emergency appointments.

Temporary and emergency appointments are not systematically reviewed and reported

We verified that systematic reviews of temporary and emergency appointments by the Department of Human Resources Development have not been taking place. These reviews are the responsibility of the Recruitment and Examination Division and the Administrative and Audit Division. The Recruitment and Examination Division administers the recruitment program, which obtains timely and sufficient numbers of qualified applicants to fill vacant state civil service positions. As a part of this responsibility, the division also coordinates audits of the recruitment, certification, and placement responsibilities that are delegated to line agencies. These audits should include monitoring the line agencies’ use of temporary and emergency appointments.

Staff of the Recruitment and Examination Division informed us that since many of the responsibilities for emergency appointments have been delegated to agencies, the division's oversight of this area has been lax. The last comprehensive review took place in the early 1980s because of a concern with long-term emergency appointments. At the Legislature's request, a 1991 report by the department described the number of emergency appointments and their costs to the State if these individuals were to receive medical and vacation benefits. Since then, there has been no statewide, comprehensive review of emergency appointments. Nor, to our knowledge, has there been a similar review of temporary appointments. Information on frequency and legitimacy of temporary and emergency appointments is not accurate or reliable among all affected line and staff agencies.

Discrepant information makes tracking problem areas difficult

An accurate reporting of the number of temporary and emergency appointments could serve as an indicator of whether line agencies have become increasingly reliant on temporary and emergency staffing options. It could also locate problem areas and determine whether long-term savings would result by hiring a permanent employee.

The Department of Human Resources Development is required to maintain a centralized comprehensive employee information system on civil service and exempt employees. The system should include employees who fill civil service positions on a temporary basis ("limited term appointment" or "temporary appointment outside the list") or emergency basis as well as permanent employees who have limited term appointments in exempt positions. Although the department has centralized information, its accuracy is questionable.

When we cross-checked employee information provided by the department with information provided by line agencies, we found conflicting data. For the fiscal years ending June 30, 1997 and 1998, we cross-checked temporary and emergency appointment reports of the Department of Human Resources Development with those provided by the Department of Human Services, the Department of Business, Economic Development, and Tourism, and the Department of Commerce and Consumer Affairs. In two agencies, we found six employees not listed in the Department of Human Resources Development's reports but listed under the line agencies'.

The reason for the discrepancy could be due to a cut-off problem whereby the Department of Human Resources Development reports excluded employees whose term ended on June 30, the fiscal year end. Many of these employees are renewed on July 1, the start of the fiscal year and reinstated at the line agencies. It is possible that larger numbers

of temporary and emergency appointments were excluded from the Department of Human Resources Development list. If so, the number of temporary and emergency appointments reported for a given agency could be substantially understated by the human resources department.

As another example of discrepant record keeping, several emergency appointments did not appear on the Department of Human Resources Development's report although the line agencies confirmed that these appointments existed. The discrepancy was again related to the report's date. Employees were in-between extensions and technically not employed at the time the line agency's report was produced. (This is related to the rule that emergency hires must have a one-day break in service every thirty days.)

Incomplete information prevents the determination of appropriate and effective staffing practices

Several years ago, the media asked the question of "How many employees are on the state payroll?" Different sources of information produced discrepant numbers. This raised concerns among the general public regarding exactly how many individuals truly are employed by the State. This also led to questions of whether staffing practices were appropriate and effective.

A lack of accurate information for temporary and emergency appointments makes it difficult for oversight bodies such as the Legislature and the Department of Budget and Finance to make informed decisions on how to appropriate and allocate resources to the line agencies. As stated earlier, we found that the potential for understated position counts exists. Lack of accurate position counts makes it difficult to determine whether a line agency has too little or too much staff to do its required work effectively.

The Department of Budget and Finance admits that its information is not complete. The department produces budget journal tables that list both permanent and temporary civil service and exempt positions. However, these tables do not include emergency appointment information. The department says that emergency appointments are too "short-term" to track. Furthermore, the tables do not show unbudgeted positions. They only show those positions that are budgeted, that is, those authorized and funded by the general or supplemental appropriation or other specific legislation.

The department's quarterly vacancy reports are also incomplete. If agencies would report unbudgeted positions on their quarterly vacancy reports as being "established and vacant," such positions could be reviewed and monitored. However, reporting unbudgeted position information is at each agency's discretion, so tracking unbudgeted positions would not be useful. Accurate information can serve as a tool to track areas in need of reform.

