
A BILL FOR AN ACT

RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

11 The legislature also finds that the conflict of interest
12 inherent in the same agency acting as both prosecutor and judge
13 has led to the establishment of state central hearing agencies,
14 also known as central panels. In central panels, an independent
15 administrative law judge presides over the administrative
16 litigation, and this judge is completely independent of the
17 agency prosecutorial functions. Roughly twenty-nine state and



1 local jurisdictions, including New York City, the City of
2 Chicago, Cook County, Illinois, and the District of Columbia,
3 have addressed this conflict by creating a central hearing
4 agency.

5 The legislature further finds that the American Bar
6 Association House of Delegates approved a model act creating a
7 state central hearing agency on February 3, 1997, to guide
8 states that wished to create central panels. The American Bar
9 Association enunciated this goal of separation in section 1-2(a)
10 which states that the "Office of Administrative Hearings is
11 created as an independent agency in the Executive Branch of
12 State Government for the purpose of separating the adjudicatory
13 function from the investigatory, prosecutory and policy-making
14 functions of agencies in the Executive Branch."

15 The American Bar Association model act, as well as the
16 current practices in just about every central panel state,
17 authorizes the central panel to hear all contested cases that
18 arise from a non-exempt agency. Central panel states report
19 that state legislatures continue to expand and confer additional
20 jurisdiction on existing central panels. Likewise, the American
21 Bar Association model act and nearly all current central panel



1 states authorized some or all final decision making authority in
2 the central panel administrative law judges.

3 The purpose of this Act is to establish a centralized
4 office of administrative hearings in the executive branch of
5 state government.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 "CHAPTER

10 OFFICE OF ADMINISTRATIVE HEARINGS

11 § -1 Scope of chapter. (a) This chapter shall not
12 apply to:

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

18 (b) Except as provided in subsection (a), this chapter
19 shall apply to each agency that employs or engages one or more
20 hearings officers, either full or part-time, to adjudicate



1 contested cases unless the agency has been exempted by the
2 governor under subsection (c).

3 (c) Until one year from the effective date of this
4 chapter, the governor may temporarily exempt an agency from this
5 chapter.

6 § -2 Office of administrative hearings established;
7 jurisdiction. (a) The office of administrative hearings is
8 established as an independent agency in the executive branch of
9 state government for the purpose of separating the adjudicatory
10 function from the investigatory, prosecutory, and policy-making
11 functions of agencies in the executive branch. The office shall
12 be placed within the department of accounting and general
13 services for administrative purposes only.

14 (b) Except as provided herein, the office shall have
15 jurisdiction to resolve all contested cases, unless the head or
16 governing body of the agency from which the case arises hears
17 the case without delegation or assignment to a hearings officer.

18 (c) Upon referral by an agency, one or more hearings
19 officers shall administer the resolution of the matters
20 referred.



1 § -3 Chief hearings officer; in general. (a) The
2 office of administrative hearings shall be headed by a chief
3 hearings officer who shall be appointed by the governor subject
4 to the consent of the senate. The chief hearings officer shall
5 be exempt from chapter 76, may be removed only for good cause
6 following notice and an opportunity for an adjudicative hearing,
7 and shall continue in office until a successor is appointed.

8 (b) The chief hearings officer shall:

- 9 (1) Take an oath of office as required by law prior to the
10 commencement of duties;
- 11 (2) Devote oneself full-time to the duties of the office
12 and shall not engage in the practice of law;
- 13 (3) Be eligible for reappointment;
- 14 (4) Receive a salary in the same amount as that provided
15 by law for a circuit court judge;
- 16 (5) Be licensed to practice law in the State and admitted
17 to practice for a minimum of five years;
- 18 (6) Have the powers and duties specified in this chapter;
19 and
- 20 (7) Be subject to the code of conduct for hearings
21 officers.



1 (c) The chief hearings officer may employ a staff subject
2 to chapter 76.

3 § -4 Chief hearings officer; powers and duties. (a)

4 The chief hearings officer shall:

5 (1) Supervise the office of administrative hearings;

6 (2) Appoint and remove hearings officers in accordance
7 with this chapter;

8 (3) Assign hearings officers in any case referred to the
9 office;

10 (4) Protect and ensure the decisional independence of each
11 hearings officer;

12 (5) Establish and implement standards and specialized
13 training programs and provide materials for hearings
14 officers;

15 (6) Provide and coordinate continuing education programs
16 and services for hearings officers, including
17 research, technical assistance, and technical and
18 professional publications;

19 (7) Compile and disseminate information and advise of
20 changes in the law relative to their duties;

21 (8) Adopt a code of conduct for hearings officers;



H.B. NO. 77

- 1 (9) Monitor the quality of state administrative hearings
2 through the provision of training, observation,
3 feedback and, when necessary, discipline of hearings
4 officers who do not meet appropriate standards of
5 conduct and competence, subject to paragraph (4);
- 6 (10) Submit an annual report on the activities of the
7 office to the governor and the legislature; and
- 8 (11) Adopt rules to implement this chapter pursuant to
9 chapter 91.
- 10 (b) The chief hearings officer may:
- 11 (1) Serve as a hearings officer in a contested case;
- 12 (2) Establish qualifications for the selection of hearings
13 officers;
- 14 (3) Furnish hearings officers on a contractual basis to
15 governmental entities other than those required to use
16 their services;
- 17 (4) Accept and expend funds, grants, bequests, and
18 services from any public or private source for
19 purposes related to the office;
- 20 (5) Enter into agreements and contracts with any public or
21 private agencies or educational institutions; and



1 (6) Create specialized subject matter divisions within the
2 office.

3 § -5 Hearings officers; qualification; tenure; scope of
4 employment. (a) Hearings officers shall be appointed by the
5 chief hearings officer pursuant to section - (4) (a) (2) and
6 shall be subject to chapter 76. The hearings officers of any
7 agency to which this chapter applies shall become employees of
8 the office of administrative hearings. Persons serving as
9 hearings officers as of July 1, 2018, shall be exempt from the
10 qualification requirement set forth in subsection (b) (2).

11 (b) A hearings officer shall:

12 (1) Take an oath of office as required by law prior to the
13 commencement of duties;

14 (2) Be admitted to practice law in the State for a minimum
15 of five years;

16 (3) Be subject to the requirements and protections of
17 chapter 76;

18 (4) Be removed, suspended, demoted, or subject to
19 disciplinary or adverse actions including any action
20 that might later influence a reduction in force, only
21 for good cause, after notice and an opportunity to be



H.B. NO. 77

- 1 heard in a hearing conducted pursuant to chapter 91
2 and a finding of good cause by the merit appeals board
3 established under section 76-47;
- 4 (5) Be subject to a reduction in force only in accordance
5 with established, objective civil service or merit
6 system procedures;
- 7 (6) Receive a salary in the same amount as that provided
8 by law for a district court judge;
- 9 (7) Not take actions inconsistent with the duties and
10 responsibilities of a hearings officer;
- 11 (8) Devote full time to the duties of the position and
12 shall not engage in the practice of law unless serving
13 as a part-time hearings officer;
- 14 (9) Be subject to administrative supervision by the chief
15 hearings officer; and
- 16 (10) Be subject to the code of conduct for hearings
17 officers.
- 18 (c) A hearings officer shall not be responsible to, or
19 subject to, the supervision, direction, or influence, whether
20 direct or indirect, of an officer, employee, or agent engaged in



1 the performance of investigatory, prosecutory, or advisory
2 functions for an agency.

3 § -6 Cooperation of state government agencies; audits;
4 selection of hearings officers. (a) All agencies of state
5 government shall cooperate with the chief hearings officer in
6 the discharge of the duties of the office.

7 (b) The office shall be subject to audit by the state
8 auditor under the same rules and rotation by which other state
9 agencies are audited.

10 (c) Except in arbitration or similar proceedings as
11 provided by law or in this chapter, or in rules adopted under
12 this chapter, an agency may not select or reject a particular
13 hearings officer for a particular proceeding.

14 § -7 Designation of additional hearings officers. If
15 the office is unable to assign a hearings officer in response to
16 an agency referral, the chief hearings officer shall designate
17 in writing an individual to serve as a hearings officer in a
18 particular proceeding before the agency; provided that the
19 individual meets the qualifications for a hearings officer as
20 established by the office and is subject to the Code of Judicial
21 Conduct.



1 § -8 Powers of hearings officers. A hearings officer
2 shall have the power to:

- 3 (1) Issue subpoenas;
- 4 (2) Administer oaths;
- 5 (3) Control the course of the proceedings;
- 6 (4) Engage in, or encourage the use of, alternative
7 dispute resolution methodologies, as appropriate;
- 8 (5) Order a party, a party's attorney, or other authorized
9 representative, to pay reasonable expenses, including
10 attorney's fees, incurred by another party as a result
11 of bad faith actions or tactics that are frivolous or
12 solely intended to cause unnecessary delay; and
- 13 (6) Perform other necessary and appropriate acts in the
14 performance of duties.

