

**HB 2362**

**HD 1**

**RELATING TO  
ADMINISTRATI-  
VE HEARING**

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# A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE HEARING OFFICERS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The department of human services has the  
2 largest operating budget of any state department, approximately  
3 \$3,304,000,000, including seventy-nine per cent of all the  
4 executive branch's federal funds. The department provides  
5 benefits and services to one in four Hawaii residents or nearly  
6 360,000 individuals.

7           The department serves vulnerable and needy adults and  
8 children statewide and is responsible for diverse and complex  
9 programs driven by their own unique and ubiquitous state and  
10 federal laws, rules, and regulations. With little overlap  
11 between the wide array of services offered by the department and  
12 each program's laws and regulations, the breadth of knowledge  
13 necessary for effective management of all the programs is  
14 extensive and difficult to develop.

15           The department's programs and services include: protection  
16 of vulnerable children and adults; vocational rehabilitation and  
17 financial assistance to the disabled; the Supplemental Nutrition



1 Assistance Program; financial assistance; job training and  
2 placement; housing and services for the homeless; Medicaid  
3 services for the State's medically needy population; and  
4 prevention, treatment, and housing for the State's youthful  
5 offenders.

6 In addition to helping Hawaii's vulnerable individuals, the  
7 department manages significant federal and state funds, and  
8 processes vast amounts of information and is currently engaged  
9 in investing in an enterprise integrated eligibility system to  
10 better serve recipients of public benefits and the State's  
11 vulnerable populations.

12 As required by federal and state laws, regulations, and  
13 administrative rules, the department provides applicants and  
14 recipients of public benefits with administrative review  
15 processes to request relief from an adverse decision made by the  
16 department. The department also provides an administrative  
17 review process for providers of medical goods or services who  
18 disagree with a department's decision.

19 The department's administrative appeals office receives  
20 nearly 1,900 requests annually for administrative relief from  
21 applicants or recipients of public benefits or services.



1 Additionally, the administrative appeals office receives  
2 approximately thirty requests per year for administrative review  
3 from providers of medical goods or services. Administrative  
4 appeal hearings are held statewide.

5 To render timely, impartial, and informed quasi-judicial  
6 administrative appeals hearing decisions, the department must  
7 maintain a cadre of experienced, trained, and knowledgeable  
8 administrative appeals hearing officers to review federal and  
9 state laws, regulations, rules, documents, receive testimony,  
10 conduct hearings, determine findings of facts and conclusions of  
11 law, and render final administrative appeal hearing decisions.

12 Timely, accurate, and prompt administrative appeals hearing  
13 decisions in contested cases positively serve eligible  
14 applicants and recipients to gain access to those benefits and  
15 services, as well as support efficiency of government by  
16 terminating benefits to an ineligible recipient and allow the  
17 department to begin recovery of improperly provided benefits.

18 The purpose of this Act is to exempt from civil service,  
19 positions to be known as administrative appeals hearing officer  
20 of the department of human services to conduct administrative  
21 appeals hearings and other required associated duties.



1 SECTION 2. Section 76-16, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The civil service to which this chapter applies shall  
4 comprise all positions in the State now existing or hereafter  
5 established and embrace all personal services performed for the  
6 State, except the following:

- 7 (1) Commissioned and enlisted personnel of the Hawaii  
8 National Guard as such, and positions in the Hawaii  
9 National Guard that are required by state or federal  
10 laws or regulations or orders of the National Guard to  
11 be filled from those commissioned or enlisted  
12 personnel;
- 13 (2) Positions filled by persons employed by contract where  
14 the director of human resources development has  
15 certified that the service is special or unique or is  
16 essential to the public interest and that, because of  
17 circumstances surrounding its fulfillment, personnel  
18 to perform the service cannot be obtained through  
19 normal civil service recruitment procedures. Any such  
20 contract may be for any period not exceeding one year;



- 1           (3) Positions that must be filled without delay to comply  
2           with a court order or decree if the director  
3           determines that recruitment through normal recruitment  
4           civil service procedures would result in delay or  
5           noncompliance, such as the Felix-Cayetano consent  
6           decree;
- 7           (4) Positions filled by the legislature or by either house  
8           or any committee thereof;
- 9           (5) Employees in the office of the governor and office of  
10          the lieutenant governor, and household employees at  
11          Washington Place;
- 12          (6) Positions filled by popular vote;
- 13          (7) Department heads, officers, and members of any board,  
14          commission, or other state agency whose appointments  
15          are made by the governor or are required by law to be  
16          confirmed by the senate;
- 17          (8) Judges, referees, receivers, masters, jurors, notaries  
18          public, land court examiners, court commissioners, and  
19          attorneys appointed by a state court for a special  
20          temporary service;