Conclusion

Earlier this year, the governor and the director of the Department of Human Resources Development voiced their desire to reform the civil service system. Our report focuses on temporary and emergency appointments, two staffing approaches that affect the system.

Our report points out several problems that should be considered during any civil service reform effort as the State works to ensure that its staffing needs are met. The problems include the negative impact of certain temporary appointments on agency recruiting, retention, and productivity and the use of emergency appointments for extended periods and for questionable reasons.

The Department of Human Resources Development needs to take the lead in identifying any problems, seeking alternatives, and monitoring and reporting on the agencies' use of temporary and emergency appointments.

Recommendations

1. The Department of Human Resources Development should more closely examine the problems related to temporary and emergency appointments, including the impact of these appointments on the merit system. In the course of the re-examination, the department should consider various options including the following:
 - a. Determine whether work being performed through very lengthy temporary appointments to temporary positions should instead be performed through the establishment of permanent positions;
 - b. Broad-banding, that is, adopting fewer job classes with broader requirements as an alternative to the more numerous existing classifications, with their highly detailed, specific, and potentially constraining duties and qualifications;
 - c. Imposing limits on return rights if the negative impacts of these rights outweigh their benefits;
 - d. Ensuring that line agencies determine whether a temporary appointment would be more appropriate than an emergency appointment if the employee will be needed for an extended period of time; and
 - e. Conducting a cost-benefit analysis to determine the feasibility of developing an employee pool of properly qualified persons to fill unexpected vacancies in non-permanent employment. The pool

could include persons willing to work on a casual basis and be only intermittently employed.

2. The Department of Human Resources Development should more effectively monitor and report on the line agencies' use of temporary and emergency appointments. This should be accomplished by the following:
 - a. Revising its rules on temporary and emergency appointments where necessary to ensure their clarity and usefulness;
 - b. Inspecting all line agencies for compliance with civil service laws governing temporary and emergency staffing; and
 - c. Regularly producing complete and accurate reports submitted to the Legislature and line agencies that document the number and types of emergency and temporary appointments, the length of each appointment, initial reason(s) for the appointment, and any reason(s) for subsequent extensions. Also, the reports should include any findings regarding noncompliance, the legitimacy of the appointment or extensions, and recommendations to rectify any problems.

Appendix A

Glossary of Terms

Appointment

Refers to the act of the appointing authority in filling a job vacancy. The two basic categories are regular and temporary.

Chapter 76, Hawaii Revised Statutes (HRS)

The Civil Service Law.

Civil service position

A position in the state service covered by the provisions of Chapter 76 and not exempted by Section 76-16 of the state civil service law.

Civil service system

A government career system that attracts, selects, and retains individuals based on merit. Free from political influences and with incentives for promotion, the system eliminates unnecessary and inefficient employees and provides technically competent and loyal personnel to render impartial service to the public.

Classification

The assignment of a position to a class based on the kind and level of work performed and the qualifications required for performing the work. Every state civil service position must be classified. Line agencies cannot establish or fill any position until the Department of Human Resources Development has placed it into an existing class or a new class.

Competitive process

The process by which a candidate for a civil service position is screened, through the use of examination, to determine his/her qualifications for appointment to a position in a particular class. Open competitive examination means admission to the process is not limited to persons already employed in civil service.

Eligible list

A list of persons qualified for appointment to a position in a particular class, such as a list being either open-competitive (examination), promotional, or reemployment.

Emergency appointment

The filling of a vacant position on a temporary basis, as a last resort, for the purpose of preventing stoppage of essential public business in serious emergency situations where public life and safety are at stake.

Limited term appointment

An appointment made when there is a need for a temporary employee for a specified period. The employee must be from an eligible list obtained from the Department of Human Resources Development. The extension of a limited term appointment shall not exceed twelve months.

Line agency

An administrative concept that categorizes the work of an agency as an operating function. The line agency carries out legislative programs and deals directly with the public. Any of the 18 recognized departments in the executive branch except for the Department of Human Resources Development, Department of Budget and Finance, and Department of Accounting and General Services are line agencies. The latter three agencies are referred to as staff agencies.