15 § -9 Decision-making authority; final; proposed. (a)
16 The assigned hearings officer shall render the final decision
17 and order of the agency, which shall not be subject to agency
18 review, unless otherwise specified in the laws governing the
19 agency.

20 (b) Except as provided under subsection (a), the hearings
21 officer shall issue a proposed decision, unless the agency



1 authorizes the issuance of a final decision and order, which
2 shall be subject to judicial review, as provided in chapter 91.

3 (c) If a matter is referred to the office by an agency,
4 the referring agency shall take no further adjudicatory action
5 with respect to the proceeding, except as a party litigant;
6 provided that the office has jurisdiction over the proceeding.
7 Nothing in this subsection shall be construed to prevent an
8 appropriate interlocutory review by the agency nor an
9 appropriate termination or modification of the proceeding by the
10 agency.

11 § -10 Proposed decisions and orders. In reviewing a
12 proposed decision or order received from the hearings officer,
13 the agency head or governing body of the agency shall not
14 modify, reverse, or remand the proposed decision of the hearings
15 officer except for specified reasons in accordance with law.
16 Judicial review of agency decisions shall be conducted in
17 accordance with section 91-14."

18 SECTION 3. Section 6E-10.5, Hawaii Revised Statutes, is
19 amended by amending subsections (d) and (e) to read as follows:

20 "(d) Any order issued pursuant to this chapter shall
21 become final, unless the person or persons named therein



1 requests in writing, not later than twenty days after notice of
2 violation and order is served, a hearing before the [~~board~~]
3 office of administrative hearings established under chapter .
4 Upon request for a hearing, the [~~board~~] office of administrative
5 hearings shall require that the alleged violator or violators
6 appear before the [~~board~~] office for a hearing to answer the
7 charges issued, at a time and place specified in the notice or
8 otherwise set by the [~~board~~] office.

9 Any penalty imposed pursuant to this chapter shall become
10 due and payable twenty days after the notice of penalty is
11 served, unless the person or persons named therein requests in
12 writing a hearing before the [~~board~~] office of administrative
13 hearings. Whenever a hearing is requested on any penalty
14 imposed pursuant to this chapter, the penalty shall become due
15 and payable only upon completion of all review proceedings and
16 the issuance of a final order confirming the penalty in whole or
17 in part.

18 (e) Any hearing conducted pursuant to this section shall
19 be conducted as a contested case under chapter 91. If, after a
20 hearing held pursuant to this section, the [~~board~~] office of



H.B. NO. 77

1 administrative hearings finds that a violation or violations has
2 occurred, the [~~board~~] office of administrative hearings shall:

- 3 (1) Affirm or modify any penalties imposed;
4 (2) Modify or affirm the order previously issued; or
5 (3) Issue an appropriate order or orders for the
6 prevention, abatement, or control of the violation or
7 for the taking of such other corrective action as may
8 be appropriate.

9 Any order issued after a hearing may prescribe timetables for
10 necessary action in preventing, abating, or controlling the
11 violation. If, after a hearing on an order or penalty contained
12 in a notice, the [~~board~~] office of administrative hearings finds
13 that no violation has occurred or is occurring, the [~~board~~]
14 office of administrative hearings shall rescind the order or
15 penalty."

16 SECTION 4. Section 11-407, Hawaii Revised Statutes, is
17 amended to read as follows:"

18 "[+]§11-407[+] **Contested case hearing.** (a) A contested
19 case hearing shall be conducted pursuant to chapter 91 and any
20 rules adopted by the [~~commission,~~] office of administrative



1 hearings established under chapter _____, except as provided in
2 this section.

3 (b) If a hearing is held before the [~~commission~~] office
4 of administrative hearings, the [~~commission~~] office of
5 administrative hearings shall not be bound by strict rules of
6 evidence when conducting a hearing to determine whether a
7 violation of this part has occurred, and the degree or quantum
8 of proof required shall be a preponderance of the evidence.

9 (c) The [~~commission or hearings officer~~] office of
10 administrative hearings, if there is no dispute as to the facts
11 involved in a particular matter, may permit the parties to
12 proceed by memoranda of law in lieu of a hearing unless the
13 procedure would unduly burden any party or is otherwise not
14 conducive to the ends of justice.

15 (d) A record shall be made of the proceeding.

16 (e) All parties shall be afforded full opportunity to
17 present evidence and argument on all issues involved.

18 (f) Any person who appears before the [~~commission~~] office
19 of administrative hearings shall have all of the rights,
20 privileges, and responsibilities of a witness appearing before
21 the courts of this State. All witnesses summoned before the



1 ~~[commission or hearings officer]~~ office of administrative
2 hearings shall receive reimbursements as paid in like
3 circumstances in the courts of this State. Any person whose
4 name is mentioned during a proceeding before the ~~[commission]~~
5 office of administrative hearings and who may be adversely
6 affected thereby may appear or file a written statement for
7 incorporation into the record of the proceeding.

8 ~~[(g) If a hearing is held before a hearings officer, the~~
9 ~~hearings officer shall render a recommended decision for the~~
10 ~~commission's consideration. Any party adversely affected by the~~
11 ~~decision may file written exceptions with the commission within~~
12 ~~fifteen days after receipt of a copy of the decision by~~
13 ~~certified mail.~~

14 ~~(h)]~~ (g) The ~~[commission]~~ office of administrative
15 hearings, as expeditiously as possible after the close of the
16 ~~[commission's]~~ office's hearing, shall issue its final
17 determination of violation together with separate findings of
18 fact and conclusions of law regarding whether a violation of
19 this part has been committed."

20 SECTION 5. Section 26-9, Hawaii Revised Statutes, is
21 amended by amending subsection (f) to read as follows:



1 "(f) ~~[The director of commerce and consumer affairs may~~
2 ~~appoint a hearings officer or officers not subject to chapter 76~~
3 ~~to hear and decide any case or controversy regarding licenses~~
4 ~~and the application and enforcement of rules involving any of~~
5 ~~the boards, commissions, or regulatory programs within the~~
6 ~~department of commerce and consumer affairs. The hearings~~
7 ~~officer or officers shall have power to issue subpoenas,~~
8 ~~administer oaths, hear testimony, find facts, and make~~
9 ~~conclusions of law and a recommended decision; provided that the~~
10 ~~conclusions and decisions shall be subject to review and~~
11 ~~redetermination by the officer, board, or commission which would~~
12 ~~have heard the case in the first instance in the absence of a~~
13 ~~hearings officer. The review shall be conducted in accordance~~
14 ~~with chapter 91.] After July 1, 2019, the director of commerce~~
15 ~~and consumer affairs may not appoint a hearings officer or~~
16 ~~officers to hear and decide any case or controversy regarding~~
17 ~~licenses and the application and enforcement of rules involving~~
18 ~~any of the boards, commissions, or regulatory programs within~~
19 ~~the department of commerce and consumer affairs."~~

20 SECTION 6. Section 88-82, Hawaii Revised Statutes, is
21 amended by amending subsections (a) and (b) to read as follows:



1 "(a) A member or applicant who is not satisfied with the
2 preliminary decision of the board to grant or deny an
3 application for disability retirement benefits or accidental
4 death benefits based on the certifications and findings of the
5 medical board may file a petition for contested case hearing
6 with the [board] office of administrative hearings established
7 under chapter _____, within sixty days after receiving written
8 notification of the preliminary decision of the board.

9 (b) If the member or applicant is the prevailing party in
10 the contested case, and disability retirement or accidental
11 death benefits are awarded to the member or applicant by the
12 [board] office of administrative hearings or court of the
13 appropriate jurisdiction under section 88-75, 88-79, 88-85, 88-
14 284, 88-285, 88-286(c), 88-334, 88-336, or 88-339, the member or
15 applicant shall be paid reasonable attorney's fees together with
16 any costs payable by the system. The attorney's fees and costs
17 shall be subject to the approval of the [board] office of
18 administrative hearings or approval by a court of appropriate
19 jurisdiction after evidence has been provided by the member or
20 applicant regarding the reasonableness of the claimed attorney's
21 fees and costs."



1 SECTION 7. Section 103D-709, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The several hearings officers appointed [~~by the~~
4 ~~director of the department of commerce and consumer affairs~~
5 ~~pursuant to section 26-9(f)] under chapter _____ shall have
6 jurisdiction to review and determine de novo, any request from
7 any bidder, offeror, contractor, or person aggrieved under
8 section 103D-106, or governmental body aggrieved by a
9 determination of the chief procurement officer, head of a
10 purchasing agency, or a designee of either officer under section
11 103D-310, 103D-701, or 103D-702."~~

12 SECTION 8. Section 104-23, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) A hearing on the written notice of appeal shall be
15 held by a hearings officer appointed by the [~~director~~] chief
16 administrative hearings officer in conformance with chapter 91.

17 Hearings on appeal shall be held within sixty days of the
18 notice of appeal and a decision shall be rendered by the
19 hearings officer within sixty days after the conclusion of the
20 hearing, stating the findings of fact and conclusions of law.



