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Director of Council Services  
David M. Raatz, Jr., Esq.

Deputy Director of Council Services  
Richelle K. Kawasaki, Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

April 15, 2026

Ms. Cynthia Razo-Porter, Director  
Department of Personnel Services  
County of Maui  
Wailuku, Hawaii 96793

Dear Ms. Razo-Porter:

**SUBJECT: PROPOSED FISCAL YEAR 2027 BUDGET FOR THE  
COUNTY OF MAUI (BFED-1) (PS-04)**

Thank you for participating in the Council's Budget, Finance, and Economic Development Committee meeting of April 10, 2026. The Committee respectfully submits an additional follow-up question below.

May I further request that you transmit your response to [bfed.committee@mauicounty.us](mailto:bfed.committee@mauicounty.us) by **4:30 p.m. on April 17, 2026**.

1. Does the Department have a policy governing DM-89 hires? If yes, please provide a copy. If no, please explain why not. (YLS)

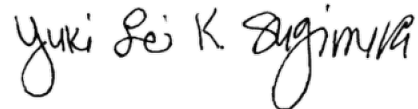
May I also request that you restate each question followed by your corresponding response. Include any attachments or exhibits. Please ensure your response is clear and legible by using a minimum 12-point font throughout so Committee Members and the public can easily read the document once it is posted.

To ensure efficient processing, please duplicate the coding in the subject line above for easy reference.

Ms. Cynthia Razo-Porter  
April 15, 2026  
Page 2

Thank you for your attention to this request. Should you have any questions, please contact me or the Committee staff (Kirsten Szabo at ext. 7662, James Krueger at ext. 7761, Jarret Pascual at ext. 7141, Clarissa MacDonald at ext. 7135, or Pauline Martins at ext. 8039).

Sincerely,

A handwritten signature in black ink that reads "Yuki Lei K. Sugimura". The signature is written in a cursive style with a large, looped initial "Y".

YUKI LEI K. SUGIMURA, Chair  
Budget, Finance, and Economic  
Development Committee

bfed:2027bgt:260413aps01:jpp

cc: Mayor Richard T. Bissen, Jr.  
Budget Director

## BFED Committee

---

**From:** BFED Committee  
**Sent:** Wednesday, April 15, 2026 9:51 PM  
**To:** 'Cynthia Razo'  
**Cc:** 'Zeke Kalua'; 'Lesley Milner'; 'tiare.p.horner@co.maui.hi.us';  
'kristina.cabbat@co.maui.hi.us'; 'Shirley Blackburn'; 'Janina Agapay'; 'Kainea Aiwohi';  
'Andrea Rock-Mendes'; 'Misha.K.Lococo@co.maui.hi.us'  
**Subject:** PROPOSED FISCAL YEAR 2027 BUDGET FOR THE COUNTY OF MAUI (BFED-1) (PS-4)  
**Attachments:** 260415aps01 (PS-04).pdf  
**Importance:** High

**RICHARD T. BISSEN, JR.**  
Mayor

**CYNTHIA M. RAZO-PORTER**  
Director

**KAINEA K.G. AIWOHI-ALO**  
Deputy Director




**DEPARTMENT OF PERSONNEL SERVICES**  
COUNTY OF MAUI

200 SOUTH HIGH STREET  
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April 16, 2026

 Ms. Lesley Milner  
Budget Director, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

Honorable Richard T. Bissen, Jr.  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

 4-17-26  
Mayor Date

For Transmittal to:  
Honorable Yuki Lei Sugimura  
Chair, Budget, Finance and Economic Development Committee  
200 South High Street  
Wailuku, Hawaii 96793

Dear Chair Sugimura:

**SUBJECT: PROPOSED FISCAL YEAR 2027 BUDGET FOR THE COUNTY OF MAUI (BFED-1) (PS-04)**

We are in receipt of your communication (BFED-1) (PS-04), which requests answers to the following question. Please find our responses below.

*Question 1. Does the Department have a policy governing DM-89 hires? If yes, please provide a copy. If no, please explain why not.*

Response: The DM-89 is one component of a broader policy titled *Guidelines and Procedures in Determining Whether a Service Is Best Provided by an Employee Exempt from Civil Service or Through Privatization*, which is attached for your reference. Page 7, Item D of the attached policy, "When Seeking Exemption from Civil Service Under HRS Section 76-16," outlines the DM-89 procedures.

