

ACT 211

H. B. NO. 11

A Bill for an Act Relating to Legislative Hearings and Procedures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 21, Hawaii Revised Statutes, is amended as follows:

1. By repealing sections 21-1, 21-2, 21-3, 21-4, 21-5, 21-6, 21-7, 21-8, 21-9, 21-10, and 21-11.
2. By amending chapter 21 to read as follows:

“LEGISLATIVE HEARINGS AND PROCEDURE

Sec. 21-1. Purpose. The purpose of this chapter is to establish procedures governing legislative investigating committees to provide for the creation and operation of legislative investigating committees in a manner which will enable them to perform properly the powers and duties vested in them, including the conduct of hearings, in a fair and impartial manner, consistent with protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good.

Sec. 21-2. Definitions. As used in this chapter:

(1) "Investigating committee" means any of the following which are authorized to compel the attendance and testimony of witnesses or the production of books, records, papers, and documents for the purpose of securing information on a specific subject for the use of the legislature:

(a) A standing or special or select committee or committee of the whole of either house of the legislature;

(b) A joint committee of both houses;

(c) An authorized subcommittee of a legislative committee, and

(d) Any body created by law, the members of which may include non-legislators.

(2) "Hearing" means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by an investigating committee for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.

(3) "Public hearing" means any hearing open to the public, or the proceedings of which are made available to the public.

Sec. 21-3. Establishment of investigating committees by legislature.(a)

An investigating committee may exercise its powers during sessions of the legislature, and also in the interim between sessions when so provided by law or by the concurrent or single house resolution or statute by which the committee was established or from which it derives its investigatory powers.

(b) The concurrent or single house resolution or statute establishing an investigating committee shall state the committee's purposes, powers, duties and duration, the subject matter and scope of its investigatory authority, and the number of its members.

Sec. 21-4. Adoption of rules. Each investigating committee shall adopt rules, not inconsistent with law or any applicable rules of the legislature, governing its procedures, including the conduct of hearings.

Sec. 21-5. Finances and staff. Each investigating committee may employ such professional, technical, clerical, or other personnel as necessary for the proper performance of its duties, to the extent of funds made available to it for such purpose and subject to such restrictions and procedures relating thereto as may be provided by law or any applicable rules of the legislature.

Sec. 21-6. Membership, quorum, voting. (a) An investigating committee shall consist of not less than five members.

(b) A quorum shall consist of a majority of the total authorized membership of the committee.

(c) No action shall be taken by a committee at any meeting unless a quorum is present. The committee may act by a majority vote of the members present and voting at a meeting at which there is a quorum, unless the provisions of this chapter or any other statute require a greater number or proportion.

Sec. 21-7. Hearings. (a) An investigating committee may hold hear-

ings appropriate for the performance of its duties, at such times and places as the committee determines.

(b) The committee shall provide by its rules that each member of the committee be given at least three days written notice of any hearing to be held when the legislature is in session and at least seven days written notice of any hearing to be held when the legislature is not in session. The notices shall include a statement of the subject matter of the hearing. A hearing, and any action taken at a hearing, shall not be deemed invalid solely because notice of the hearing was not given in accordance with this requirement.

(c) Any investigating committee shall not conduct a hearing unless a quorum is present.

Sec. 21-8. Issuance of subpoenas. (a) The president or speaker or other presiding officer of either house of the legislature may issue subpoenas requiring the attendance of witnesses and subpoenas duces tecum requiring the production of books, documents, or other evidence, in any matter pending before either house, or committee, as the case may be.

(b) Every investigating committee, when authorized by either house or both houses, as the case may be, may issue, by majority vote of all its members, subpoenas requiring the attendance of witnesses and subpoenas duces tecum requiring the production of books, documents, or other evidence, in any matter pending before the committee.

(c) A person subpoenaed to attend a hearing of an investigating committee shall receive the same fees and allowances as a person legally required to attend upon a circuit court or a grand jury in any criminal case pursuant to section 621-7.