1 The hearings officer may extend the due date for decision for
2 good cause; provided that all parties agree."

3 SECTION 9. Section 128D-19, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Any person who receives and complies with the terms
6 of any order issued under this chapter, within sixty days after
7 completion of the required order, may petition the director to
8 ~~[appoint a hearings officer for]~~ refer the matter to the office
9 of administrative hearings for a review of the order and for
10 reimbursement from the fund or the State for the reasonable
11 costs of complying with the order, including interest."

12 SECTION 10. Section 174C-11, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) ~~[The chairperson may appoint hearings officers, not~~
15 ~~subject to chapter 76, to]~~ Hearings officer appointed under
16 chapter shall hear and reach a preliminary decision on any
17 matter concerning the implementation or administration of the
18 state water code which the commission may refer to the hearings
19 officers by rule or otherwise.

20 (b) In assigning matters to hearings officers, the
21 ~~[chairperson]~~ chief hearings officer appointed under



1 chapter shall make the assignments in a manner which ensures
2 that hearings officers will develop familiarity and expertise
3 with given geographic areas."

4 SECTION 11. Section 269-6, Hawaii Revised Statutes, is
5 amended by amending subsection (e) to read as follows:

6 "(e) [~~The chairperson of the commission may appoint a~~
7 ~~hearings officer, who shall not be subject to chapter 76, to] A
8 hearings officer subject to chapter shall hear and recommend
9 decisions in any proceeding before it other than a proceeding
10 involving the rates or any other matters covered in the tariffs
11 filed by the public utilities. The hearings officer shall have
12 the power to take testimony, make findings of fact and
13 conclusions of law, and recommend a decision; provided that the
14 findings of fact, the conclusions of law, and the recommended
15 decision shall be reviewed and may be approved by the commission
16 after notice to the parties and an opportunity to be heard. The
17 hearings officer shall have all of the above powers conferred
18 upon the public utilities commission under section 269-10."~~

19 SECTION 12. Section 269-15, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



1 "(b) In addition to any other remedy available, the
2 commission or its enforcement officer may issue citations to any
3 person acting in the capacity of or engaging in the business of
4 a public utility within the State, without having a certificate
5 of public convenience and necessity or other authority
6 previously obtained under and in compliance with this chapter or
7 the rules adopted thereunder.

8 (1) The citation may contain an order of abatement and an
9 assessment of civil penalties as provided in section
10 269-28(c). All penalties collected under this
11 subsection shall be deposited in the treasury of the
12 State. Service of a citation issued under this
13 subsection shall be made by personal service whenever
14 possible, or by certified mail, restricted delivery,
15 sent to the last known business or residence address
16 of the person cited.

17 (2) Any person served with a citation under this
18 subsection may submit a written request to the
19 commission for a hearing, within twenty days from the
20 receipt of the citation, with respect to the
21 violations alleged, the scope of the order of



1 abatement and the amount of civil penalties assessed.
2 If the person cited under this subsection timely
3 notifies the commission of the request for a hearing,
4 the commission shall afford an opportunity for a
5 hearing under chapter 91. The hearing shall be
6 conducted by [~~the commission or the commission may~~
7 ~~designate~~] a hearings officer appointed under chapter
8 to hold the hearing.

9 (3) If the person cited under this subsection does not
10 submit a written request to the commission for a
11 hearing within twenty days from the receipt of the
12 citation, the citation shall be deemed a final order
13 of the commission. The commission may apply to the
14 appropriate court for a judgment to enforce the
15 provisions of any final order, issued by the
16 commission [~~or designated hearings officer~~] pursuant
17 to this subsection, including the provisions for
18 abatement and civil penalties imposed. In any
19 proceeding to enforce the provisions of the final
20 order of the commission [~~or designated hearings~~
21 ~~officer~~], the commission need only show that the



1 notice was given, a hearing was held or the time
2 granted for requesting the hearing has run without
3 such a request, and a certified copy of the final
4 order of the commission [~~or designated hearings~~
5 ~~officer~~].

- 6 (4) If any party is aggrieved by the decision of the
7 commission [~~or the designated hearings officer~~], the
8 party may appeal to the intermediate appellate court,
9 subject to chapter 602, in the manner provided for
10 civil appeals from the circuit court; provided that
11 the operation of an abatement order shall not be
12 stayed on appeal unless specifically ordered by a
13 court of competent jurisdiction after applying the
14 stay criteria enumerated in section 91-14(c). The
15 sanctions and disposition authorized under this
16 subsection shall be separate and in addition to all
17 other remedies either civil or criminal provided in
18 any other applicable statutory provision. The
19 commission may adopt rules under chapter 91 as may be
20 necessary to fully effectuate this subsection."



1 SECTION 13. Section 269E-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[§269E-3]~~ **General duties and powers of the**
4 **commission.** The general duties and powers of the commission
5 shall be to:

6 (1) Establish and administer a one call center that
7 provides advance warning to excavators in this State
8 of the location of subsurface installations in the
9 area of an excavation for the purpose of protecting
10 those installations from damage;

11 (2) Adopt, amend, or repeal rules pursuant to chapter 91
12 as it may deem necessary to effectuate this chapter.
13 The rules adopted shall have the force and effect of
14 law and may include but are not limited to rules that:

15 (A) Forbid acts or practices deemed by the commission
16 to be detrimental to the accomplishment of the
17 purposes of this chapter; and

18 (B) Require operators and excavators to make reports
19 to the commission containing information that
20 will enable the commission to improve the
21 accomplishment of this chapter;



- 1 (3) Enforce this chapter and any rules adopted pursuant
2 thereto;
- 3 (4) Issue binding interpretations or declaratory rulings,
4 [and] but not conduct contested case proceedings
5 pursuant to chapter 91; and
- 6 (5) Subpoena witnesses and documents, administer oaths,
7 and receive affidavits and oral testimony, including
8 telephonic and electronic communications."

9 SECTION 14. Section 271-27, Hawaii Revised Statutes, is
10 amended by amending subsection (j) to read as follows:

11 "(j) In addition to any other remedy available, the
12 commission or its enforcement officer, including a motor vehicle
13 safety officer employed and assigned by the department of
14 transportation pursuant to section 271-38, may issue citations
15 to persons acting in the capacity of or engaging in the business
16 of a motor carrier within this State, without having a
17 certificate of public convenience and necessity or other
18 authority previously obtained under and in compliance with this
19 chapter and rules adopted, or to any shipper or consignee
20 located in this State, or any officer, employee, agent, or



1 representative thereof who engages the services of those
2 persons.

3 (1) The citation may contain an order of abatement and an
4 assessment of civil penalties as provided in
5 subsection (h). All penalties collected under this
6 subsection shall be deposited in the treasury of the
7 State. Service of a citation issued under this
8 subsection shall be made by personal service whenever
9 possible or by certified mail, restricted delivery,
10 sent to the last known business or residence address
11 of the person cited.

12 (2) Any person served with a citation under this
13 subsection may submit a written request to the
14 commission for a hearing within twenty days from the
15 receipt of the citation, with respect to the
16 violations alleged, the scope of the order of
17 abatement, and the amount of civil penalties assessed.
18 If the person cited under this subsection notifies the
19 commission of the request for a hearing in time, the
20 commission shall afford the person an opportunity for
21 a hearing under chapter 91. The hearing shall be



1 conducted by ~~[the commission, or the commission may~~
2 ~~designate]~~ a hearings officer ~~[to hold the hearing.]~~
3 who is appointed under chapter .

4 (3) If the person cited under this subsection does not
5 submit a written request to the commission for a
6 hearing in time, the citation shall be deemed a final
7 order of the commission. The commission may apply to
8 the appropriate court for a judgment to enforce the
9 provisions of any final order issued by the commission
10 ~~[or designated hearings officer]~~ pursuant to this
11 subsection, including the provisions for abatement and
12 civil penalties imposed. In any proceeding to enforce
13 the final order, the commission need only produce a
14 certified copy of the final order and show that the
15 notice was given and that a hearing was held or the
16 time granted for requesting the hearing has run
17 without a request.

18 (4) If any party is aggrieved by the decision of the
19 commission ~~[or the designated hearings officer]~~, the
20 party may appeal, subject to chapter 602, in the
21 manner provided for civil appeals from the circuit



1 courts; provided that the operation of an abatement
 2 order shall not be stayed on appeal unless
 3 specifically ordered by a court of competent
 4 jurisdiction after applying the stay criteria
 5 enumerated in section 91-14(c). The sanctions and
 6 disposition authorized under this subsection shall be
 7 separate and in addition to all other remedies either
 8 civil or criminal provided by law. The commission may
 9 adopt any rules under chapter 91 that may be necessary
 10 to fully effectuate this subsection."

11 SECTION 15. Section 271-31, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "§271-31 Hearings. (a) All hearings, investigations, and
 14 proceedings shall be governed by this section and by rules of
 15 practice and procedure adopted by the [~~public utilities~~
 16 ~~commission,~~] office of administrative hearings established under
 17 chapter _____, and in the conduct thereof, the technical rules of
 18 evidence need not be applied. No informality in any hearing,
 19 investigation, or proceeding, or in the manner of taking
 20 testimony shall invalidate any order, decision or rule made,



1 approved, or confirmed by the [~~commission-~~] office of
2 administrative hearings.

