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 agencies that combine regulatory, enforcement, prosecutorial, and adjudicatory authority in a single agency. 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 this judge 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 just about every central panel state, 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 authorized 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 conduct a study relating to the
establishment of a centralized office of administrative hearings
in the executive branch of state government and submit a report
to the legislature prior to the convening of the regular session
of 2020. The study and report shall be based on the guidelines
established by this Act.

SECTION 2. (a) The legislative reference bureau shall
conduct a study relating to the establishment of a state central
hearing agency to be known as the office of administrative
hearings. The office shall:

(1) Be based on the guidelines stated in the February 3,
1997, model act of the American Bar Association House
of Delegates that relate to the establishment of a
state central hearing agency, unless otherwise
provided herein; and

(2) Operate as an independent agency in the executive
branch of state government for the purpose of
separating the adjudicatory function from the
investigatory, prosecutorial, and policy-making
functions of agencies in the executive branch.

(b) The office of administrative hearings shall not
replace the hearings functions of:

(1) Agencies in the political subdivisions of the State;
(2) An agency of the legislature;
(3) An agency of the judiciary;
(4) The office of the governor; or
(5) The office of the lieutenant governor.

SECTION 3. (a) The legislative reference bureau study
shall review the existing administrative hearings system to:

(1) Identify the departments and agencies that conduct
hearings or delegate that authority to another agency;
(2) Determine and identify the placement of the hearings
agency in the department's organization;
(3) Identify and quantify the personnel and state
resources that are necessary to operate each hearings
agency;
(4) Identify and determine the types of issues and subjects that are subject to the hearings agencies' jurisdiction;

(5) Identify and determine the process to appeal a decision of each agency's administrative hearing, including chapter 91, Hawaii Revised Statutes, and rights to and process for judicial appeals; and

(6) Identify potential legal conflicts and barriers that affect each agency's administrative hearings jurisdiction.

SECTION 4. The legislative reference bureau shall submit a report of the study to the legislature no later than twenty days prior to the convening of the regular session of 2020. The report shall include:

(1) Findings and recommendation from the study conducted pursuant to sections 2 and 3;

(2) The appropriateness, feasibility, and cost effects of establishing and operating an office of administrative hearings that is based on the guidelines stated in the February 3, 1997, model act of the American Bar Association House of Delegates, as modified; and
Recommendations, including proposed legislation to establish and implement an office of administrative hearings.

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

INTRODUCED BY: 

JAN 24 2019
Report Title:
Office of Administrative Hearings; LRB Study; Report

Description:
Requires the Legislative Reference Bureau to conduct a study on establishing a state central hearing agency to be known as the Office of Administrative Hearings and submit a report of its findings and recommendations, including any proposed legislation, to the Legislature prior to the Regular Session of 2020.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.