Although the policy requires updating (eg., transitioning from manpower/SF-1 to Workday requisitions for hiring), the underlying practices and statutory provisions

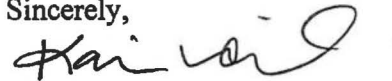
Honorable Chair Sugimura  
December 31, 2024  
Page 2

remain unchanged.

Please see attached Policy No. 602.110

Thank you for the opportunity to assist the Budget, Finance, and Economic Development Committee.

Sincerely,



*for* CYNTHIA M. RAZO-PORTER  
Director of Personnel Services

SUBJECT: GUIDELINES AND PROCEDURES IN DETERMINING IF A SERVICE CAN BEST BE PROVIDED BY AN EMPLOYEE EXEMPT FROM CIVIL SERVICE OR PRIVATIZATION

REFERENCE: DPS Administrative Rules Chapter 207, Exempt Service; HRS Section 76-77, Hawaii Supreme Court Decision (Konno, et al., vs. County of Hawaii, et al.) dated February 28, 1997; HRS Section 76-16 as amended by Act 253 SLH 2000 concerning civil service reform; and Act 90 SLH 2001 concerning privatization of government services.

EFFECTIVE DATE: This procedure amends and retitles DPS Procedure 11-5, Request for Exemption from Civil Service, dated July 3, 1997, effective July 1, 2002. The changes made in June 2005 consist of housekeeping changes and do not have substantive impact. Therefore, the effective date of July 1, 2002 remains unchanged.

I. PURPOSE

To provide a guideline to determine if a service can best be provided by an employee exempt from civil service or by contracting out to a private party. To establish policies and procedures for the expeditious processing of requests for exemption from civil service under HRS Section 76-77, and HRS Section 76-16 for services or privatizing in accordance with Act 90 SLH 2001.

II. BACKGROUND

The Hawaii Supreme Court in *Konno v. County of Hawaii*, 85 Haw. 61 (1997), ruled that all services that have been historically and customarily performed by civil servants are civil service unless exempted under Section 76-77, Hawaii Revised Statutes. The court ruled that public services provided by business entities, *i.e.*, corporations, partnerships, etc., are also required to be exempted under HRS Section 76-77, which differed from Maui County's interpretation of HRS Section 76-77(12). The state legislature, in response to the "Konno Decision," passed Act 230, SLH 1998 which allowed the County to continue to privatize certain government services. In 2001, by action of the legislature and governor, Act 90, SLH 2001 became law. Essentially, Act 90 offers two ways to contract services: privatization and managed competition.

In light of Act 90 SLH 2001 and Act 253 SLH 2000, HRS Section 76-77 concerning Exemption from Civil Service, needed to be reviewed and clarified.

Act 90 establishes the foundation on which to privatize any government service. The Act states that, "If there is a reasonable basis to believe that the service of equivalent or better quality than that which could be provided by a government agency can be provided at

lower cost by privatizing, one may do so.” This means that the use of HRS Section 76-77(12) to authorize private contractors to perform the service is no longer possible. Section HRS 76-77(12) is now limited to hiring an individual who may be offering and performing similar type work for others as an employee and paid on a fee, piecework or contract basis.

Additionally, Act 253 repealed HRS Section 76-31 which authorized the use of provisional, temporary appointment and emergency hire. So these methods of filling civil service positions with non-civil service employees are no longer available, effective July 1, 2002.

The pertinent sections of law that this policy implements are as follows:

**“HRS § 76-77 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

- (1) Positions in the office of the mayor; provided that the positions shall be included in the classification systems;
- (2) Positions of officers elected by public vote, positions of heads of departments, and positions of one first deputy or first assistant of heads of departments;
- (3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;
- (4) Positions of members of any board, commission, or agency;
- (5) Positions filled by students; positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;
- (6) Positions of district judges, jurors, and witnesses;
- (7) Positions filled by persons employed by contract where the personnel director has certified that the service is special or unique, is essential to the public interest, and that because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be recruited through normal civil service procedures; provided that no contract pursuant to this paragraph shall be for any period exceeding one year;
- (8) Positions of a temporary nature needed in the public interest where the need does not exceed ninety days; provided that before any