3 (b) Complaints may be made, in writing, by the commission
4 on its own motion or by any person or body politic, setting
5 forth any act or thing done, or omitted to be done by any motor
6 carrier, including any rule, regulation, rate, or charge,
7 heretofore established or fixed by or for any motor carrier, in
8 violation or claimed to be in violation, of any law or of any
9 order or rule of the [~~commission-~~] office of administrative
10 hearings.

11 (c) All matters upon which complaint may be founded may be
12 joined in one hearing, and no motion shall be entertained
13 against a complaint for misjoinder of causes of action or
14 grievances or misjoinder or nonjoinder of parties. In any
15 review by the courts of orders or decisions of the [~~commission~~]
16 office of administrative hearings the same rule shall apply with
17 regard to the joinder of causes and parties as herein provided.
18 The [~~commission~~] office of administrative hearings shall not be
19 required to dismiss any complaint because of the absence of
20 direct damage to the complainant.



1 (d) Upon the filing of a complaint, the commission shall
2 cause a copy thereof to be served upon the person or motor
3 carrier complained of. Service in all hearings, investigations,
4 and proceedings pending before the [~~commission~~] office of
5 administrative hearings may be made upon any person upon whom a
6 summons may be served in any proceeding before the courts of
7 this State, and may be made personally or by mailing in a sealed
8 envelope, registered or certified, with postage prepaid. The
9 [~~commission~~] office of administrative hearings shall fix the
10 time when and place where a hearing will be had upon the
11 complaint and shall serve notice thereof, not less than ten days
12 before the time set for the hearing, unless the [~~commission~~]
13 office of administrative hearings finds that public necessity
14 requires that the hearing be held at an earlier date.

15 (e) At the time fixed for any hearing before the
16 [~~commission~~] office of administrative hearings or the time to
17 which the hearing has been continued, the complainant and the
18 person complained of, and such persons as the [~~commission~~]
19 office of administrative hearings allows to intervene, shall be
20 entitled to be heard and to introduce evidence. The
21 [~~commission~~] office of administrative hearings shall issue



1 process to enforce the attendance of all necessary witnesses.
2 After the conclusion of the hearing, the [~~commission~~] office of
3 administrative hearings shall make and file its order,
4 containing its decision which shall be based on findings of fact
5 and conclusions of law therein stated. A copy of each order,
6 certified under the seal of the [~~commission~~], office of
7 administrative hearings, shall be served upon the person
8 complained of, or the person's attorney. The order shall, of
9 its own force, take effect and become operative twenty days
10 after the service thereof, except as otherwise provided, and
11 shall continue in force either for a period designated in it or
12 until changed or abrogated by the [~~commission~~], office of
13 administrative hearings. If the [~~commission~~] office of
14 administrative hearings believes that an order cannot be
15 complied with within twenty days, it may prescribe such
16 additional time as in its judgment is reasonably necessary to
17 comply with the order, and may on application and for good cause
18 shown, extend the time for compliance fixed in its order.

19 (f) A complete record of all proceedings and testimony
20 before the [~~commission~~] office of administrative hearings on any
21 formal hearing shall be taken down by a reporter appointed by



1 the [~~commission~~] office of administrative hearings, and the
2 parties shall be entitled to be heard in person or by attorney.
3 In case of an action to review an order or decision of the
4 [~~commission~~] office of administrative hearings, a transcript of
5 the testimony, together with all exhibits or copies thereof
6 introduced, and of the pleadings, records, and proceedings in
7 the cause, shall constitute the record of the [~~commission~~]
8 office of administrative hearings, but the party or parties to
9 the proceeding and the [~~commission~~] office of administrative
10 hearings may stipulate that designated parts of the record need
11 not be transmitted to the appellate court, as provided by the
12 rules of the court.

13 (g) Any motor carrier may complain on any of the grounds
14 upon which complaints are allowed to be filed by other parties,
15 and the same procedure shall be adopted and followed as in other
16 cases, except that the complaint may be heard ex parte by the
17 [~~commission~~] office of administrative hearings or may be served
18 upon any party designated by the [~~commission~~] office of
19 administrative hearings.

20 (h) The [~~commission~~] office of administrative hearings may
21 at any time upon notice to the motor carrier affected, and after



1 opportunity to be heard as provided in the case of complaints,
 2 rescind, alter, or amend any order or decision made by it. Any
 3 order rescinding, altering, or amending a prior order or
 4 decision shall, when served upon the motor carrier affected,
 5 have the same effect as an original order or decision.

6 (i) In all collateral actions or proceedings, the orders
 7 and decisions of the [~~commission~~] office of administrative
 8 hearings which have become final shall be conclusive."

9 SECTION 16. Section 271-32, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "§271-32 Reconsideration and rehearings. (a) After any
 12 order or decision has been made by the [~~public utilities~~
 13 ~~commission,~~] office of administrative hearings, any party to the
 14 proceeding may apply once for reconsideration or a rehearing in
 15 respect to any matter determined in the proceeding and specified
 16 in the motion for reconsideration or rehearing. The
 17 [~~commission~~] office of administrative hearings may grant the
 18 motion if in its judgment sufficient reason is made to appear.

19 (b) The motion for reconsideration or a rehearing shall be
 20 filed within ten days after the decision and order has been
 21 served and shall set forth specifically the ground or grounds on



1 which the applicant considers the decision or order to be
2 unlawful. No person shall in any court urge or rely on any
3 ground not so set forth in the motion. If a motion for
4 reconsideration or rehearing is filed from a final decision and
5 order, the [~~commission's~~] office of administrative hearings'
6 order shall be automatically stayed until the [~~commission~~]
7 office of administrative hearings renders its final
8 determination on the motion; provided that:

9 (1) No change in any rate, fare, or charge shall go into
10 effect while a motion for reconsideration or rehearing
11 is pending notwithstanding section 271-20(e);

12 (2) Any motion for reconsideration or rehearing shall be
13 determined and an order issued by the [~~commission~~]
14 office of administrative hearings within forty-five
15 days from the filing date of the motion for
16 reconsideration or rehearing; and

17 (3) The [~~commission~~] office of administrative hearings may
18 set aside the automatic stay in its discretion.

19 (c) A motion for reconsideration or rehearing shall not
20 excuse any person from complying with and obeying any order or
21 decision, or any requirement of any order or decision of the



H.B. NO. 77

1 ~~[commission]~~ office of administrative hearings theretofore made,
2 or operate in any manner to stay or postpone the enforcement
3 thereof, except in such cases and upon such terms as the
4 ~~[commission]~~ office of administrative hearings by order directs.

5 (d) If, after reconsideration or rehearing the
6 ~~[commission]~~ office of administrative hearings is of the opinion
7 that the original order or decision, or any part thereof, is in
8 any respect unjust or unwarranted, or should be changed, the
9 ~~[commission]~~ office of administrative hearings may abrogate,
10 change, or modify it. The order or decision abrogating,
11 changing, or modifying the original order or decision shall have
12 the same force and effect as an original order or decision, but
13 shall not affect any right or the enforcement of any right
14 arising from or by virtue of the original order or decision
15 unless so ordered by the ~~[commission.]~~ office of administrative
16 hearings.

17 (e) An appeal shall lie, subject to chapter 602, from
18 every order made by the ~~[commission]~~ office of administrative
19 hearings that is final, or if preliminary, is of the nature
20 defined by section 91-14(a), in the manner provided for civil
21 appeals from the circuit court; provided the order is made after



H.B. NO. 77

1 reconsideration or rehearing or is the subject of a motion for
2 reconsideration or rehearing, which the [~~commission~~] office of
3 administrative hearings has denied. An appeal shall lie,
4 subject to chapter 602, in the manner provided for civil appeals
5 from the circuit courts, only by a person aggrieved in the
6 contested case hearing provided for in this section."

7 SECTION 17. Section 271G-19, Hawaii Revised Statutes, is
8 amended by amending subsection (e) to read as follows:

9 "(e) In addition to any other remedy available, the
10 commission or its enforcement officer may issue citations to
11 persons acting in the capacity of or engaging in the business of
12 a water carrier within the State, without having a certificate
13 of public convenience and necessity or other authority
14 previously obtained under and in compliance with this chapter
15 and the rules adopted thereunder.

16 (1) The citation may contain an order of abatement and an
17 assessment of civil penalties of not less than \$100,
18 nor more than \$500 for each such offense, and, in the
19 case of a continuing violation, not less than \$200 nor
20 more than \$500 for each day that uncertified activity
21 continues. All penalties collected under this



1 subsection shall be deposited in the treasury of the
2 State. Service of a citation issued under this
3 subsection shall be made by personal service whenever
4 possible, or by certified mail, restricted delivery,
5 sent to the last known business or residence address
6 of the person cited.

