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LEGISLATIVE REFERENCE BUREAU
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Written Comments

HB1307, SD1 RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS

Comments by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Director

Presented to the Senate Committees on Judiciary and Ways and Means

Wednesday, April 3, 2019, 10:00 a.m.
Conference Room 211

Chairs Rhoads and Dela Cruz and Members of the Committees:

Good morning Chairs Rhoads and Dela Cruz and members of the Committees, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.B. No. 1307, S.D. 1, Relating to an Office of Administrative Hearings.

The purpose of this measure is to have the Legislative Reference Bureau conduct a study regarding the existing administrative hearings process in the State and the potential for a centralized office of administrative hearings that includes:

- (1) Statistical, non-confidential information from 2018 from all state departments and agencies that conduct or delegate contested case hearings, and which must be provided to the Legislative Reference Bureau by August 1, 2019; and
- (2) Research on centralized administrative hearings offices in other jurisdictions.

The Bureau takes no position on the merits of this measure, but submits the following comments for your consideration.

The previous Senate Committee was gracious enough to include the Bureau's suggested amendments to require relevant executive branch agencies to provide the Bureau with the administrative hearing information and statistics so it may expeditiously conduct the

study. In furtherance of expediting the completion of the study, the Bureau would like to also request that the measure be amended to require the relevant executive branch agencies to provide the information in an electronic form acceptable to the Bureau.

The Bureau believes that if the described information is submitted by the relevant state agencies to the Bureau in an acceptable electronic form by the August 1, 2019 due date, then the services requested under this measure are manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.



HAWAI‘I CIVIL RIGHTS COMMISSION

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April 3, 2019
Rm. 211, 10:00 a.m.

To: Hon. Karl Rhoads, Chair
Members of the Senate Committee on Judiciary

Hon. Donovan M. Dela Cruz, Vice Chair
Members of the Senate Committee on Ways and Means

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 1307, S.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

HCRC opposes H.B. 1307, S.D. 1, with the following concerns.

H.B. No.1307, S.D. 1, if enacted, will require the legislative reference bureau to submit a report to the legislature regarding the existing administrative hearings process in the State and the potential for a centralized office of administrative hearings. It also requires state departments and agencies to provide statistical information on contested case hearings to the legislative reference bureau. The bill requires the legislative reference bureau to research centralized administrative hearings offices in other jurisdictions.

The bill is based on questionable premises, that combination of regulatory, adjudicatory, and enforcement functions inherently creates conflicts of interest, and that the establishment of central hearing panels and separating enforcement and adjudication functions into separate executive agencies will yield more just outcomes.

The HCRC is composed of two sections. The HCRC enforcement section receives, investigates, and conciliates complaints of discrimination. The HCRC adjudication section conducts contested case hearings on complaints that do not conciliate, and the Commissioners issue final decisions on those cases. Pursuant to HRS § 368-2(a), Commissioners are selected by the Governor based on their knowledge and experience in civil rights matters. The Commission has rulemaking authority pursuant to HRS § 368-3(9) and to hold hearings and order appropriate legal and equitable relief pursuant to § 368-3(2) and (5). To avoid conflicts of interest, there is a separation between the HCRC enforcement and adjudication sections. In addition, pursuant to HAR § 12-46-40, ex parte communications between the enforcement section and the adjudication section/Commissioners on any open cases are strictly prohibited.

In the HCRC statutory and regulatory scheme, in contested cases that are docketed for hearing, the Commission appoints a hearings examiner. The hearings examiner conducts the administrative hearing and issues a proposed decision, with proposed findings of fact and conclusions of law. The parties may file exceptions to the proposed decision, which are presented and argued to the Commission. The Commission issues a final decision which is subject to judicial review.

The discrimination laws (statutes, administrative rules, and caselaw) that are interpreted and applied in HCRC contested cases involve complex analyses and a myriad of elements, proof standards and defenses. Hearings officers in a centralized office of administrative hearings would likely not have the specialized expertise or experience required to correctly apply the law in conducting contested hearings, ruling on motions, and rendering proposed and final decisions in HCRC discrimination cases. The result will be poorer quality and inconsistent final decisions in HCRC cases, with messier records on appeal to the courts.

Under the current system, on judicial review when a case is appealed, the courts accord administrative agencies deference in interpretation of their rules, which have force and effect of law, because of agency expertise on the laws within their jurisdiction.

This bill assigns the legislative reference bureau a large task, including review of the multiple state and local jurisdictions which have instituted a central panel system, without questioning or reviewing the foregone conclusion that such systems yield superior results. The HCRC opposes H.B. 1307, S.D. 1.