

Charlotte A. Carter-Yamauchi  
Director

Shawn K. Nakama  
First Assistant

Research (808) 587-0666  
Revisor (808) 587-0670  
Fax (808) 587-0681



**LEGISLATIVE REFERENCE BUREAU**  
State of Hawaii  
State Capitol, Room 446  
415 S. Beretania Street  
Honolulu, Hawaii 96813

## Written Comments

### **HB1307** **RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS**

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

Presented to the Senate Committee on Government Operations

Tuesday, March 12, 2019, 2:45 p.m.  
Conference Room 225

Chair Kim and Members of the Committee:

Good afternoon Chair Kim and members of the Committee, 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, Relating to an Office of Administrative Hearings.

The purpose of this measure is to have the Legislative Reference Bureau conduct a study relating to the establishment of an independent, centralized office of administrative hearings in the executive branch of state government and report to the Legislature prior to the convening of the Regular Session of 2020.

Specifically, the measure requires the Bureau to:

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

- (4) Identify and determine the types of issues and subjects that are subject to the hearings agencies' jurisdiction;
- (5) Identify and determine the process to appeal a decision of each agency's administrative hearing, including Chapter 91, Hawaii Revised Statutes, and rights to and process for judicial appeals; and
- (6) Identify potential legal conflicts and barriers that affect each agency's administrative hearings jurisdiction.

Furthermore, the measure requires the Bureau to determine the appropriateness, feasibility, and cost effects of establishing and operating an office of administrative hearings that is based on the guidelines stated in the February 3, 1997, model act of the American Bar Association House of Delegates, as modified.

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

The Bureau would like to note that, while the measure requires the Bureau to study the foregoing issues, it does not *require* any potentially affected agencies to provide the relevant information to the Bureau. Of particular concern are the requirements that the Bureau:

- (1) Identify and quantify the personnel and state resources that are necessary to operate each hearings agency;
- (2) Identify potential legal conflicts and barriers that affect each agency's administrative hearings jurisdiction; and
- (3) Determine the appropriateness, feasibility, and cost effects of establishing and operating an office of administrative hearings that is based on the guidelines stated in the February 3, 1997, model act of the American Bar Association House of Delegates, as modified.

The measure contemplates a study that requires the compilation, review, and analysis of a considerable amount of data already in the hands of the relevant agencies. Without a requirement that potentially affected agencies provide relevant information to the Bureau, and do so in a timely manner, the Bureau would be extremely hard-pressed to complete the study prior to the 2020 Regular Session.

Furthermore, the measure provides no guidance on what is meant by and how to "identify potential legal conflicts and barriers that affect each agency's administrative hearings jurisdiction," or how to determine or measure "the appropriateness, feasibility, and cost effects of establishing and operating an office of administrative hearings." Moreover, the measure is silent on how the Bureau is to study issues such as:

- (1) Where to physically house such an independent, centralized agency;

- (2) What parameters should be considered when trying to determine the feasibility of which executive department the office of administrative hearings would be attached to or whether the office is intended to be established as a stand alone executive department; and
- (3) How the Bureau should address the employment status of existing public employees who currently perform administrative hearing and ancillary services and whose positions may potentially be eliminated due to a consolidation of services and functions.

The Bureau would also like to note that it lacks any specific expertise in how the budgets of the various executive branch departments and agencies operate. Due to this lack of expertise, the Bureau feels that it may have to contract the services of a person or entity with relevant budgetary knowledge and experience. If the Bureau is allowed to contract for services, an appropriation for this purpose would need to be added, since there are no funds included in the Bureau's base budget to contract for study services. In addition, to ensure the study can be completed in a timely manner and submitted prior to the 2020 Regular Session, we would request that the contract be made exempt from the Procurement Code (Chapter 103D, HRS).

In summary, if the Bureau is to conduct the study, we respectfully request the following amendments:

- (1) Guidance be provided on how to "identify potential legal conflicts and barriers that affect each agency's administrative hearings jurisdiction," and parameters on how the Legislature would like the Bureau to determine "the appropriateness, feasibility, and cost effects of establishing and operating an office of administrative hearings";
- (2) Executive departments and agencies be explicitly required to provide all statutory and administrative rules information that establishes their respective agency's administrative hearings jurisdiction and functions, and all relevant fiscal and personnel information relating to the respective administrative hearings functions;
- (3) Executive departments and agencies be explicitly required to provide a summary of caseload subject matter and statistics on the number of administrative hearings it conducts annually and average duration of cases from filing to disposition;
- (4) Executive departments and agencies be explicitly required to provide information that specifically identifies and quantifies the personnel and state resources, and any other relevant information, that are necessary to operate their respective hearings agency;
- (5) Executive departments and agencies be explicitly required to transmit the aforementioned information to the Bureau by no later than August 1, 2019;

- (6) An appropriation section for an unspecified sum be added to allow the Bureau to contract for services to conduct the study; and
- (7) An exemption from the Procurement Code (Chapter 103D, HRS) be provided for any contract executed for the study.

These amendments will facilitate the compilation, review, and analysis of the submitted data in a more expeditious manner. Otherwise, the study could be stalled due to waiting for the executive departments and agencies to submit the necessary information, or due to time constraints in complying with the Procurement Code, and the Bureau would not be able to complete the study within the given time frame.

If the measure is amended to fully address the concerns noted above, the Bureau believes that 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.