7 (2) Any person served with a citation under this
8 subsection may submit a written request to the
9 commission for a hearing, within twenty days from the
10 receipt of the citation, with respect to the
11 violations alleged, the scope of the order of
12 abatement and the amount of civil penalties assessed.
13 If the person cited under this subsection timely
14 notifies the commission of the request for a hearing,
15 the commission shall afford an opportunity for a
16 hearing under chapter 91. The hearing shall be
17 conducted by ~~[the commission or the commission may~~
18 ~~designate]~~ a hearings officer ~~[to hold the hearing.]~~
19 who is appointed pursuant to chapter _____.

20 (3) If the person cited under this subsection does not
21 submit a written request to the commission for a



1 hearing within twenty days from the receipt of the
2 citation, the citation shall be deemed a final order
3 of the commission. The commission may apply to the
4 appropriate court for a judgment to enforce the
5 provisions of any final order, issued by the
6 commission [~~or designated hearings officer~~] pursuant
7 to this subsection, including the provisions for
8 abatement and civil penalties imposed. In any
9 proceeding to enforce the provisions of the final
10 order of the commission [~~or designated hearings~~
11 ~~officer~~], the commission need only show that the
12 notice was given, a hearing was held or the time
13 granted for requesting the hearing has run without
14 such a request, and a certified copy of the final
15 order of the commission [~~or designated hearings~~
16 ~~officer~~].

- 17 (4) If any party is aggrieved by the decision of the
18 commission [~~or the designated hearings officer~~], the
19 party may appeal, subject to chapter 602, in the
20 manner provided for civil appeals from the circuit
21 courts; provided that the operation of an abatement



1 order shall not be stayed on appeal unless
2 specifically ordered by a court of competent
3 jurisdiction after applying the stay criteria
4 enumerated in section 91-14(c). The sanctions and
5 disposition authorized under this subsection shall be
6 separate and in addition to all other remedies, either
7 civil or criminal, provided in any other applicable
8 statutory provision. The commission may adopt rules
9 under chapter 91 as may be necessary to fully
10 effectuate this subsection."

11 SECTION 18. Section 304A-105, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The board of regents shall have management and
14 control of the general affairs, and exclusive jurisdiction over
15 the internal structure, management, and operation of the
16 university. The board may:

17 (1) Appoint a treasurer and other officers as it deems
18 necessary;

19 (2) Authorize any officer, elected or appointed by it, to
20 approve and sign on its behalf any voucher or other
21 document that the board may approve and sign;



- 1 (3) ~~[Delegate to the president or the president's~~
2 ~~designee]~~ Refer to the office of administrative
3 hearings established under chapter the authority
4 to render the final decision in contested case
5 proceedings subject to chapter 91, as it deems
6 appropriate;
- 7 (4) Purchase or otherwise acquire lands, buildings,
8 appliances, and other property for the purposes of the
9 university; and
- 10 (5) Expend any sums of money as, from time to time, may be
11 placed at the disposal of the university from whatever
12 source; provided that notwithstanding any other law to
13 the contrary, all documents regarding expenditures and
14 changes thereto, made by the board shall be disclosed
15 in open meetings for the purpose of public comment;
16 provided further that all expenditure requests,
17 proposals, and any other budgetary documents used by
18 the board at an open meeting shall be made available
19 to the public at least six calendar days before the
20 meeting.



1 All lands, buildings, appliances, and other property so
2 purchased or acquired shall be and remain the property of the
3 university to be used in perpetuity for the benefit of the
4 university. The board, in accordance with this section and
5 other law, shall manage the inventory, equipment, surplus
6 property, and expenditures of the university and, subject to
7 chapter 91, may adopt rules, further controlling and regulating
8 the same."

9 SECTION 19. Section 305J-5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The director shall:

12 (1) Unless otherwise provided by law, adopt, amend, and
13 repeal rules pursuant to chapter 91 to carry out the
14 purposes of this chapter;

15 (2) Adopt policies and procedures as necessary, without
16 regard to chapter 91, for reauthorization pursuant to
17 section 305J-10;

18 (3) Issue declaratory rulings or informal, nonbinding
19 interpretations and conduct contested case proceedings
20 pursuant to chapter 91;



- 1 (4) Grant, deny, confirm, forfeit, renew, reinstate, or
2 restore authorizations, including conditional,
3 probationary, or qualified authorizations;
- 4 (5) Revoke, suspend, condition, or otherwise limit the
5 authorization of an institution for any violation of
6 this chapter, applicable rules, or the Higher
7 Education Act of 1965, as amended;
- 8 (6) Establish requirements for authorization in accordance
9 with this chapter;
- 10 (7) Investigate [~~and conduct hearings regarding~~] any
11 violation of this chapter, applicable rules, or the
12 Higher Education Act of 1965, as amended[+], and refer
13 hearings to the office of administrative hearings
14 established under chapter ;
- 15 (8) Create fact-finding committees, including the
16 appointment of one or more advisory committees, which
17 may assist the department and make recommendations for
18 consideration;
- 19 (9) Contract with qualified persons, including
20 investigative and legal staff, who may be exempt from



- 1 chapter 76, to assist the director in exercising the
2 director's powers and duties;
- 3 (10) Subpoena witnesses and documents, administer oaths,
4 and receive affidavits and oral testimony, including
5 communications through electronic media;
- 6 (11) Establish the types and amounts of fees that the
7 department may assess in order to carry out the
8 purposes of this chapter;
- 9 (12) Establish policies to require authorized institutions
10 to submit to the department, upon request, data that
11 is directly related to student enrollment and degree
12 completion and, if applicable, student financial aid
13 and educator preparation programs, which policies
14 shall include a determination as to whether data
15 received may be disclosed to the public;
- 16 (13) Establish policies and procedures for the handling of
17 proprietary information;
- 18 (14) Enter into any post-secondary education authorization
19 reciprocity agreement with other post-secondary
20 educational authorizers of schools whose home state is
21 not Hawaii pursuant to section 305J-16; and



1 (15) Do any and all things necessary or incidental to the
2 exercise of the director's powers and duties."

3 SECTION 20. Section 342B-3, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) In addition to other specific powers provided in this
6 chapter, the director may [~~appoint, without regard to chapter~~
7 ~~76, hearings officers to~~] conduct [~~contested case hearings and~~]
8 public participation activities, including public hearings and
9 public informational meetings[-] and refer contested case
10 hearings to the office of administrative hearings established
11 under chapter _____."

12 SECTION 21. Section 342B-42, Hawaii Revised Statutes, is
13 amended by amending subsections (d) and (e) to read as follows:

14 "(d) Any order issued pursuant to this chapter shall
15 become final, unless not later than twenty days after the notice
16 of violation and order is served, the person or persons named
17 therein request in writing a hearing before the [~~director-~~]
18 office of administrative hearings established under chapter _____.

19 Any penalty imposed pursuant to this chapter shall become due
20 and payable twenty days after the notice of penalty is served,
21 unless the person or persons named therein request in writing a



1 hearing before the [~~director~~] office of administrative
2 hearings. Whenever a hearing is requested on any penalty
3 imposed pursuant to this chapter, the penalty shall become due
4 and payable only upon completion of all review proceedings and
5 the issuance of a final order confirming the penalty in whole or
6 in part. Upon request for a hearing, the [~~director~~] office of
7 administrative hearings shall require that the alleged violator
8 or violators appear before the [~~director~~] office for a hearing
9 at the time and place specified in the notice and answer the
10 charges complained of.

11 (e) Any hearing conducted pursuant to this section shall
12 be conducted as a contested case under chapter 91. If, after a
13 hearing held pursuant to this section, the [~~director~~] office of
14 administrative hearings finds that a violation or violations
15 have occurred, the [~~director~~] office of administrative hearings
16 shall affirm or modify any penalties imposed or shall modify or
17 affirm the order previously issued or issue an appropriate order
18 or orders for the prevention, abatement, or control of the
19 violation or emission of air pollutants involved, or for the
20 taking of such other corrective action as may be appropriate.
21 If, after a hearing on an order or penalty contained in a



H.B. NO. 77

1 notice, the [~~director~~] office of administrative hearings finds
 2 that no violation has occurred or is occurring, the [~~director~~]
 3 office of administrative hearings shall rescind the order or
 4 penalty. Any order issued after a hearing may prescribe
 5 timetables for necessary action in preventing, abating, or
 6 controlling the violation."

7 SECTION 22. Section 342D-9, Hawaii Revised Statutes, is
 8 amended by amending subsections (d) and (e) to read as follows:

9 "(d) Any order issued under this chapter shall become
 10 final, unless not later than twenty days after the notice of
 11 order is served, the person or persons named therein request in
 12 writing a hearing before the director. Any penalty imposed
 13 under this chapter shall become due and payable twenty days
 14 after the notice of penalty is served unless the person or
 15 persons named therein request in writing a hearing before the
 16 [~~director~~] office of administrative hearings established under
 17 chapter . Whenever a hearing is requested on any penalty
 18 imposed under this chapter, the penalty shall become due and
 19 payable only upon completion of all review proceedings and the
 20 issuance of a final order confirming the penalty in whole or in
 21 part. Upon request for a hearing, the [~~director~~] office of



1 administrative hearings shall require that the alleged violator
2 or violators appear before the [~~director~~] office for a hearing
3 at a time and place specified in the notice and answer the
4 charges complained of.