- person may be employed to render temporary service pursuant to this paragraph, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; and provided further that the employment of any person pursuant to this paragraph may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director;
- (9) Positions of temporary election clerks in the office of the county clerk employed during election periods;
  - (10) Positions specifically exempted from this part by any other state statutes;
  - (11) Positions of one private secretary for each department head; provided that the positions shall be included in the classification systems;
  - (12) Positions filled by persons employed on a fee, contract, or piecework basis who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified by the director;
  - (13) Positions filled by persons with a severe disability who are certified by the state vocational rehabilitation office as able to safely perform the duties of the positions;
  - (14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions; and
  - (15) The following positions in the office of the prosecuting attorney: private secretary to the prosecuting attorney, secretary to the first deputy prosecuting attorney, and administrative or executive assistants to the prosecuting attorney; provided that the positions shall be included in the classification systems.

The director shall determine the applicability of this section to specific positions and shall determine whether or not positions exempted by paragraphs (7) and (8) shall be included in the classification systems.”

**HRS § 76-16**, as amended, reads in part “. . . (c) No position shall be exempted from civil service recruitment procedures unless it is in accordance with this section. In addition to exemptions under . . . 76-77, . . . the director may exempt additional positions

if the reason for exempting the position is for the same reason as a position that is included in the list of exemptions for the respective jurisdiction.”

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

**Section 2 of Act 90 SLH 2001**, regarding privatization of government services, reads in part: “(a) Notwithstanding any law to the contrary, including but not limited to chapters 46, 76, 77, 78, 89, and 89A, any other applicable civil service law, customary or historical past practices, or the fact that the services hereinafter described may have been performed by persons or positions in civil service, any state or county official in whom procurement authority is vested by law may enter into a contract financed by public funds with a private entity to obtain services, including services provided in conjunction with the procurement of goods or construction, from a private entity, when there is reasonable basis to believe that the service of equivalent or better quality than that which could be provided by a government agency can be provided at lower cost.”

“(b) For the purposes of this chapter, a “private entity” is any individual, company, or organization that is not an employee or agency within the federal, state or county government.”

### III. WHEN CERTIFICATION FROM DIRECTOR OF PERSONNEL IS REQUIRED

The following are the ONLY exemptions under HRS Sections 76-77 and 76-16 that require certification of the Director of Personnel Services (see Section V for further explanation of these exemptions):

1. SPECIAL OR UNIQUE SERVICES, HRS Section 76-77(7).
2. POSITIONS OF A TEMPORARY NATURE, HRS Section 76-77(8).  
Applies to work of a temporary nature not to exceed ninety (90) days.
3. INDEPENDENT CONTRACTORS, HRS Section 76-77(12).
4. POSITIONS OR APPOINTMENTS OF A LIMITED DURATION, HRS Section 76-16. Position or period of employment that has a limitation date

where it would be impractical to recruit under civil service procedures because the required probationary period cannot be completed by the limitation date.

For the above four exemptions, *i.e.*, HRS Sections 76-77(7), (8), (12), and 76-16, work by the service provider shall not commence until the certification of the exemption and, when required, upon execution of the contract or purchase order.

This policy does not cover contracts awarded for goods, materials or products; which may include services. Also not covered are contracts for goods, materials or products and services performed as part of a program supported by a grant of County funds.

IV. GUIDE TO DETERMINE IF EXEMPTION FROM CIVIL SERVICE PROCESS SHOULD BE SUBMITTED

- A. This procedure is to assist departments in determining if a service being sought can best be provided by an employee exempt from civil service or a private contractor.
1. Is there a position available to place the exempt employee?
  2. Is the work of a temporary nature?
  3. Is this the most economical way to accomplish the task?

If the answer is YES to all of the above questions, then a request to hire via an exemption from civil service would appear appropriate. Proceed to Section V of this procedure.

If question Number 1 or 2 cannot be answered YES, then this procedure cannot be used. Contracting out via Act 90 may be more appropriate. Proceed to Section VII of this procedure.

