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## A BILL FOR AN ACT

RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS.

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

1           SECTION 1. The legislature finds that in most federal  
2 agencies and in many state, territorial, and local  
3 jurisdictions, administrative adjudications take place within  
4 agencies that combine regulatory, enforcement, prosecutorial,  
5 and adjudicatory authority in a single agency. The legislature  
6 believes that this combination of functions creates a potential  
7 conflict of interest. The legislature also believes that this  
8 combination of functions may also compromise the integrity of  
9 administrative adjudications and is often perceived as unfair by  
10 the litigants opposing the agencies.

11           The legislature also finds that the conflict of interest  
12 inherent in the same agency acting as both prosecutor and judge  
13 has led to the establishment of state central hearing agencies,  
14 also known as central panels. In central panels, an independent  
15 administrative law judge presides over the administrative  
16 litigation and this judge is completely independent of the



1 agency prosecutorial functions. Approximately twenty-nine state  
2 and local jurisdictions, including New York City, the City of  
3 Chicago, Cook County, Illinois, and the District of Columbia,  
4 have addressed this conflict by creating a central hearing  
5 agency.

6 The legislature further finds that the American Bar  
7 Association House of Delegates, on February 3, 1997, approved a  
8 model act that provides guidance to states intending to create  
9 central panels. The American Bar Association enunciated a goal  
10 of separation of functions in section 1-2(a) which states that  
11 the "Office of Administrative Hearings is created as an  
12 independent agency in the Executive Branch of State Government  
13 for the purpose of separating the adjudicatory function from the  
14 investigatory, prosecutory and policy-making functions of  
15 agencies in the Executive Branch."

16 The American Bar Association model act, as well as the  
17 current practices in just about every central panel state,  
18 authorizes the central panel to hear all contested cases that  
19 arise from a non-exempt agency. Central panel states report  
20 that state legislatures continue to expand and confer additional  
21 jurisdiction on existing central panels. Likewise, the American



1 Bar Association model act and nearly all current central panel  
2 states authorized some or all final decision making authority in  
3 the central panel administrative law judges.

4 The purpose of this Act is to require the legislative  
5 reference bureau to conduct a study relating to the  
6 establishment of a centralized office of administrative hearings  
7 in the executive branch of state government and submit a report  
8 to the legislature prior to the convening of the regular session  
9 of 2020. The study and report shall be based on the guidelines  
10 established by this Act.

11 SECTION 2. (a) The legislative reference bureau shall  
12 conduct a study relating to the establishment of a state central  
13 hearing agency to be known as the office of administrative  
14 hearings. The office shall:

15 (1) Be based on the guidelines stated in the February 3,  
16 1997, model act of the American Bar Association House  
17 of Delegates that relate to the establishment of a  
18 state central hearing agency, unless otherwise  
19 provided herein; and

20 (2) Operate as an independent agency in the executive  
21 branch of state government for the purpose of



1 separating the adjudicatory function from the  
2 investigatory, prosecutorial, and policy-making  
3 functions of agencies in the executive branch.

4 (b) The office of administrative hearings shall not  
5 replace the hearings functions of:

- 6 (1) Agencies in the political subdivisions of the State;
- 7 (2) An agency of the legislature;
- 8 (3) An agency of the judiciary;
- 9 (4) The office of the governor; or
- 10 (5) The office of the lieutenant governor.

11 SECTION 3. (a) The legislative reference bureau study  
12 shall review the existing administrative hearings system to:

- 13 (1) Identify the departments and agencies that conduct  
14 hearings or delegate that authority to another agency;
- 15 (2) Determine and identify the placement of the hearings  
16 agency in the department's organization;
- 17 (3) Identify and quantify the personnel and state  
18 resources that are necessary to operate each hearings  
19 agency;



1 (4) Identify and determine the types of issues and  
2 subjects that are subject to the hearings agencies'  
3 jurisdiction;

4 (5) Identify and determine the process to appeal a  
5 decision of each agency's administrative hearing,  
6 including chapter 91, Hawaii Revised Statutes, and  
7 rights to and process for judicial appeals; and

8 (6) Identify potential legal conflicts and barriers that  
9 affect each agency's administrative hearings  
10 jurisdiction.

11 SECTION 4. The legislative reference bureau shall submit a  
12 report of the study to the legislature no later than twenty days  
13 prior to the convening of the regular session of 2020. The  
14 report shall include:

15 (1) Findings and recommendation from the study conducted  
16 pursuant to sections 2 and 3;

17 (2) The appropriateness, feasibility, and cost effects of  
18 establishing and operating an office of administrative  
19 hearings that is based on the guidelines stated in the  
20 February 3, 1997, model act of the American Bar  
21 Association House of Delegates, as modified; and



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1 (3) Recommendations, including proposed legislation to  
2 establish and implement an office of administrative  
3 hearings.

4 SECTION 5. This Act shall take effect on July 1, 2019.  
5

INTRODUCED BY:         *Scam*        

        *Scam*          
        *John F. Carr*        

JAN 24 2019



# H.B. NO. 1307

**Report Title:**

Office of Administrative Hearings; LRB Study; Report

**Description:**

Requires the Legislative Reference Bureau to conduct a study on establishing a state central hearing agency to be known as the Office of Administrative Hearings and submit a report of its findings and recommendations, including any proposed legislation, to the Legislature prior to the Regular Session of 2020.

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