5 (e) Any hearing conducted under this section shall be
6 conducted as a contested case under chapter 91. If after a
7 hearing held pursuant to this section, the [~~director~~] office of
8 administrative hearings established under chapter finds that
9 a violation or violations have occurred, the [~~director~~] office
10 of administrative hearings shall affirm or modify any penalties
11 imposed or shall modify or affirm the order previously issued or
12 issue an appropriate order or orders for the prevention,
13 abatement, or control of the violation or discharges involved,
14 or for the taking of such other corrective action as may be
15 appropriate. If, after a hearing on an order or penalty
16 contained in a notice, the [~~director~~] office of administrative
17 hearings finds that no violation has occurred or is occurring,
18 the [~~director~~] office of administrative hearings shall rescind
19 the order or penalty. Any order issued after hearing may
20 prescribe the date or dates by which the violation or violations
21 shall cease and may prescribe timetables for necessary action in



1 preventing, abating, or controlling the violation or
2 discharges."

3 SECTION 23. Section 342F-7, Hawaii Revised Statutes, is
4 amended by amending subsections (d) and (e) to read as follows:

5 "(d) Any order issued under this chapter shall become
6 final, unless no later than twenty days after the notice of
7 order is served, the person or persons named therein request in
8 writing a hearing before the [~~director~~] office of
9 administrative hearings established under chapter . Any
10 penalty imposed under this chapter shall become due and payable
11 twenty days after the notice of penalty is served unless the
12 person or persons named therein request in writing a hearing
13 before the [~~director~~] office of administrative hearings.

14 Whenever a hearing is requested on any penalty imposed under
15 this chapter, the penalty shall become due and payable only upon
16 completion of all review proceedings and the issuance of a final
17 order confirming the penalty in whole or in part. Upon request
18 for a hearing, the [~~director~~] office of administrative hearings
19 shall require that the alleged violator or violators appear
20 before the [~~director~~] office for a hearing at a time and place
21 specified in the notice and answer the charges complained of.



1 (e) Any hearing conducted under this section shall be
2 conducted as a contested case under chapter 91. If after a
3 hearing held pursuant to this section, the [~~director~~] office of
4 administrative hearings established under chapter finds that
5 a violation or violations have occurred, the [~~director~~] office
6 of administrative hearings shall affirm or modify any penalties
7 imposed or shall modify or affirm the order previously issued or
8 issue an appropriate order or orders for the prevention,
9 abatement, or control of the violation or discharges involved,
10 or for the taking of such other corrective action as may be
11 appropriate. If, after a hearing on an order or penalty
12 contained in a notice, the [~~director~~] office of administrative
13 hearings finds that no violation has occurred or is occurring,
14 the [~~director~~] office of administrative hearings shall rescind
15 the order or penalty. Any order issued after hearing may
16 prescribe the date or dates by which the violation or violations
17 shall cease and may prescribe timetables for necessary action in
18 preventing, abating, or controlling the violation or
19 discharges."

20 SECTION 24. Section 342G-72, Hawaii Revised Statutes, is
21 amended by amending subsections (c) and (d) to read as follows:



1 (c) Any order issued under this chapter shall become
2 final, unless not later than twenty days after the notice of
3 order is served, the person or persons named therein request in
4 writing a hearing before the [~~director~~] office of
5 administrative hearings established under chapter . Any
6 penalty imposed under this chapter shall become due and payable
7 twenty days after the notice of penalty is served unless the
8 person or persons named therein request in writing a hearing
9 before the [~~director~~] office of administrative hearings.
10 Whenever a hearing is requested on any penalty imposed under
11 this chapter, the penalty shall become due and payable only upon
12 completion of all review proceedings and the issuance of a final
13 order confirming the penalty in whole or in part. Upon request
14 for a hearing, the [~~director~~] office of administrative hearings
15 shall require that the alleged violator or violators appear
16 before the [~~director~~] office for a hearing at a time and place
17 specified in the notice and answer the charges complained of.

18 (d) Any hearing conducted under this section shall be
19 conducted as a contested case under chapter 91. If after a
20 hearing held pursuant to this section, the [~~director~~] office of
21 administrative hearings finds that a violation or violations



1 have occurred, the [~~director~~] office of administrative hearings
2 shall:

- 3 (1) Affirm or modify any penalties imposed or shall modify
4 or affirm the order previously issued; or
- 5 (2) Issue an appropriate order or orders for the
6 prevention, abatement, or control of the violation
7 involved, or for the taking of such other corrective
8 action as may be appropriate.

9 If, after a hearing on an order or penalty contained in a
10 notice, the [~~director~~] office of administrative hearings finds
11 that no violation has occurred or is occurring, the [~~director~~]
12 office of administrative hearings shall rescind the order or
13 penalty. Any order issued after hearing may prescribe the date
14 or dates by which the violation or violations shall cease and
15 may prescribe timetables for necessary action in preventing,
16 abating, or controlling the violation."

17 SECTION 25. Section 342H-7, Hawaii Revised Statutes, is
18 amended by amending subsections (c) and (d) to read as follows:

19 (c) Any order issued under this chapter shall become
20 final, unless not later than twenty days after the notice of
21 order is served, the person or persons named therein request in



1 writing a hearing before the [~~director~~] office of
2 administrative hearings established under chapter . Any
3 penalty imposed under this chapter shall become due and payable
4 twenty days after the notice of penalty is served unless the
5 person or persons named therein request in writing a hearing
6 before the director. Whenever a hearing is requested on any
7 penalty imposed under this chapter, the penalty shall become due
8 and payable only upon completion of all review proceedings and
9 the issuance of a final order confirming the penalty in whole or
10 in part. Upon request for a hearing, the [~~director~~] office of
11 administrative hearings shall require that the alleged violator
12 or violators appear before the [~~director~~] office of
13 administrative hearings for a hearing at a time and place
14 specified in the notice and answer the charges complained of.

15 (d) Any hearing conducted under this section shall be
16 conducted as a contested case under chapter 91. If after a
17 hearing held pursuant to this section, the [~~director~~] office of
18 administrative hearings finds that a violation or violations
19 have occurred, the [~~director~~] office of administrative hearings
20 shall affirm or modify any penalties imposed or shall modify or
21 affirm the order previously issued or issue an appropriate order



1 or orders for the prevention, abatement, or control of the
2 violation or disposals involved, or for the taking of such other
3 corrective action as may be appropriate. If, after a hearing on
4 an order or penalty contained in a notice, the [~~director~~] office
5 of administrative hearings finds that no violation has occurred
6 or is occurring, the [~~director~~] office of administrative
7 hearings shall rescind the order or penalty. Any order issued
8 after hearing may prescribe the date or dates by which the
9 violation or violations shall cease and may prescribe timetables
10 for necessary action in preventing, abating, or controlling the
11 violation or disposals."

12 SECTION 26. Section 342J-7, Hawaii Revised Statutes, is
13 amended by amending subsections (c) and (d) to read as follows:

14 "(c) Any order issued under this chapter shall become
15 final, unless not later than twenty days after the notice of
16 order is served, the person or persons named therein request in
17 writing a hearing before the [~~director.~~] office of
18 administrative hearings established under chapter . Any
19 penalty imposed under this chapter shall become due and payable
20 twenty days after the notice of penalty is served unless the
21 person or persons named therein request in writing a hearing



1 before the [~~director~~] office of administrative hearings.
2 Whenever a hearing is requested on any penalty imposed under
3 this chapter, the penalty shall become due and payable only upon
4 completion of all review proceedings and the issuance of a final
5 order confirming the penalty in whole or in part. Upon request
6 for a hearing, the [~~director~~] office of administrative hearings
7 shall require that the alleged violator or violators appear
8 before the [~~director~~] office for a hearing at a time and place
9 specified in the notice and answer the charges complained of.

10 (d) Any hearing conducted under this section shall be
11 conducted as a contested case under chapter 91. If after a
12 hearing held pursuant to this section, the [~~director~~] office of
13 administrative hearings finds that a violation or violations
14 have occurred, the [~~director~~] office of administrative hearings
15 shall affirm or modify any penalties imposed or shall modify or
16 affirm the order previously issued or issue an appropriate order
17 or orders for the prevention, abatement, or control of the
18 violation or disposals involved, or for the taking of such other
19 corrective action as may be appropriate. If, after a hearing on
20 an order or penalty contained in a notice, the [~~director~~] office
21 of administrative hearings finds that no violation has occurred



1 or is occurring, the [~~director~~] office of administrative
2 hearings shall rescind the order or penalty. Any order issued
3 after hearing may prescribe the date or dates by which the
4 violation or violations shall cease and may prescribe timetables
5 for necessary action in preventing, abating, or controlling the
6 violation or disposals."