V. GENERAL PROCEDURES FOR SEEKING EXEMPTION FROM CIVIL SERVICE

- A. Filling a vacant position exempt from civil service under HRS Section 76-77(1), (2), (3), (4), (5), (6), (9), (10), (11), (13), (14) and (15)

1. Submit Request for Position Action (Manpower Control Form) (See DPS Procedure 11-3), with method of filling noted and the specific exemption from civil service under HRS Section 76-77.
  2. Block 35, "Authority" on the Notification of Personnel Action (SF-1) should contain the appropriate exemption under HRS Section 76-77. Creating a position exempted under the provisions above may require the position to be classified. In such cases, a position description must accompany the Manpower Control Form. Enter the specific exemption.
- B. When seeking exemption from civil service under HRS Sections 76-77(7) or (12),
1. Submit Request for Position Action (Manpower Control Form) (See DPS Procedure 11-3), with method of filling noted and the specific exemption from civil service under HRS Section 76-77.
  2. Requesting department must prepare Form DM 89-1 (revised 6/9/05), Request for Exemption from Civil Service. Submit the completed Form DM 89-1 to the Department of Personnel Services for certification.
  3. Personal Services Contract (HRS 76-77(7) and 76-77(12)). Upon return of approved Form DM 89-1 from the Department of Personnel Services, the requesting department is to complete the contract documents, as applicable with projected starting dates and signatures, and submit contract documents and Form DM 89-1 to the Corporation Counsel for approval as to form and legality.
  4. Upon return of approved contract from Corporation Counsel, the requesting department is to inform the awardee and get the necessary signatures. Upon completion forward the contract to Department of Finance for distribution as follows:
    - a. Retain original set in the Department of Finance.
    - b. One set to awardee.
    - c. One set to requesting department.
    - d. One set to Department of Personnel Services along with SF-1 (Notification of Personnel Action).
  5. Contract Renewals. All contracts that expire at the end of the fiscal year must follow the procedure outlined above and be completed before the start of the new fiscal year.

- C. When seeking exemption from civil service under HRS Section 76-77(8),
1. Submit Request for Position Action (Manpower Control Form) (See DPS Procedure 11-3), with method of filling noted and the specific exemption from civil service under HRS Section 76-77.
  2. Requesting department must prepare Form DM 89-1 (revised 6/9/05), Request for Exemption from Civil Service. Submit the completed form DM 89-1 to the Department of Personnel Services for certification
- D. When seeking exemption from civil service under HRS Section 76-16,
1. A Request for Position Action (Manpower Control Form) (See DPS Procedure 11-3) must have been submitted and approved.
  2. The requesting department must prepare Form DM 89-1 (revised 6/9/05), Request for Exemption from Civil Service. Submit the completed form DM 89-1 to the Department of Personnel Services for certification.
  3. If the request is for a temporary appointment until a list is received and selection made, the DM 89-1 can be completed before a candidate is found. In this case, the department should indicate, "to be determined", on the line for the name of individual.
  4. Once a fully completed DM 89-1 is received, complete SF-1, Notification of Personnel Action, form and submit to Department of Personnel Services with approved DM 89-1 attached.

VI. EXPLANATION OF EXEMPTIONS

- A. SPECIAL OR UNIQUE SERVICES, HRS Section 76-77(7)
1. This method of employment is appropriate only when the following criteria are met: *The service is special or unique, essential to the public interest, and, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures.*
  2. Exemption under this section must be certified by the Director of Personnel Services.

3. Any contract under this exemption cannot exceed one year. Breaking up the duration of employment to fall within the prescribed time limitation is not allowed.
4. The contract relationship is to be that of an employer-employee, where the awardee will be supervised and paid on payment schedules applicable to regular employees. A position number is required, and the employee should be scheduled for orientation.

B. POSITIONS OF A TEMPORARY NATURE, HRS Section 76-77(8)

1. This exemption is for any work of a temporary nature not to exceed ninety (90) days. Breaking up the duration of employment to fall within the prescribed limitations is not allowed.
2. Exemptions under this section must be certified by the Director of Personnel Services. Extension for additional time not to exceed ninety (90) days is subject to the approval of the Director of Personnel Services.

C. INDEPENDENT CONTRACTORS, HRS Section 76-77(12)

The passage of Act 90 SLH 2001 regarding privatization and managed competition affected this section. First, Act 90 requires the employer to follow the procurement procedure for any work being privatized. Consequently, section (76-77(12)) appear to have been rendered null and void as currently interpreted. However, since the legislature did not change section (76-77(12)), they may have had a different idea. Section (12) states - "Positions filled by **persons employed** on a fee, contract or piecework . . ." This could mean that we could hire an employee exempt from civil service and pay that employee by fee or piecework or contract without going through the recruitment process. This would mean that we can use this section for individuals only and not for any business entity.

