

HB 1033, HD1

RELATING TO ADMINISTRATIVE PROCEDURE

Allows state and county agencies to participate in the administrative procedure by including "agencies" within the definition of "persons" in section 91-1, Hawaii Revised Statutes. (HB1033 HD1)



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1033, H.D. 1, RELATING TO ADMINISTRATIVE PROCEDURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, March 17, 2017

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Dawn T. Apuna, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General supports this administration bill.

The purpose of this bill is to include "agencies" within the definition of "persons" in the Hawaii Administrative Procedure Act, chapter 91, Hawaii Revised Statutes (HRS).

Including "agencies" within the definition of "persons" will allow state and county agencies the same opportunities available to individuals, businesses, and public or private organizations to participate in the administrative process, as well as conforms to the Model State Administrative Procedure Act (MSAPA), drafted and approved by the National Conference of Commissioners on Uniform State Laws.

This bill directly affects all state and county agencies that promulgate administrative rules. Currently, the definition of "persons" expressly excludes "agencies". HRS § 91-1(2). Unlike "persons", agencies are needlessly restricted from participating in the administrative process in the following ways: (1) agencies are not afforded the opportunity to submit data, views, or arguments on the proposed amendment or repeal of any administrative rule (HRS § 91-3(a)); (2) agencies cannot petition another agency requesting the adoption, amendment, or repeal of any rule (HRS § 91-6); (3) agencies cannot pursue a judicial declaration as to the validity of any agency rule (HRS § 91-7); and (4) agencies cannot petition another agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency (HRS § 91-8). Yet, agencies often have the same needs as individuals, businesses, and public or private organizations to get clarity on statutes or rules, and

can provide useful insights and perspectives to enhance the overall administrative process.

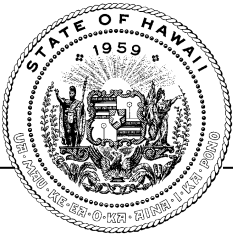
The change in definition of "persons" to include "agencies" was made in the 1981 MSAPA. The comment provided on the change explained,

This definition is broader than the 1961 Revised Model Act definition in Section 1(6) because it includes an "agency" other than the agency against whom rights under this Act are asserted by the "person." Inclusion of such agencies and units of government insures, therefore, that other agencies or other governmental bodies can, for example, petition an agency for the adoption of a rule, and will be accorded all the other rights that a "person" will have under the Act.

As indicated in the comment, sometimes an agency might act as a "person" for the purpose of interacting with another agency, which was not recognized in the prior version of the MSAPA.

It was therefore the intent of the 1981 MSAPA amendment, to allow agencies the same rights and privileges as interested persons in rulemaking, judicial declarations, declaratory rulings, and contested case appeals, consistent with the intentions of this bill.

For these reasons, we respectfully request that you pass this measure.



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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
SENATE COMMITTEE ON JUDICIARY AND LABOR
Friday, March 17, 2017
9:00 AM
State Capitol, Conference Room 016

in consideration of
HB 1033, HD1
RELATING TO ADMINISTRATIVE PROCEDURE.

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Senate Committee on Judiciary and Labor.

The Office of Planning (OP) supports HB1033, HD1, an Administration Bill which amends Hawaii Revised Statutes (HRS) § 91-1 to include “agencies” in the definition of “persons.”

HB 1033, HD1 would clarify the standing of public agencies as a party in initiating or participating in proceedings pertaining to agency rules. This would give agencies the ability to: (a) petition an agency regarding the repeal of rules proposed to be repealed, (b) request the adoption, amendment, or repeal of a rule, (c) bring an action as to the validity of an agency rule against an agency in court, and (d) petition an agency for a declaratory order as to the applicability of a statutory provision, rule, or order of the agency.

This housekeeping amendment is critically needed to ensure that State agencies have access to an administrative appeals mechanism to examine the interpretation and application of State law pertinent to an agency’s statutory responsibilities. The executive branch and its agencies must have the ability to clarify the application of law in situations where there is a question as to how statutory provisions are implemented through rule-making or how statutes or rules are applied in practice.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
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Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
Senate Committee on Judiciary and Labor
Friday March 17, 2017
9:00 AM
State Capitol, Conference Room 016

In consideration of
HB 1033 HD1
RELATING TO ADMINISTRATIVE PROCEDURE

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Committee on Judiciary and Labor:

The Land Use Commission (LUC) supports this measure, an administration bill, which seeks to amend section 91-1, Hawai'i Revised Statutes (HRS) to include "agencies" in the definition of "persons."

We believe this proposed change would clarify the standing of public agencies to initiate or participate in proceedings pertaining to agency rules. The executive branch and its agencies need to have the ability to clarify the application of law in situations where there is a question of how statutory provisions are implemented through rule-making or applied in practice.

Thank you for the opportunity to testify on this matter.



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COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

DATE: Friday, March 17, 2017
TIME: 9:00 a.m.
PLACE: Conference Room 016

re: HB 1033 HD1 Relating to Administrative Procedure

OPPOSE

Aloha Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee

The federal "Administrative Procedure Act"¹ of 1946 and the Hawai`i Administrative Procedure Act of 1961 (HRS Chapter 91) governs the way in which administrative agencies of the federal government may propose and establish regulations.

HB1033 HD1 proposes to amend Chapter 91, granting personhood to governmental agencies. "Persons` includes individuals, partnerships, corporations, associations, agencies, or public or private organizations [~~of any character other than agencies~~]." ²

Imagine granting all federal agencies the right to have standing to challenge state and county agencies. Imagine giving them the right to petition any state or county agency for a "declaratory order", and the right to petition a state or county agency "requesting the adoption, amendment, or repeal of any rule", and to right to "pursue a judicial declaration as to the validity of any agency rule".

Imagining allowing state and county agencies to file similar actions against each other. Currently that is not possible, because agencies are not people.

Henry Curtis
Executive Director

¹ Pub.L. 79-404, 60 Stat. 237. <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title5/pdf/USCODE-2011-title5-partI-chap5-subchapII.pdf>

² http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=1033&year=2017