7 SECTION 27. Section 342L-8, Hawaii Revised Statutes, is
8 amended by amending subsections (c) and (d) to read as follows:

9 "(c) Any order issued under this chapter shall become
10 final, unless not later than twenty days after the order is
11 served, the person or persons named therein request in writing a
12 hearing before the [~~director~~.] office of administrative hearings
13 established under chapter _____. Any penalty imposed under this
14 chapter shall become due and payable twenty days after the order
15 is served unless the person or persons named therein request in
16 writing a hearing before the [~~director~~.] office of
17 administrative hearings. Whenever a hearing is requested on any
18 penalty imposed under this chapter, the penalty shall become due
19 and payable only upon completion of all review proceedings and
20 the issuance of a final order confirming the penalty in whole or
21 in part. Upon request for a hearing, the [~~director~~] office of



1 administrative hearings shall require that the alleged violator
2 or violators appear before the [~~director~~] office for a hearing
3 at a time and place specified in the notice and answer the
4 charges complained of.

5 (d) Any hearing conducted under this section shall be
6 conducted as a contested case under chapter 91. If, after a
7 hearing held pursuant to this section, the [~~director~~] office of
8 administrative hearings finds that one or more violations have
9 occurred or are occurring, the [~~director~~] office of
10 administrative hearings shall affirm or modify any penalties
11 imposed or shall modify or affirm the order previously issued or
12 issue an appropriate order or orders for the prevention,
13 abatement, or control of the violation or release involved, or
14 for the taking of such other corrective action as may be
15 appropriate. If, after a hearing on an order, the [~~director~~]
16 office of administrative hearings finds that no violation has
17 occurred or is occurring, the [~~director~~] office of
18 administrative hearings shall rescind the order. Any order
19 issued after a hearing may prescribe the date or dates by which
20 the violation or violations shall cease and may prescribe



1 timetables for necessary action in preventing, abating, or
2 controlling the violation or release."

3 SECTION 28. Section 342P-5, Hawaii Revised Statutes, is
4 amended by amending subsections (d) and (e) to read as follows:

5 "(d) Any order issued under this chapter shall become
6 final, unless, not later than twenty days after the notice of
7 order is served, the person or persons named therein request in
8 writing a hearing before the [~~director~~] office of
9 administrative hearings established under chapter . Any
10 penalty imposed under this chapter shall become due and payable
11 twenty days after the notice of penalty is served, unless the
12 person or persons named therein request in writing a hearing
13 before the [~~director~~] office of administrative hearings.
14 Whenever a hearing is requested on any penalty imposed under
15 this chapter, the penalty shall become due and payable only upon
16 completion of all review proceedings and the issuance of a final
17 order confirming the penalty in whole or in part. Upon request
18 for a hearing, the [~~director~~] office of administrative hearings
19 shall require the alleged violator or violators to appear before
20 the [~~director~~] office for a hearing at a time and place
21 specified in the notice to answer the charges complained of.



1 (e) Any hearing conducted under this section shall be
2 conducted as a contested case in accordance with chapter 91.
3 If, after a hearing held pursuant to this section, the
4 ~~[director]~~ office of administrative hearings finds that a
5 violation or violations have occurred, the ~~[director]~~ office of
6 administrative hearings shall affirm or modify any penalties
7 imposed, modify or affirm the order previously issued, or issue
8 an appropriate order or orders for the prevention, abatement, or
9 control of the violation or discharges involved or the taking of
10 such other corrective action as may be appropriate. If, after a
11 hearing on an order or penalty contained in a notice, the
12 ~~[director]~~ office of administrative hearings finds that no
13 violation has occurred or is occurring, the ~~[director]~~ office of
14 administrative hearings shall rescind the order or penalty. Any
15 order issued after a hearing may prescribe the date or dates by
16 which the violation or violations shall cease and may prescribe
17 timetables for necessary action in preventing, abating, or
18 controlling the violation or discharges."

19 SECTION 29. Section 346-59.7, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:



1 "(c) As used in this section, the term "administrative
2 appeals officer" means the [~~director's designated subordinate~~]
3 hearings officer from the office of administrative hearings
4 established under chapter _____, appointed to contested case
5 hearings pursuant to chapter 91, and this chapter."

6 SECTION 30. Section 356D-93, Hawaii Revised Statutes, is
7 amended by amending subsections (b) and (c) to read as follows:

8 "(b) Hearings shall be conducted by [~~an eviction board~~
9 ~~appointed by the authority. The eviction board shall consist of~~
10 ~~not fewer than one person, and no more than three persons, of~~
11 ~~which one member shall be a tenant.~~] the office of
12 administrative hearings established under chapter _____. If
13 feasible, the [~~eviction board~~] office of administrative hearings
14 may conduct hearings using video conferencing technology;
15 provided that these hearings shall be conducted pursuant to
16 chapter 91. The findings, conclusions, decision, and order of
17 the [~~eviction board~~] office of administrative hearings shall be
18 final unless an appeal is taken as hereinafter provided.

19 (c) The [~~eviction board~~] office of administrative hearings
20 shall have the same powers respecting administering oaths,
21 compelling the attendance of witnesses and the production of



1 documentary evidence, and examining witnesses, as are possessed
 2 by circuit courts. In case of disobedience by any person of any
 3 order of the [~~eviction board,~~] office of administrative
 4 hearings, or of any subpoena issued by the [~~eviction board,~~]
 5 office of administrative hearings, or the refusal of any witness
 6 to testify to any matter regarding which the witness may
 7 lawfully be questioned, any circuit judge, on application by the
 8 [~~eviction board,~~] office of administrative hearings, shall
 9 compel obedience as in the case of disobedience of the
 10 requirements of a subpoena issued by a circuit court, or a
 11 refusal to testify therein."

12 SECTION 31. Section 368-14, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "§368-14 [~~Commission hearings.~~] Hearings. (a) If,
 15 fifteen days after service of the final conciliation demand, the
 16 commission finds that conciliation will not resolve the
 17 complaint, the commission shall [~~appoint a hearings examiner~~
 18 ~~and]~~ refer the matter to the office of administrative hearings
 19 established under chapter _____ to schedule a contested case
 20 hearing that shall be held in accordance with chapter 91. The
 21 case in support of the complaint shall be presented at the



1 hearing by counsel provided by the commission. Following the
2 completion of the contested case hearing, the [~~hearings~~
3 ~~examiner~~] office of administrative hearings shall issue a
4 proposed decision containing a statement of reasons including a
5 determination of each issue of fact or law necessary to the
6 proposed decision which shall be served upon the parties. Any
7 party adversely affected by the proposed decision may file
8 exceptions and present argument to the [~~commission~~] office of
9 administrative hearings which shall consider the whole record or
10 such portions thereof as may be cited by the parties. If the
11 [~~commission~~] office of administrative hearings finds that
12 unlawful discrimination has occurred, the [~~commission~~] office of
13 administrative hearings shall issue a decision and order in
14 accordance with chapter 91 requiring the respondent to cease the
15 unlawful practice and to take appropriate remedial action. If
16 there is no finding of discrimination, the [~~commission~~] office
17 of administrative hearings shall issue an order dismissing the
18 case.

19 (b) At any time after a complaint is filed, the commission
20 may file a petition in the circuit court in the circuit in which
21 the subject of the complaint occurred, or in the circuit in



1 which a respondent resides or transacts business, seeking
2 appropriate temporary relief against the respondent, pending
3 final determination of proceedings under this chapter, including
4 an order or decree restraining the respondent from doing or
5 procuring any act tending to render ineffectual any order the
6 commission may enter with respect to the complaint. The court
7 may grant the temporary relief or restraining order as it deems
8 just and proper, but no relief or order extending beyond five
9 days shall be granted except by consent of the respondent or
10 after hearing upon notice to the respondent and a finding by the
11 court that there is reasonable cause to believe that the
12 respondent has engaged in a discriminatory practice.

13 If a complaint is dismissed by final order of the
14 [~~commission~~] office of administrative hearings or a court after
15 a court has granted temporary relief or a restraining order
16 under this subsection, the respondent is entitled to recover
17 from the State damages and costs, not to exceed a total of \$500,
18 sustained by reason of the temporary relief or restraining order
19 in an action in the court that granted the temporary relief or
20 restraining order."



1 SECTION 32. Section 373-14.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§373-14.3 Hearings. In all proceedings, the director or
4 hearings officer [~~duly appointed by the director~~] appointed
5 pursuant to chapter _____ shall have the same powers respecting
6 administering oaths, compelling the attendance of witnesses,
7 producing documentary evidence, and examining witnesses as are
8 possessed by circuit courts. In case of disobedience by any
9 person of any order or subpoena issued by the director or
10 hearings officer, or the refusal of any witness to testify to
11 any matter regarding which the witness may be questioned
12 lawfully, any circuit judge, on application by the director or
13 hearings officer, shall compel obedience as in the case of
14 disobedience of the requirements of a subpoena issued by a
15 circuit court, or a refusal to testify therein."

16 SECTION 33. Section 398-24, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Upon appeal by the employer, the order issued by the
19 department shall be subject to a de novo review by a hearings
20 officer appointed [~~by the director.~~] pursuant to chapter _____."