(d) Any subpoena, warrant of arrest or other process issued under the authority of any house or of both houses of the legislature shall run in the name of the State of Hawaii and shall be addressed to any or all of the following officers: the sergeant-at-arms of either house of the legislature; the sergeant-at-arms of both houses of the legislature, in the case of a subpoena issued in behalf of a joint committee of both houses; the sheriff or his deputies; the chief of police of any county or his deputies; any police officer of the State or any county. The subpoena, warrant or other process shall be signed by the officer authorized to issue it, shall set forth his official title, shall contain a reference to the rule, or concurrent, or other resolution, or other means, by which the taking of testimony or other evidence, or the issuance of such warrant or other process, was authorized, and shall, in the case of a summons or subpoena, set forth in general terms the matter or question with reference to which the testimony or other evidence is to be taken.

(e) Any officer to whom such process is directed, if within his territorial jurisdiction, shall forthwith serve or execute the same upon delivery thereof to him, without charge or compensation, except as provided in section 21-8 (f).

(f) The house, or both houses of the legislature in the case of a subpoena or process issued by a joint committee, shall compensate or reimburse any officer serving or executing the subpoena or process for his actual expenses, if any, in connection therewith.

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Sec. 21-9. Notice to witnesses. (a) Service of a subpoena requiring the attendance of a person at a hearing of an investigating committee shall be made at least five days prior to the date of the hearing unless a shorter period of time is authorized by majority vote of all the members of the committee in a particular instance when, in their opinion, the giving of five days notice is not practicable; but if a shorter period of time is authorized, the person subpoenaed shall be given reasonable notice of the hearing, consistent with the particular circumstances involved.

(b) Any person who is served with a subpoena to attend a hearing of an investigating committee also shall be served with a copy of the resolution or statute establishing the committee, a copy of the rules under which the committee functions, a general statement informing him of the subject matter of the committee's investigation or inquiry, and a notice that he may be accompanied at the hearing by counsel of his own choosing.

Sec. 21-10. Conduct of hearings. (a) All hearings of an investigating committee shall be public unless the committee, by two-thirds vote of all of its members, determines that a hearing should not be open to the public in a particular instance.

(b) The chairman of an investigating committee, if present and able to act, shall preside at all hearings of the committee and shall conduct the examination of witnesses himself or supervise examination by other members of the committee, the committee's counsel, or members of the committee's staff who are so authorized. In the chairman's absence or disability, the vice-chairman shall serve as presiding officer. The committee shall provide by its rules for the selection of a presiding officer to act in the absence or disability of both the chairman and the vice-chairman.

(c) No hearing, or part thereof, shall be televised, filmed, or broadcast except upon approval of the committee, by majority vote of all of its members.

Sec. 21-11. Right to counsel and submission of questions. (a) Every witness at a hearing of an investigating committee may be accompanied by counsel of his own choosing, who may advise the witness as to his rights, subject to reasonable limitations which the committee may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing.

(b) Any witness at a hearing, or his counsel, may submit to the committee proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the committee shall ask such of the questions as are appropriate to the subject matter of the hearing.

Sec. 21-12. Testimony. (a) An investigating committee shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced, which record shall include rulings of the chair, questions of the committee and its staff, the testimony or responses of witnesses, sworn written statements submitted to the committee, and such other matters as the committee or its chairman may direct.

(b) All testimony given or adduced at a hearing shall be under oath or af-

firmation unless the requirement is dispensed with in a particular instance by majority vote of the committee members present at the hearing.

(c) The president or speaker or other presiding officer of either house of the legislature or any member of an investigating committee may administer an oath or affirmation to a witness at a hearing of such committee.

(d) The presiding officer at a hearing may direct a witness to answer any relevant question or furnish any relevant book, paper, or other document, the production of which has been required by subpoena duces tecum. Unless the direction is overruled by majority vote of the committee members present, disobedience shall constitute a contempt.

(e) A witness at a hearing or his counsel, with the consent of a majority of the committee members present at the hearing, may file with the committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter, and scope of the committee's investigation or inquiry.

(f) A witness at a hearing, upon his advance request and at his own expense, shall be furnished a certified transcript of his testimony at the hearing.

(g) Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorized by majority vote of all of the members of the committee, which authorization shall also specify the form and manner in which the testimony or other evidence may be released.

(h) All information of a defamatory or highly prejudicial nature received by or for the committee other than in an open or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorized by majority vote of all of the members of the committee for legislative purposes, or unless its use is required for judicial purposes.