1           (9) One bailiff for the chief justice of the supreme court  
2           who shall have the powers and duties of a court  
3           officer and bailiff under section 606-14; one  
4           secretary or clerk for each justice of the supreme  
5           court, each judge of the intermediate appellate court,  
6           and each judge of the circuit court; one secretary for  
7           the judicial council; one deputy administrative  
8           director of the courts; three law clerks for the chief  
9           justice of the supreme court, two law clerks for each  
10          associate justice of the supreme court and each judge  
11          of the intermediate appellate court, one law clerk for  
12          each judge of the circuit court, two additional law  
13          clerks for the civil administrative judge of the  
14          circuit court of the first circuit, two additional law  
15          clerks for the criminal administrative judge of the  
16          circuit court of the first circuit, one additional law  
17          clerk for the senior judge of the family court of the  
18          first circuit, two additional law clerks for the civil  
19          motions judge of the circuit court of the first  
20          circuit, two additional law clerks for the criminal  
21          motions judge of the circuit court of the first



1 circuit, and two law clerks for the administrative  
 2 judge of the district court of the first circuit; and  
 3 one private secretary for the administrative director  
 4 of the courts, the deputy administrative director of  
 5 the courts, each department head, each deputy or first  
 6 assistant, and each additional deputy, or assistant  
 7 deputy, or assistant defined in paragraph (16);

8 (10) First deputy and deputy attorneys general, the  
 9 administrative services manager of the department of  
 10 the attorney general, one secretary for the  
 11 administrative services manager, an administrator and  
 12 any support staff for the criminal and juvenile  
 13 justice resources coordination functions, and law  
 14 clerks;

15 (11) (A) Teachers, principals, vice-principals, complex  
 16 area superintendents, deputy and assistant  
 17 superintendents, other certificated personnel,  
 18 not more than twenty noncertificated  
 19 administrative, professional, and technical  
 20 personnel not engaged in instructional work;





- 1 (B) Effective July 1, 2003, teaching assistants,  
2 educational assistants, bilingual/bicultural  
3 school-home assistants, school psychologists,  
4 psychological examiners, speech pathologists,  
5 athletic health care trainers, alternative school  
6 work study assistants, alternative school  
7 educational/supportive services specialists,  
8 alternative school project coordinators, and  
9 communications aides in the department of  
10 education;
- 11 (C) The special assistant to the state librarian and  
12 one secretary for the special assistant to the  
13 state librarian; and
- 14 (D) Members of the faculty of the University of  
15 Hawaii, including research workers, extension  
16 agents, personnel engaged in instructional work,  
17 and administrative, professional, and technical  
18 personnel of the university;
- 19 (12) Employees engaged in special, research, or  
20 demonstration projects approved by the governor;



- 1       (13)   (A)   Positions filled by inmates, patients of state
- 2                   institutions, persons with severe physical or
- 3                   mental disabilities participating in the work
- 4                   experience training programs;
- 5       (B)   Positions filled with students in accordance with
- 6                   guidelines for established state employment
- 7                   programs; and
- 8       (C)   Positions that provide work experience training
- 9                   or temporary public service employment that are
- 10                  filled by persons entering the workforce or
- 11                  persons transitioning into other careers under
- 12                  programs such as the federal Workforce Investment
- 13                  Act of 1998, as amended, or the Senior Community
- 14                  Service Employment Program of the Employment and
- 15                  Training Administration of the United States
- 16                  Department of Labor, or under other similar state
- 17                  programs;
- 18       (14)   A custodian or guide at Iolani Palace, the Royal
- 19                  Mausoleum, and Hulihee Palace;
- 20       (15)   Positions filled by persons employed on a fee,
- 21                  contract, or piecework basis, who may lawfully perform



1 their duties concurrently with their private business  
2 or profession or other private employment and whose  
3 duties require only a portion of their time, if it is  
4 impracticable to ascertain or anticipate the portion  
5 of time to be devoted to the service of the State;  
6 (16) Positions of first deputies or first assistants of  
7 each department head appointed under or in the manner  
8 provided in section 6, article V, of the Hawaii State  
9 Constitution; three additional deputies or assistants  
10 either in charge of the highways, harbors, and  
11 airports divisions or other functions within the  
12 department of transportation as may be assigned by the  
13 director of transportation, with the approval of the  
14 governor; four additional deputies in the department  
15 of health, each in charge of one of the following:  
16 behavioral health, environmental health, hospitals,  
17 and health resources administration, including other  
18 functions within the department as may be assigned by  
19 the director of health, with the approval of the  
20 governor; an administrative assistant to the state