Merit principles

Principles upon which the state personnel system is administered, pursuant to Section 76-1, HRS, such as equal opportunity for all, impartial selection, opportunity for promotion, reasonable job security, systematic classification of positions, and proper balance between employer and employee relations.

Non-competitive action or process

A screening process for particular positions requiring special qualifications and training. This action is initiated by the department head and is usually done when it is preferable to fill a position with an existing employee.

Permanent appointment

An appointment granted a civil service employee under the following circumstances: (1) after he or she has successfully completed a probational period; (2) upon the employee's movement to a vacant position; or (3) when specifically authorized by statute.

Position

A specific job, whether occupied or vacant, consisting of duties and responsibilities assigned or delegated requiring the full or part-time employment of one person.

Return rights

The right of civil service employees to be reinstated to their previously held permanent position after having held a temporary appointment or after having completed a leave of absence. If the employee elects to extend the temporary appointment and the department head does not give written approval, the employee loses return rights and must be terminated at the end of the temporary appointment period. However, if the approval is granted, the employee's return rights are maintained.

Staff agency

An administrative concept that categorizes the work of an agency as a supportive function. Staff agencies serve in a supportive capacity, aiding the governor and the line officials through such activities as planning, coordinating, and budgeting. In this report, the Department of Budget and Finance and the Department of Human Resources Development are both staff agencies. The Department of Budget and Finance determines whether staffing actions involving an agency's reorganization or position variance are in compliance with state policies. The Department of Human Resources Development provides leadership, mechanisms, and resources to support line agencies in attracting, hiring, developing, and retaining the "best and the brightest" in the public service.

Temporary appointment

The filling of a vacant position on a temporary basis for the purpose of ensuring the continuation of essential public business.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted drafts of this report to the Department of Human Resources Development and the Department of Budget and Finance on November 23, 1999. A copy of the transmittal letter to the Department of Human Resources Development is included as Attachment 1. We sent a similar letter to the Department of Budget and Finance. The response from the Department of Human Resources Development is included as Attachment 2. The Department of Budget and Finance elected not to submit a response.

The Department of Human Resources Development commented that it generally concurred with the data and findings of our draft report. The department also commented on a variety of subjects, including “internal functional reengineering” in the executive branch; civil service modernization; the department’s Human Resources Management System; economic conditions affecting state staffing; and the department’s relationship to the line agencies. Among other things, the department stated its commitment to “continuing to improve the management of temporary and emergency hire staffing resources.” Through the civil service modernization initiative, the department seeks to “improve the balance between permitting programs to fill vacancies on a temporary or permanent basis in a timely manner” yet ensuring safeguards to prevent misuse or overuse of “temporary fixes.”

The department stated that our draft report did not acknowledge that the Legislature authorizes permanent as well as temporary civil service positions. However, our draft report made it clear that civil service positions may be permanent or temporary and that the Legislature authorizes permanent civil service positions. To clarify that the Legislature also authorizes temporary civil service positions, we have made some editorial changes in this published report. We also revised our report to reflect the department’s suggested descriptions of the functions of the department and its Recruitment and Examination Division.

The department also noted that our draft report omitted provisional appointments. However, we wish to point out that in the Scope and Methodology section of our draft, we stated that we did not include provisional hires and explained why (for example, their numbers are small).

Additionally, the department recommended amending a statement in our draft report that deals with the likely intent of frequent extensions at or

near the end of 30-day emergency appointments. While the department's method of showing its suggested revision was somewhat hard to follow, it appears that in essence the department was asking us to substitute "emergency appointments" for "extensions" and "reappoint" for "extend" in the pertinent sentence. However, we did not incorporate the department's suggestion because we believe that our original language accurately reflected the evidence and conveyed our meaning.

The department also asked us to provide more information about Nebraska's Specialized Services Office, which serves as a clearinghouse for all temporary employment within that state. Preferring not to expand our report's discussion of the Nebraska experience, we suggest that the department contact the Department of Administrative Services of the State of Nebraska for additional information.

Finally, we made some other changes to our draft report in response to the department's comments and made a few other editorial changes for purposes of clarity and style.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

November 23, 1999

COPY

The Honorable Michael McCartney
Director
Department of Human Resources Development
Leiopapa a Kamehameha Building
235 South Beretania Street
Honolulu, Hawaii 96813

Dear Mr. McCartney:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Audit of Temporary and Emergency Staffing of State Agencies*. We ask that you telephone us by Monday, November 29, 1999, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, December 6, 1999.

