



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

H.B. NO.847, RELATING TO THE OFFICE OF ADMINISTRATIVE ADJUDICATIONS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Tuesday, February 16, 2021                      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Via Videoconference, Room 325

**TESTIFIER(S):**    **WRITTEN TESTIMONY ONLY.**  
(For more information, contact, Bryan C. Yee  
Deputy Attorney General, at 586-1180)

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Chair Nakashima and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of this bill is to have the Department, in conjunction with the Department of Commerce and Consumer Affairs, Department of Health, and other affected agencies, conduct a study relating to the establishment of a centralized office of administrative adjudications in the executive branch, and to present a report to the legislature.

The bill tasks the Department to investigate certain factual questions and make certain recommendations and proposals necessary to establish a single office of administrative adjudications for all agencies in the executive branch of the State. No money is appropriated for this task.

As this mandate does not fall within the normal function of the Department, we do not have personnel dedicated to this or similar actions. If this task of governmental reorganization planning is given to the Department, we respectfully request that additional resources be provided to accomplish it.

Thank you for the opportunity to provide comments.

**HB-847**

Submitted on: 2/16/2021 7:11:41 AM

Testimony for JHA on 2/16/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Isaac Moriwake	Earthjustice	Support	No

Comments:

Aloha Chair Nakashima, Vice Chair Matayoshi, and Committee Members,

Earthjustice supports House Bill 847, which calls for a study and report to the legislature on the feasibility of establishing an office of administrative adjudications.

The bill raises an important point about the conflict of interest (and appearance thereof) inherent in agencies acting as both prosecutor and judge in administrative adjudications. Further, based on our experience, some agencies are better equipped and more motivated than others in conducting fair and efficient adjudications as required by constitutional due process. An office of administrative hearings or adjudications is a common institution in states and cities/counties throughout the country, and such an office or some similar solution may likewise help promote a more consistent standard for administrative adjudications across state agencies in Hawai'i.

This solution suggested in this bill is much more sensible and effective than the proposal in House Bill 344 to eliminate contested cases in violation of constitutional due process, which this Committee previously deferred.

Thank you for this opportunity to testify. Please feel free to contact us with any questions or for further information.

Aloha,

Isaac Moriwake, Esq.

Managing Attorney, Earthjustice



# HAWAI'I CIVIL RIGHTS COMMISSION

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February 16, 2021  
Rm. 325, 2:00 p.m.  
Videoconference

To: The Honorable Mark M. Nakashima, Chair  
The Honorable Scot Z. Matayoshi, Vice Chair  
Members of the House Committee on Judiciary and Hawaiian Affairs

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 847

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.

H.B. No. 847 requires the department of the attorney general to study and submit a report to the legislature on the feasibility and cost effect of establishing an office of administrative adjudications that conducts administrative hearings for the State's executive branch agencies.

**The HCRC opposes H.B. No. 847. The Commission has the statutory authority and power to appoint its hearings officer pursuant to HRS § 368-3(8).**

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 adjudications

would not necessarily have the specialized expertise or experience that the Commission seeks in selecting and appointing its hearings officers, as required in HCRC discrimination cases in order to correctly apply the law in conducting contested hearings, rule on substantive motions, and render proposed and final decisions. Elimination of Commission statutory authority to appoint its hearings officer based on expertise and experience in civil rights and anti-discrimination law would undermine the area-specific expertise and consistency of recommended and final decisions in HCRC cases, and could render less complete records on appeal to the courts.

The proposed measure presumes that agencies have a conflict of interest in enforcing their own statutes. The HCRC divides its office into two sections, enforcement and adjudication, to avoid such conflicts. Hearings examiners are neutral, and in our case, are not HCRC employees.

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. That deference will be undermined if the Commission authority to appoint its hearings officers is eliminated and the Commission is required to rely on a pool of hearings examiners with no consideration of expertise and experience relating to the laws administered and enforced by HCRC.

**The HCRC opposes H.B. No. 847.**