June 21, 2019

GOV. MSG. NO. 1212

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai‘i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai‘i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 21, 2019, the following bill was signed into law:

HB1307 SD2 CD1 RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS.
ACT 110 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai‘i
A BILL FOR AN ACT

RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

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.
HB No. 1307, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAI'I

Date: May 1, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives
THE SENATE OF THE STATE OF HAWAI‘I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai‘i, Regular Session of 2019.

[Signature]
President of the Senate

[Signature]
Clerk of the Senate