The Department of Budget and Finance, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script that reads "Marion M. Higa".

Marion M. Higa
State Auditor

Enclosures

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



MIKE McCARTNEY
DIRECTOR

JAMES K. NISHIMOTO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

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STATE OF HAWAII

December 6, 1999

Ms. Marion M. Higa
State Auditor
465 King Street, Room 500
Honolulu, HI 96813

Dear Ms. Higa:

Thank you for providing the Department of Human Resource Development (HRD) the opportunity to comment on the recently completed auditor's Draft Report, Audit of Temporary and Emergency Staffing of State Agencies. While HRD generally concurs with the data and findings of the Draft Report, HRD believes that there were other insights which were shared with the auditor, but not reflected in the Draft Report leaving open the possibility that other conclusions may be drawn from the data and findings. Additionally, there are other comments that warrant consideration when examining the utilization of Temporary and Emergency Staffing.

General Comments Regarding the Draft Report :

As a preface to our comments, there are two important concurrent developments that should be noted:

First, the State executive branch has been undergoing tremendous internal functional reengineering since Governor Cayetano took office. In June of 1999, the Governor charged HRD to lead the modernization efforts for the State's civil service system. Extensive efforts are underway to modernize the civil service with stakeholders which include department leadership, managers, employees, employee unions, the Governor and legislators.

Second, as the result of HRD's intensive drive to reengineer the various HR data systems, the State's new Human Resources Management System (HRMS) has been successfully connected all departmental personnel offices. This new system will

have the accuracy, timeliness and utility of HR data and reports needed for more effective management decisions and efficient government to include the utilization of temporary staffing.

Legislature authorizes both permanent and temporary civil service positions.

Absent from the Draft Report is acknowledgment of the fact that the Legislature authorizes permanent as well as temporary civil service positions. In-turn, the executive branch fills positions in the context of their status, i.e. temporary or permanent. The status of the position along with other programmatic factors, e.g. availability of funding, operational considerations, etc., also impact on the program managers' decisions whether or not to fill positions on a temporary or permanent basis.

Line departments may establish, recruit and fill authorized temporary civil service positions only with temporary civil service appointments.

For program operation purposes, programs may establish authorized temporary positions, which may not be filled with permanent civil service employees. On the other hand, line departments may fill authorized permanent civil service positions with permanent civil service appointments, and under certain limited conditions, fill permanent civil service positions on a temporary basis. The decisions to fill on a temporary or permanent basis is appropriately the program manager's decisions.

Hawaii's depressed economic conditions since early to mid-1990's have impacted programs of all departments, and their ability to fill vacancies on a permanent basis.

Since the State's largest ever Reduction-in-Force (RIF) in 1995 and abolishment of vacant positions, the nature of hiring and staffing of programs in the state Executive Branch has undergone tremendous changes. In fact, HRD has been involved with RIF actions occurring since 1994 and up until late September of 1999. Between 1995 and 1998, the Governor in order to maintain a sound financial plan issued hiring freezes, and even the hiring of temporary appointments were necessarily monitored by the Department of Budget and Finance. Additionally, the State's economic condition did not at all factor into the mandatory satisfaction of federal consent decree orders in the departments of public safety, health, and education. The various mandates required the immediate establishment and filling of positions to meet decree requirements or affected departments would face stiff sanctions.

Because of the uncertainty of tax revenue collections, and continual program reengineering efforts, many program managers elected to take a conservative approach by filling permanent civil service vacancies on a temporary basis as a potential cost-effective measure rather than gamble that a permanent filling would not later have to be subject to the draining complexities of a reduction-in-force process because of

unrealized funding. If departments fill their permanent civil service positions with permanent appointments, then when a RIF becomes effectuated, initially affected civil service employees are then guaranteed a minimum 90-day notice and employment, and if placed, retain a "red-circled" salary. The administration of RIFs, in itself, is costly as well.

HRD has had to redesign its functional workflow and work priorities.