- 1           librarian; and an administrative assistant to the  
2           superintendent of education;
- 3       (17) Positions specifically exempted from this part by any  
4       other law; provided that:
- 5           (A) Any exemption created after July 1, 2014, shall  
6           expire three years after its enactment unless  
7           affirmatively extended by an act of the  
8           legislature; and
- 9           (B) All of the positions defined by paragraph (9)  
10          shall be included in the position classification  
11          plan;
- 12       (18) Positions in the state foster grandparent program and  
13       positions for temporary employment of senior citizens  
14       in occupations in which there is a severe personnel  
15       shortage or in special projects;
- 16       (19) Household employees at the official residence of the  
17       president of the University of Hawaii;
- 18       (20) Employees in the department of education engaged in  
19       the supervision of students during meal periods in the  
20       distribution, collection, and counting of meal



- 1 tickets, and in the cleaning of classrooms after  
2 school hours on a less than half-time basis;
- 3 (21) Employees hired under the tenant hire program of the  
4 Hawaii public housing authority; provided that not  
5 more than twenty-six per cent of the authority's  
6 workforce in any housing project maintained or  
7 operated by the authority shall be hired under the  
8 tenant hire program;
- 9 (22) Positions of the federally funded expanded food and  
10 nutrition program of the University of Hawaii that  
11 require the hiring of nutrition program assistants who  
12 live in the areas they serve;
- 13 (23) Positions filled by persons with severe disabilities  
14 who are certified by the state vocational  
15 rehabilitation office that they are able to perform  
16 safely the duties of the positions;
- 17 (24) The sheriff;
- 18 (25) A gender and other fairness coordinator hired by the  
19 judiciary;
- 20 (26) Positions in the Hawaii National Guard youth and adult  
21 education programs; [and]



1 (27) In the state energy office in the department of  
2 business, economic development, and tourism, all  
3 energy program managers, energy program specialists,  
4 energy program assistants, and energy analysts[-]; and

5 (28) Positions known as administrative appeals hearing  
6 officer in the department of human services.

7 The director shall determine the applicability of this  
8 section to specific positions.

9 Nothing in this section shall be deemed to affect the civil  
10 service status of any incumbent as it existed on July 1, 1955."

11 SECTION 3. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 3000.



**Report Title:**

Department of Human Services; Administrative Appeals;  
Administrative Appeals Hearing Officers; Civil Service Exemption

**Description:**

Exempts Administrative Appeals Hearing Officers in the  
Department of Human Services from civil service requirements.  
(HB2362 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**HB 2362**

**HD 1**

**TESTIMONY**





STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 11, 2018

TO: The Honorable Representative Aaron Ling Johanson, Chair  
House Committee on Labor & Public Employment

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2362 HD1 – RELATING TO ADMINISTRATIVE HEARING OFFICERS**

Hearing: Tuesday, February 13, 2018, 9:45 a.m.  
Conference Room 309, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports this administration bill.

**PURPOSE:** The purpose of this bill is to exempt from civil service positions known as administrative appeals hearing officer in the Department of Human Services.

DHS has the largest operating budget of any state department, approximately \$3.3billion, including seventy-nine percent of all federal funds in the executive branch. DHS provides benefits and services to one in four Hawaii residents, or approximately 360,000 individuals, and administers public benefits programs and services governed by federal and state laws, regulations, and administrative rules. Annually, the department's Administrative Appeals Office (AAO) receives nearly 1,900 requests from applicants or recipients for administrative relief from an adverse program decision. Additionally, DHS receives approximately thirty requests per year for administrative relief from providers of medical goods or services.

The highly specialized demands of the administrative appeals hearing officer position necessitates the positions to be exempt from the civil service provisions of chapter 76, HRS, as the positions require requisite legal education, legal experience, demeanor to

conduct hearings and receive testimony, analytic and writing abilities to properly interpret state and federal law, administrative regulations and rules, and to timely issue written decisions. Administrative appeals hearings officers are expected to conduct administrative hearings in a timely, fair, and impartial way that ensures due process. To perform their duties, officers are expected to interpret and apply all pertinent federal and state statutes, rules, regulations, policies, and procedures regarding the department's public assistance and support services programs, make and prepare case determinations that include findings of fact, conclusions of law, and orders, and issue written final decisions within specified periods.

Further, administrative hearing officers are expected to perform other administrative responsibilities including responding to inquiries from claimants, attorneys, other government agencies, and the general public; review administrative rules adoption, participate in meetings and conferences, and perform other activities to ensure the continued and uninterrupted operation of the AAO.

Amongst other things, administrative hearing officers are required to be an attorney in good standing, admitted to the practice of law in the State of Hawaii, with a valid driver's license, class 3, and at least five years of litigation or legal experience as a judge, hearings officer, or attorney.

DHS is aware that hearings officers of other departments are similarly exempt from requirements of Chapter 76. DHS respectfully requests this bill be passed to exempt from civil service administrative appeals hearing officer positions of DHS.

Thank you for this opportunity to provide testimony in support of this bill.

**HB 2362**

**HD 1**

**LATE  
TESTIMONY**