

ACT 110

H.B. NO. 1307

A Bill for an Act Relating to an Office of Administrative Hearings.

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

SECTION 1. The legislature finds that in most federal agencies and in many state, territorial, and local jurisdictions, administrative adjudications take place within a single agency that combines regulatory, enforcement, prosecutorial, and adjudicatory authority. The legislature believes that this combination of functions creates a potential conflict of interest. The legislature also believes that this combination of functions may also compromise the integrity of administrative adjudications and is often perceived as unfair by the litigants opposing the agencies.

The legislature also finds that the conflict of interest inherent in the same agency acting as both prosecutor and judge has led to the establishment of state central hearing agencies, also known as central panels. In central panels, an independent administrative law judge presides over the administrative litigation and is completely independent of the agency prosecutorial functions. Approximately twenty-nine state and local jurisdictions, including New York City; the City of Chicago; Cook County, Illinois; and the District of Columbia, have addressed this conflict by creating a central hearing agency.

The legislature further finds that the American Bar Association House of Delegates, on February 3, 1997, approved a model act that provides guidance to states intending to create central panels. The American Bar Association enunciated a goal of separation of functions in section 1-2(a) which states that the "Office of Administrative Hearings is created as an independent agency in the Executive Branch of State Government for the purpose of separating the adjudicatory function from the investigatory, prosecutory and policy-making functions of agencies in the Executive Branch."

The American Bar Association model act, as well as the current practices in most central panel states, authorizes the central panel to hear all contested cases that arise from a non-exempt agency. Central panel states report that state legislatures continue to expand and confer additional jurisdiction on existing central panels. Likewise, the American Bar Association model act and nearly all current central panel states authorize some or all final decision making authority in the central panel administrative law judges.

The purpose of this Act is to 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 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.

SECTION 2. (a) The legislative reference bureau shall compile a report of the contested case hearings process conducted or delegated by the various state departments and agencies.

(b) To facilitate the completion of the report by the legislative reference bureau, all state departments and agencies that conduct or delegate contested case hearings shall provide the following data in an electronic format approved

by the legislative reference bureau for 2018 regarding all contested case hearings to the legislative reference bureau by August 1, 2019:

- (1) Case type, based on subject matter;
- (2) Caseload statistics, including:
 - (A) Number of administrative hearings conducted;
 - (B) Average duration of cases, from filing to disposition;
 - (C) Number of hearings officers; and
 - (D) Number of contested cases appealed to the court; and
- (3) Costs, broken down by case type.
- (c) All state departments and agencies shall provide the legislative reference bureau with information on any areas of conflicts of interest or other barriers to third party administrative hearings.
- (d) Each state department or agency that provides information to the legislative reference bureau pursuant to this section shall also specify whether the 2018 data is representative of a typical year with regard to contested case hearings for that department or agency.
- (e) The legislative reference bureau shall have the ability to request additional non-confidential information from each department and agency, as needed.

SECTION 3. The legislative reference bureau shall research whether other jurisdictions have centralized administrative hearings offices. For all jurisdictions that have centralized administrative hearings offices, the legislative reference bureau shall summarize how each of these systems are run.

SECTION 4. The legislative reference bureau shall submit a report of its findings and recommendations, including a summation of the statistical data provided by section 2 and a summary of research complied pursuant to section 3, to the legislature no later than twenty days before the convening of the regular session of 2020.

SECTION 5. This Act shall take effect on July 1, 2019.

(Approved June 21, 2019.)