The HRD's Recruitment and Examination Division (R&E) is currently at 31% less staffing since 1995 to present, and as a consequence R&E has had to reprioritize its focus to satisfy priority recruitment and certification requirements for all Executive Branch Departments. HRD believes that the filling of positions is appropriately at the discretion of the employing departments, who also must balance their needs for staffing resources, varying levels of funding that may not permit permanent appointments. Even if HRD were to rescind the delegated authority regarding the filling of vacancies, the decisions to fill the vacancies on a temporary basis would still have to be made by the line agencies, with or without the intervention of budget instructions. Hence, even a post HRD audit of the temporary appointments may not address the underlying and real basis for the utilization of temporary staffing.

Rather than the close monitoring and auditing of the utilization of temporary and emergency staffing, HRD believes that the staffing decisions is appropriately within the discretion and purview of the line agencies, who are responsible for providing governmental public services.

The line agencies make the determination whether the work performed by very lengthy temporary appointments in temporary positions justify legislative action in making these temporary positions permanent. It is the line agency that has the authority to and would be responsible for submitting legislative requests and justifications to this affect.

HRD's belief that its role is to support and enable programs to meet their staffing needs rather than dictate programmatic staffing. Especially in this time of such organizational flux faced by all agencies, HRD does not believe that it should unilaterally impose limits on extensions of temporary appointments, which are at the discretion of the appointing authorities as currently defined by administrative rules. Such limits have the potential for adversely affecting program operations and may even be contrary to consent decree requirements.

There already exist limits on return rights. Any agency can deny the extension of its employee in a temporary position. Subsequent to 1995, this became strengthened since an employee who fails to return also loses his/her permanent civil service status. Additionally, although seldom used, an appointing authority may stop an employee from taking a LTA appointment when it is a non-competitive transfer or voluntary demotion. Such movements require the approval of the losing and gaining agency.

Due to the sheer volume of temporary appointments being made, HRD (in particular the R&E Division) does not have the staffing resources to monitor and program evaluative skills capability to be able to ensure a timely and less bureaucratic assessment of when a temporary appointment is more appropriate than an emergency hire. Our knowledge of the Executive Branch is that every agency has unique service goals and goal-specific staffing needs. Ultimately, how a vacancy is filled should be a program manager's decision guided by guidelines and monitored by the department's personnel office.

It appears that an objective of the Nebraska's Specialized Service Office seems to be quick response to the filling of vacant temporary positions. While being proposed in the Draft Report as a possible solution, the objective of the Nebraska approach to fill positions quickly would seem to disregard an underlying focus of the Audit Report, i.e. the number and duration of temporary appointments. Therefore, is Nebraska's program needed in Hawaii or would it only exacerbate the situation? HRD would appreciate the Auditor providing more information about the Nebraska experience.

HRD is currently addressing revisions of statutes and rules on all temporary appointments via its recruitment modernization efforts.

The recruitment modernization committee has submitted its recommendations that where feasible, the line agencies are best able to determine the method in filling their vacancies, and hence, they seek decentralization of recruitment, examination and referral activities. Simply stated, there is a strong belief that one method of recruitment no longer fits every program's staffing needs, and with this decentralization of authority and increased flexibility, accountability laws must also be enacted to ensure that merit principles and employment Discrimination laws are not violated. Finally, the R&E modernization task group, comprised of departmental personnel officers, managers, and union representatives, recognized the problems cited in the auditor's report and has developed a proposal to reduce the number of temporary appointments to two types: casual hire of less than 90 days duration with no reappointments ("extensions") and temporary appointment of a set duration without extension. Further development and evaluation of the ramifications on operations of these ideas are necessary.

While broad banding may in part address some concerns, it is not an omnibus panacea as has been suggested by the Auditor's Report.

Broad-banding or fewer classes in itself will not directly address the real problem. In reality, other factors, e.g. operational necessity, funding limitations, etc., will have a greater impact on line agencies decisions to fill permanent positions on temporary basis or that they must fill temporary positions with temporary appointments.

While broad banding could minimize some temporary appointments since qualifications would be broader and broad banding is certainly being considered in the civil service modernization process, however, even under the current system, virtually all

occupations in the State already have entry level classes, which could be used to appoint individuals without full performance qualifications. Since pay levels are appropriately tied to the level of knowledge and skill required to do the work, it would be inappropriate to compensate individuals for a broad band of skills required on the job but not, as yet, attained by the employee.

In summation:

HRD would agree that the numbers of temporary appointments being made by line departments could be excessive and hence require HRD's close monitoring if the Legislature authorized only permanent civil service positions.