Sec. 21-13. Interested persons. (a) Any person whose name is mentioned or who is otherwise identified during a hearing of an investigating committee and who, in the opinion of the committee, may be adversely affected thereby, may, upon his request or upon the request of any member of the committee, appear personally before the committee and testify in his own behalf, or, with the committee's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record of the hearing.

(b) Upon the consent of a majority of its members, an investigating committee may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance, or submission of evidence shall limit in any way the investigating committee's power of subpoena.

(c) Any person who appears before an investigating committee pursuant to this section shall have all the rights, privileges, and responsibilities of a witness provided by this chapter.

Sec. 21-14. Contempt. (a) A person shall be in contempt if he:

(1) Fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation;

(2) Fails or refuses to answer any relevant question or fails or refuses to

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furnish any relevant book, paper, or other document subpoenaed by or on behalf of an investigating committee, or

(3) Commits any other act or offense against an investigating committee which, if committed against the legislature or either house thereof, would constitute a contempt.

(b) An investigating committee may, by majority vote of all its members, report to the legislature or the house thereof by which it was established, any instance of alleged contempt. The president or speaker shall certify a statement of such contempt under his signature as president or speaker, as the case may be, to the attorney general who shall prosecute the offender in any court of the State. If the legislature is not in session, a statement of the alleged contempt shall be certified by the chairman or acting chairman of the committee concerned, under his signature, to the attorney general who shall prosecute the offender as aforesaid. An instance of alleged contempt shall be considered as though committed in or against such house or the legislature itself.

Sec. 21-15. Penalties. (a) A person guilty of contempt under this chapter shall be fined not more than \$1,000 or imprisoned not more than one year or both.

(b) If any investigating committee fails in any material respect to comply with the requirements of this chapter, any person subject to a subpoena or a subpoena duces tecum who is injured by the failure shall be relieved of any requirement to attend the hearing for which the subpoena was issued or, if present, to testify or produce evidence therein; and the failure shall be a complete defense in any proceeding against the person for contempt or other punishment.

(c) Any person other than the witness concerned or his counsel who violates subsection 21-12(g) or (h) shall be fined not more than \$500 or imprisoned not more than six months, or both. The attorney general, on his own motion or on the application of any person claiming to have been injured or prejudiced by an unauthorized disclosure may institute proceedings for trial of the issue and imposition of the penalties provided herein. Nothing in this subsection shall limit any power which the legislature or either house thereof may have to discipline a member or employee or to impose a penalty in the absence of action by a prosecuting officer or court.

Sec. 21-16. Government officer and employees to cooperate. The officers and employees of the State and of each county shall cooperate with any investigating committee or committees or with their representatives and furnish to them or to their representatives such information as may be called for in connection with the research activities of the committees.

Sec. 21-17. Sergeants-at-arms; powers and duties. The sergeant-at-arms of each house of the legislature, and each of his deputies appointed by authority of such house, shall:

(a) Attend such house during its sittings;

(b) Maintain order under the direction of the speaker, president or other presiding officer of such house;

(c) Under the direction of the clerk of such house, execute the commands of such house and all processes issued by authority thereof, directed to him by the speaker, president or other presiding officer of such house, or by the chairman or acting chairman of any joint committee established by a concurrent resolution of the two houses of the legislature, or by the chairman or acting chairman of any committee of either house. In such connection the sergeant-at-arms and each of his deputies shall have all the powers and authority of a sheriff appointed under chapter 28.

Sec. 21-18. Same; badge. The symbol of the office of the sergeant-at-arms of each house of the legislature shall be a metal badge in such form as such house shall adopt, bearing the words, among others, "Sergeant-at-Arms of the Senate, State of Hawaii," or "Sergeant-at-Arms of the House of Representatives, State of Hawaii," as the case may be, and shall be displayed by him in enforcing or carrying out his duties.

Sec. 21-19. Limitations. Nothing contained in this chapter shall be construed to limit or prohibit the acquisition of evidence or information by an investigating committee by any lawful means not provided for herein.

Sec. 21-20. Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 2. This Act shall take effect upon its approval.

(Approved July 14, 1969.)