



# OFFICE OF PLANNING STATE OF HAWAII

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DIRECTOR  
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Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**HOUSE COMMITTEE ON JUDICIARY**  
Tuesday, February 7, 2017  
2:00 PM  
State Capitol, Conference Room 325

in consideration of  
**HB 1033**  
**RELATING TO ADMINISTRATIVE PROCEDURE.**

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary.

The Office of Planning (OP) supports HB1033, an Administration Bill. HB 1033 amends Hawaii Revised Statutes (HRS) § 91-1 to include “agencies” in the definition of “persons.”

HB 1033 would clarify the standing of public agencies as a party in initiating or participating in proceedings pertaining to agency rules. This would give agencies the ability to: (a) petition an agency regarding the repeal of rules proposed to be repealed, (b) request the adoption, amendment, or repeal of a rule, (c) bring an action as to the validity of an agency rule against an agency in court, and (d) petition an agency for a declaratory order as to the applicability of a statutory provision, rule, or order of the agency.

This housekeeping amendment is critically needed to ensure that State agencies have access to an administrative appeals mechanism to examine the interpretation and application of State law pertinent to an agency’s statutory responsibilities. The executive branch and its agencies must have the ability to clarify the application of law in situations where there is a question as to how statutory provisions are implemented through rule-making or how statutes or rules are applied in practice.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 1033, RELATING TO ADMINISTRATIVE PROCEDURE.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 7, 2017                      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Dawn T. Apuna, Deputy Attorney General

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Chair Nishimoto and Members of the Committee:

The Department of the Attorney General supports this administration bill.

The purpose of this bill is to include "agencies" within the definition of "persons" in the Hawaii Administrative Procedure Act, chapter 91, Hawaii Revised Statutes (HRS).

Including "agencies" within the definition of "persons" will allow state and county agencies the same opportunities available to individuals, businesses, and public or private organizations to participate in the administrative process, as well as conforms to the Revised Model State Administrative Procedure Act, drafted and approved by the National Conference of Commissioners on Uniform State Laws.

This bill directly affects all state and county agencies that promulgate administrative rules. Currently, the definition of "persons" expressly excludes "agencies". HRS § 91-1(2). Unlike "persons", agencies are needlessly restricted from participating in the administrative process in the following ways: (1) agencies are not afforded opportunity to submit data, views, or arguments on the proposed amendment or repeal of any administrative rule (HRS § 91-3(a)); (2) agencies cannot petition another agency requesting the adoption, amendment, or repeal of any rule (HRS § 91-6); (3) agencies cannot pursue a judicial declaration as to the validity of any agency rule (HRS § 91-7); and (4) agencies cannot petition another agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency (HRS § 91-8). Yet, agencies often have the same needs as individuals, businesses,

and public or private organizations to get clarity on statutes or rules, and can provide useful insights and perspectives to enhance the overall administrative process.

For these reasons, we respectfully request that you pass this measure.