HRD would also agree that if there was sufficient monies in tax revenues in a recovered, stable and booming economy and there were not fear of future reductions-in-force then programs would have greater incentives to fill their authorized permanent positions on a permanent basis. HRD would also agree that HRD should adopt a more aggressive and controlling posture and philosophy with the impact of micro-managing line departmental personnel staff decision-making regarding the filling of vacancies on a temporary or permanent basis if HRD were empowered to control programs and dictate operational decisions without regard to such factors, e.g. funding, competing programmatic needs, etc.

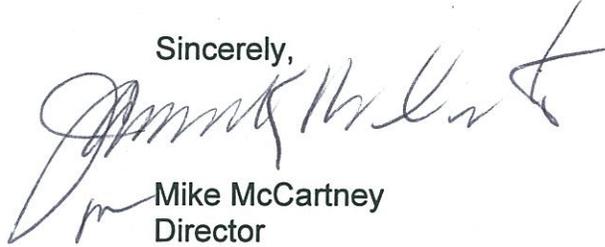
Given that the "if's" in the preceding paragraph are not the situation and the belief that it is HRD's role to support, facilitate and assist programs to satisfy their program responsibilities rather than add more bureaucracy or create more rules for an already "rule bound system", HRD still appreciates and recognizes the need to ensure that system safeguards against the mis-uses of temporary and emergency staffing are still needed. However, in pursuing the implementation of safeguards an awareness cannot be lost of the fact that the Legislature authorizes a variety of positions, be they temporary or permanent, and it is appropriately the responsibility and discretion authority of program managers who must take into consideration a variety of factors, e.g. availability of funding, the continual reengineering of organizational structures, competing program priorities, etc., in the deciding how best to fill positions vacancies, i.e. temporarily or permanently, to satisfy program requirements and consistent with the status of the position.

HRD is committed to continuing to improve the management of temporary and emergency hire staffing resources. HRD intends through the civil service modernization initiative to continue to seek to improve the balance between permitting programs to fill

Page 6

vacancies on temporary or permanent basis in a timely manner and yet ensure that safeguards to part of the system to prevent the mis-use or overuse of "temporary fixes" as have been noted in the Audit Report.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McCartney". The signature is written in a cursive style with a large, sweeping initial "M".

Mike McCartney
Director

Attachment

Technical Comments on Draft Report

Page 1.

The last sentence of this page may be more appropriately stated as follows: "HRD is the primary staffing agency for civil service employment in the Executive Branch. "

Page 2.

In the first paragraph the second sentence may be more appropriately stated as follows: "The Recruitment and Examination Division conducts competitive recruitments, examinations, and referral activities for civil service employment."

With respect to paragraph four: The First Consideration Policy does not mandate that line agencies HIRE their internal applicants but simply that those qualified employees are given first consideration. If line agencies do not select qualified internal employees, they may still obtain a list of competitive eligibles from the HRD. After line agencies conduct the IVA processes, they may also consider inter-jurisdictional transfers and demotions under certain conditions.

With respect to paragraph five: The staffing process is not limited to only permanent civil service positions but also includes temporary civil service positions.

Page 3.

With respect to paragraph one: The findings misses the point that line agencies can only fill temporary civil service positions via temporary appointments. It is noted that provisional appointments, a type of temporary appointments, are absent from the Draft Report.

With respect to paragraphs one through three: Absent from reasons for filling permanent positions with temporary appointments are the continuing budget cuts and restrictions faced by all line agencies.

With respect to the Temporary Appointments section: The first sentence under this title is very misleading in that, the type of position, permanent vs. temporary, determines the limitation of the appointment. Agencies cannot fill temporary positions with permanent appointments. Again missing are provisional appointments for permanent positions.

Page 6.

With respect to paragraph one: Regular employees are usually given LTAs into temporary positions or permanent positions being filled on a temporary basis, and not TAOLs. Additionally, while the last sentence is factual it gives the impression that an extension is limited to one year. Rules provide that additional extensions may be granted for good cause.

With respect to paragraph two: Emergency Appointments must still meet the minimum legal residency and citizenship requirements under HRS 78-1. Additionally, a clarification is necessary in the last sentence: An employee is not placed on one-day leave to break service but is terminated and starts another emergency appointment.