1. An independent contractor is an individual, who becomes an exempt employee who is paid on a fee, piecework or contract basis. As an exempt employee whose remuneration is very narrowly defined, the individual may not be eligible for other benefits. This method of obtaining services is appropriate when the following criteria are met:

The service is provided on a fee, contract, or piecework basis where the person employed may lawfully perform the contracted duties concurrently with the person's private business or profession or other private

employment, if any, and whose duties require only a portion of the contractor's time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the County.

This method of obtaining service is available to individuals only.

2. Exemptions under this section must be certified by the Director of Personnel Services.

D. EXEMPTION FROM CIVIL SERVICE FOR APPOINTMENTS OF LIMITED DURATION, HRS Section 76-16

1. TEMPORARY POSITION: Request to fill a position that will expire at a specific time may be filled with an exempt employee, if it can be shown that the time spent recruiting, filling, and completing the probation period would exceed the authorized period.
2. LIMITED DURATION APPOINTMENT: Request authorization to fill a permanent position for a limited period such as during the period it would take to recruit, interview, and bring an applicant on board may be granted. Generally, this would be not more than 90 days after receipt of a Certificate of Eligibles which is deemed adequate for selection purposes. A Certificate of Eligibles of three (3) names may be deemed adequate, by the Director of Personnel Services, for selection purposes.
3. Only one exemption can be granted for a position until an appointment is made through civil service recruitment procedures. No extensions of an exemption shall be allowed.

E. ADDITIONAL COMMENTS REGARDING EXEMPTIONS

1. The following are **not** proper considerations for obtaining an exemption:
  - a. No civil service positions are available to perform the services. Use Act 90 - Privatization provisions.
  - b. The services represent additional work which would require shifting priorities.
  - c. Services will require overtime work for existing employees.
  - d. Insufficient funds are budgeted.
2. When determining whether a particular exemption under HRS Section 76-77 applies, each exemption must be read in its total context. Do not take

phrases out of context and attempt to exempt position based only on selected phrases.

VII. ACT 90 SLH 2001 - Privatization

See attached Finance procedure dated June 2, 2002 entitled Privatization Determination - Act 90 Implementation.

## BFED Committee

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**From:** Tiare P. Horner <tiare.p.horner@co.maui.hi.us>  
**Sent:** Friday, April 17, 2026 4:34 PM  
**To:** BFED Committee; Cynthia M. Razo-Porter  
**Cc:** Ezekiel I. Kalua; Lesley J. Milner; Kristina Angeline C. Cabbat; Shirley Blackburn; Janina E. Agapay; Kainea K. Aiwohi-Alo; Misha K. Lococo  
**Subject:** RE: PROPOSED FISCAL YEAR 2027 BUDGET FOR THE COUNTY OF MAUI (BFED-1) (PS-4)  
**Attachments:** (BFED-1) (PS-04).pdf

Aloha,

Please see attached correspondence.

Mahalo,

Tiare P. Horner  
Budget Specialist  
Phone: 808.270.7517

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**From:** BFED Committee <BFED.Committee@mauicounty.us>  
**Sent:** Wednesday, April 15, 2026 21:51  
**To:** Cynthia M. Razo-Porter <cynthia.razo@co.maui.hi.us>  
**Cc:** Ezekiel I. Kalua <Zeke.Kalua@co.maui.hi.us>; Lesley J. Milner <Lesley.J.Milner@co.maui.hi.us>; Tiare P. Horner <tiare.p.horner@co.maui.hi.us>; Kristina Angeline C. Cabbat <kristina.cabbat@co.maui.hi.us>; Shirley Blackburn <shirley.blackburn@co.maui.hi.us>; Janina E. Agapay <Janina.E.Agapay@co.maui.hi.us>; Kainea K. Aiwohi-Alo <kainea.aiwohi@co.maui.hi.us>; Andrea M. Rock-Mendes <andrea.m.rock-mendes@co.maui.hi.us>; Misha K. Lococo <misha.k.lococo@co.maui.hi.us>  
**Subject:** PROPOSED FISCAL YEAR 2027 BUDGET FOR THE COUNTY OF MAUI (BFED-1) (PS-4)  
**Importance:** High