

A Bill for an Act Relating to the Administrative Procedure Act.

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

SECTION 1. Nationally, there is a move among state legislatures to achieve legislative oversight concerning executive rule making which is based upon laws enacted by the legislature. To date, at least twenty-four states have obtained such legislative oversight through various means. The legislature finds that there are on file at least 7,000 pages of active administrative rules in the office of the lieutenant governor. In addition, about 1,000 pages are filed every year consisting of amendments and new rules. The legislature finds that the drafting of administrative rules by the executive branch implements statutes enacted by the legislature and that such implementation should be subject to scrutiny by the legislature to determine if the rules meet the substance of the statute drafted by the legislature.

The legislature further finds that in implementing a general statute the substance of such statute may be contravened. If the executive branch adopts a rule contrary to statute, it usurps the policy-making function of the legislature; however, if the legislature is not informed of such usurpation remedial action cannot be taken. While the legislature realizes that all rules are reviewed by the attorney general prior to approval by the governor and that such substantive violations should be determined at that point, the legislature finds that the attorney general acts for the executive branch and the attorney general's determination cannot be substituted for a separate determination by the legislative branch of possible violation of its policy-making powers through the enactment of substantive law. The legislature also realizes that a rule that violates substantive law is a nullity and can be so proved in court. The legislature finds, however, that while such a rule is on the books, persons will be following that rule in many instances without questioning its validity. Such a situation could continue for many years until challenged. Legislative review of such rules would provide for an early determination in such instances and will ensure there is no unintended usurpation of the policy-making functions of the legislature.

The legislature further finds that rule-making is an essential and critical activity, since it is through rules that definition and specification are gained, and that the rule-making process can effectively determine priorities and prescribe conduct for citizens and administrators. In view of the importance of rules, the lack of an easily accessible and uniform index is serious and constitutes a major need.

The purposes of this Act are to provide for legislative review of executive rules for the purpose of determining if the rules or amendments thereto violate the substantive law under which they were adopted, and to establish a uniform format and an index for such rules, with the index to be published in such a manner to ensure maximum citizen access and use.

SECTION 2. Chapter 91, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

"Sec. 91- Review of rules. (a) Each state agency adopting, amending, or repealing a rule, after approval thereof by the governor, shall submit certified copies

thereof, which shall be drafted according to the Ramseyer format, to the legislative auditor.

(b) The office of the legislative auditor shall review each rule and rule amendment submitted by a state agency under this section to determine if the rule or amendment violates the substantive authority under which the rule or amendment was adopted. The office shall submit to each regular session of the legislature a report concerning its findings itemizing the agency and rules which may be in violation of the substantive authority under which the rule or amendment was adopted. The legislature shall take such action in response to the report as it finds appropriate and shall notify each agency or department whose rule is itemized in the report of the report's findings.

Sec. 91- Rule format; publication of index. The revisor of statutes shall:

- (1) Prescribe a format for the publication of rules by all state agencies. Among other things, the revisor shall provide for the manner and form, including size, in which the agency rules shall be prepared, printed, and indexed, to the end that all rules, compilations, and codifications shall be prepared and published in a uniform manner at the earliest practicable date. The format shall provide that each rule published shall be accompanied by a reference to the statutory authority pursuant to which the rule is adopted, the statutory section implemented by the rule, if any, and the effective date of the rule; and provide that whenever possible rules should incorporate any applicable sections of the Hawaii Revised Statutes by reference and not print the section in the rule.
- (2) Compile and publish an index to all rules required to be filed with the lieutenant governor with annual supplements.

Sec. 91- Price. (a) The lieutenant governor shall sell the Hawaii administrative rules index and its supplements at prices which as nearly as practicable will reimburse the State for all costs incurred for printing, publication, and distribution.

(b) All money received from the sale of the Hawaii administrative rules index and its supplements shall be deposited in the state general fund.

Sec. 91- Form of publication. The revisor of statutes shall determine the form in which the Hawaii administrative rules index and its supplements shall be published. Either or both of the publications may be issued in units, in bound or loose-leaf form, separately or in combination, at the same or different times, as the revisor considers most economical and best adapted to make the index available to interested persons and the public."

SECTION 3. Section 23-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 23-4 Duties. (a) The auditor shall conduct postaudits of all transactions and of all books and accounts kept by or for all departments, offices, and agencies of the State and its political subdivisions. The postaudits and all examinations to discover evidence of any unauthorized, illegal, irregular, improper, or unsafe handling or expenditure of state funds, or other improper practice of financial administration shall be conducted at least once in every two years after the close of a fiscal year, and at such other time or times during the fiscal year as he shall deem necessary or as

may be required by the legislature for the purpose of certifying to the accuracy of all financial statements issued by the respective accounting officers and of determining the validity of expenditures of state or public funds.

(b) The auditor shall serve as liaison between the legislature and the federal government and shall report to the legislature at least annually on such matters as should be considered by the legislature pertaining to the relationship between the state and federal governments.

(c) The auditor shall review all rules submitted to it as provided in section 91-

(d) The auditor shall maintain and keep current a compilation of all rules and regulations adopted pursuant to chapter 91."

SECTION 4. Section 23G-12, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 23G-12 Duties. In performing the function of statute revision and publication of session laws, and supplements, and replacement volumes, the duties of the revisor of statutes, in the order of priority shall be:

- (1) The publication of the session laws;
- (2) The publication of supplements to the revised statutes;
- (3) The publication of replacement volumes of the revised statutes;
- (4) The review of annotations to the revised statutes;
- (5) The continuous revision of the statutes of Hawaii;
- (6) The publication of the Hawaii administrative rules index and supplements thereto; and
- (7) The preparation of rules of format to be followed by all state agencies in the compilation and publication of their rules and the distribution of copies of the format rules to all state agencies."

SECTION 5. Section 91-5, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 91-5 Publication of rules. (a) Each agency shall, as soon as practicable after January 2, 1962, compile, index, and publish, in the manner prescribed by the format established by the revisor of statutes under section 91- (1), all rules adopted by the agency and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years. Within two years of the effective date of this section, each agency shall have compiled and published all of its rules in effect in the manner specified by the revisor of statutes' format rules.

(b) Each agency, as soon as practicable after July 1, 1979, shall provide to the office of the legislative auditor free of charge, a current compilation of all rules adopted by the agency and in effect as of July 1, 1979.

(c) Compilations and supplements shall be made available free of charge upon request by the state officers in the case of a state agency and by the county officers in the case of a county agency. As to other persons each agency may fix a price to cover mailing and publication costs. Each state agency adopting, amending, or repealing a rule shall file forthwith a copy with the revisor of statutes."

SECTION 6. All state agency rules existing on the effective date of this Act shall be reviewed by the legislative auditor as soon as practicable.

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 8. This Act shall take effect upon its approval.

(Approved June 21, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.