With respect to paragraph three the first sentence: replace "is eligible for a permanent position." with "may be eligible...". An LTA employee would be eligible for permanent appointment only if (s)he, at the time the individual was certified to the temporary position, was also certifiable to the position if the position was permanent. Also, same paragraph, last sentence: TAOL appointees are also not eligible for permanent appointment to the position.

Page 9.

Comment: Objectives of the Audit: As discussed with the auditors, but not mentioned, is the need to recognize other key variables that affect and/or require temporary appointments---such as legislative authorization of only temporary positions, and budgeting process.

A correction is needed in the first paragraph of the Scope and Methodology, second sentence: delete: "if they meet minimum qualifications," since to be a provisional hire, you must meet the MQRs of the class and position.

Comment with respect to paragraph two. HRD's response to the 1994 audit was that HRD agreed with the conclusions and would be considering the creation of a pool of exempt positions under the control of the Governor that would be assigned specific tasks and program activities to develop and implement. However, beginning with 1995 the budget short-fall was the priority and establishment of exempt positions were few. In 1996 the DB&F amended the existing procedure to have all requests for 76-16 (2),(3) and (12) reviewed by the Governor. Even with this amended procedure, there were few denials.

It has been HRD's position that the exemption provisions were sufficiently prescriptive except for (2) – "special", "unique", "essential to the public interest" and it is for this reason that this section and (3) and (15) were never delegated to the departments. It's interesting to note that the auditor indicates the need for clear definitions and yet cites on page 8, paragraph 1, that a study rated "Hawaii's personnel system as one of the most rule-bound in the country."

The 1995-1996 RIF preempted work on other program activities, but in 1997 a policy/procedure was considered to address the 1994 study concerns. However, the policy/procedure was not issued as the administration and departments preferred the quicker, simpler staffing exempt positions offered owing in part to the

fact that during this same timeframe, the State was suddenly confronted with having expeditiously satisfy federal consent decree requirements involving the immediate provision of staffing imposed on PSD and the Hawaii State Hospital, which was also facing the loss of accreditation.

Pages 12 -14

With respect to paragraph one: The last sentence should be corrected by replacing "appointments" with "extensions" since the duration of the appointment could be for any predetermined period.

With respect to paragraph three: The first sentence is erroneous. An appointment can be for any predetermined period. There is no "one year" limitation.

Comment on the Section "Temporary Appointments Lack Job Security" Relating to the impact of temporary staff departures, HRD points out that the heavy burdens being placed on the program is not limited to the departure of temporary staff. All departments have suffered the loss of permanent positions and employees with the RIFs, budget restrictions and budget cuts--leaving behind the remaining survivors to pick up the same workload. This is not unique to programs with temporary staff, but we believe prevalent in our state workforce.

Page 16

With respect to paragraph three, second sentence: HRD believes that the correct terminology is underlined and existing terminology that should be deleted is bracketed as follows: "When there is a pattern of frequent emergency appointments (~~not extensions~~), the likely intent is to reappoint (~~not extend~~) the individual rather than respond to an emergency situation."

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Comment on pages 21-22, "Discrepant information": While the finding that departments use different cut-off dates for reporting actions from when HRD aggregates data for reports is correct, but to conclude that this leads to inaccurate information is not necessarily the most appropriate conclusion. With the introduction and greater usage of technology, "finger-tip" access to and control of data employee data has become a reality. However, as the auditor's findings aptly point out there will be differences in employee counts depending on the dates HRD uses to report and the dates departments last submitted data used in those reports.

Because there were no employee numbers provided in the report HRD can only surmise that the June 30 versus July 1 counts will differ as described. While HRD

does count employees who are terminated on June 30, to conclude that the same employee(s) would appear on July 1 is not a truism. It is a possibility and as described in the findings depends on whether departments have reported all such actions in time to make the cut-off date for our July 1 to June 30 reporting period.

Perhaps it would have been more appropriate to conclude that HRD should compare counts of June 30 and July 1 and audit by employee to see if indeed the same employees are being terminated and re-hired. Rather than conclude discrepant reporting is done by HRD, the conclusion should be discrepant departmental reporting occurred. Since HRD's cut-off dates are established and known, departments are responsible for reporting employee data within the report dates HRD uses and in consideration of the effective dates of their employment actions.