1 SECTION 34. Section 431:14G-107, Hawaii Revised Statutes,
2 is amended by amending subsection (d) to read as follows:

3 "(d) (1) Any enrollee of a managed care plan or organization
4 that purchases health insurance from a managed care
5 plan aggrieved with respect to any filing that is in
6 effect may make a written demand to the [~~commissioner~~]
7 office of administrative hearings established under
8 chapter _____ for a hearing thereon; provided that the
9 managed care plan that made the filing shall not be
10 authorized to proceed under this subsection;

11 (2) The demand shall specify the grounds to be relied upon
12 by the aggrieved enrollee or organization and the
13 demand shall show that the enrollee or organization
14 has a specific economic interest affected by the
15 filing;

16 (3) If the [~~commissioner~~] office of administrative
17 hearings finds that:

18 (A) The demand is made in good faith;

19 (B) The applicant would be so aggrieved if the
20 enrollee's or organization's grounds are
21 established; and



1 (C) The grounds otherwise justify a hearing;
2 the [~~commissioner~~,] office of administrative hearings,
3 within thirty days after receipt of the demand, shall
4 hold a hearing. The hearing shall be held upon not
5 less than ten days' written notice to the aggrieved
6 party and to every managed care plan that made the
7 filing. The aggrieved party shall bear the burden of
8 proving that the filing fails to meet the standards
9 set forth in section 431:14G-103; and

10 (4) If, after the hearing, the [~~commissioner~~] office of
11 administrative hearings finds that the filing does not
12 meet the requirements of this article, the
13 [~~commissioner~~] office of administrative hearings shall
14 issue an order specifying in what respects the filing
15 fails to meet the requirements of this article, and
16 stating when, within a reasonable period, the filing
17 shall be deemed no longer effective. Copies of the
18 order shall be sent to the applicant and to every
19 affected managed care plan. The order shall not
20 affect any contract or policy made or issued prior to
21 the expiration of the period set forth in the order."



1 SECTION 35. Section 436B-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§436B-7 Powers and duties of licensing authority. In
4 addition to any other powers and duties authorized by law, each
5 licensing authority may:

- 6 (1) Adopt, amend, or repeal rules, issue declaratory
7 rulings or informal nonbinding interpretations, [and]
8 but not conduct contested case proceedings pursuant to
9 chapter 91;
- 10 (2) Grant, deny, convert, forfeit, renew, reinstate, or
11 restore licenses, including the issuance of
12 conditional licenses;
- 13 (3) Revoke, suspend, or otherwise limit the license of any
14 licensee for any violation of the provisions in this
15 chapter, the licensing laws, or any rule or order of
16 the licensing authority;
- 17 (4) Develop requirements for licensure through the
18 applicable licensing law or rules;
- 19 (5) Investigate [~~and conduct hearings regarding~~] any
20 violation of this chapter, the licensing laws, and any
21 rule or order of the licensing authority;



H.B. NO. 71

- 1 (6) Monitor the scope of practice of the profession or
2 vocation regulated by the licensing authority;
- 3 (7) Prepare, administer, and grade examinations; provided
4 that the licensing authority may contract with a
5 testing agency to provide those services, and the
6 licensing authority may also reserve the right to
7 modify, amend, change, or regrade the examination;
- 8 (8) Create fact-finding committees which may make
9 recommendations to the licensing authority for its
10 deliberations;
- 11 (9) Contract with qualified persons including
12 investigators who may be exempt from chapter 76 and
13 who shall assist the licensing authority in exercising
14 its powers and duties; and
- 15 (10) Subpoena witnesses and documents, administer oaths,
16 and receive affidavits and oral testimony, including
17 telephonic communications, and do any and all things
18 necessary or incidental to the exercise of the
19 licensing authority's power and duties, but not
20 including the authority to conduct contested case
21 proceedings under chapter 91."



1 SECTION 36. Section 436B-25, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§436B-25[+] Judicial review by circuit court. Any
4 person aggrieved by a final decision and order of the [board]
5 office of administrative hearings in a "contested case", as
6 defined in chapter 91, is entitled to judicial review thereof by
7 the circuit court of the circuit in which the board making the
8 final decision and order has jurisdiction. The review shall be
9 as provided by chapter 91."

10 SECTION 37. Section 436B-26.5, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsection (f) to read:

13 "(f) If the person cited under this section timely
14 notifies the director of the request for a hearing, the director
15 shall afford an opportunity for a hearing under chapter 91. The
16 hearing shall be conducted by [~~the director or the director may~~
17 ~~designate~~] a hearings officer [~~to hold the hearing.~~] appointed
18 pursuant to chapter _____. The [~~director or any~~] hearings officer
19 [~~designated by the director~~] shall have the power to issue
20 subpoenas, administer oaths, hear testimony, find facts, make
21 conclusions of law, and issue a final order."



1 2. By amending subsections (h) and (i) to read:

2 "(h) The director may apply to the appropriate court for a
3 judgment to enforce the provisions of any final order issued by
4 the [~~director or designated~~] hearings officer pursuant to this
5 section, including the provision for abatement and civil
6 penalties imposed.

7 (i) If any party is aggrieved by the decision of the
8 [~~director or the designated~~] hearings officer, the party may
9 appeal in the manner provided in chapter 91 to the circuit court
10 of the circuit in which the party resides or has the party's
11 principal place of business or in which the action in question
12 occurred. The operation of an abatement order shall not be
13 stayed on appeal unless specifically ordered by a court of
14 competent jurisdiction after applying the stay criteria
15 enumerated in section 91-14(c)."

16 SECTION 38. Section 437-51, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[-]§437-51[+] **Dispute resolution.** (a) In any dispute
19 among a manufacturer, distributor, or dealer on matters governed
20 by this part, the manufacturer, distributor, or dealer may seek
21 a hearing from the [~~department of commerce and consumer~~



1 ~~affairs.]~~ office of administrative hearings established under
2 chapter .

3 (b) The office of administrative hearings [~~of the~~
4 ~~department of commerce and consumer affairs]~~ shall accept no
5 more than thirty requests for hearing per fiscal year under this
6 section. The office of administrative hearings may reject a
7 request for a hearing if in the opinion of the hearings officer
8 the matter presented does not involve the interpretation or
9 enforcement of the provisions of this chapter. [~~The director of~~
10 ~~commerce and consumer affairs shall appoint a hearings officer~~
11 ~~pursuant to section 26-9(f) who shall have jurisdiction to~~
12 ~~review any request for hearing filed under this section.] The
13 hearings officer shall have the power to issue subpoenas,
14 administer oaths, hear testimony, find facts, make conclusions
15 of law, and issue written decisions that shall be final and
16 conclusive, unless a party adversely affected by the decision
17 files an appeal in the circuit court under section 91-14. All
18 information so provided in and for the hearing shall be sealed
19 and not subject to public review or access. The information
20 shall also remain confidential and not subject to public access
21 or review on appeal pursuant to section 91-14.~~



1 (c) The party requesting the hearing shall file a petition
2 with the [~~department of commerce and consumer affairs~~] office of
3 administrative hearings specifying the specific provisions of
4 this chapter that are in issue; the interpretation or
5 enforcement sought; the legal and factual basis for the
6 interpretation or enforcement sought; and the remedy or remedies
7 sought. The party requesting a hearing under this section shall
8 provide a copy of the petition to the board at the time the
9 petition is filed. Each adverse party shall file a response
10 with the [~~department of commerce and consumer affairs.~~] office
11 of administrative hearings.

12 (d) Hearings under this section shall be conducted
13 pursuant to chapter 91 [~~and rules adopted by the department of~~
14 ~~commerce and consumer affairs~~]. The burden of proof, including
15 the burden of producing the evidence and the burden of
16 persuasion, shall be upon the party initiating the proceeding,
17 unless otherwise specified in this chapter. The standard of
18 proof required shall be by a preponderance of the evidence.

19 (e) The hearings officer shall issue written findings of
20 fact, conclusions of law, and an order as expeditiously as
21 practicable after the hearing has been concluded.



1 (f) The prevailing party in any proceeding brought under
2 this section shall provide a copy of the hearings officer's
3 written findings of fact, conclusions of law, and order to the
4 board within ten days of receipt of the written findings of
5 fact, conclusions of law, and order.

6 (g) Each party to the hearing shall bear the party's own
7 costs, including attorney's fees. Both parties shall share
8 equally in the cost of the hearing, including any allocable
9 departmental overhead attributable to the hearing.

10 (h) Any party to a proceeding brought under this section
11 who is aggrieved by a final decision of a hearings officer may
12 apply for judicial review of that decision pursuant to section
13 91-14; provided that any party seeking judicial review pursuant
14 to section 91-14 shall be responsible for the costs of preparing
15 the record on appeal, including the cost of preparing the
16 transcript of the hearing. Any party aggrieved by a final
17 decision of a hearings officer who applies for judicial review
18 under this section shall provide a copy of the party's
19 application for judicial review to the board within ten days of
20 filing the application for judicial review.



1 [~~(i) The department of commerce and consumer affairs may~~
2 ~~adopt rules, pursuant to chapter 91, to effectuate the purpose~~
3 ~~of this section and to implement its provisions, including fees~~
4 ~~to recover the cost of hearings.] "~~

5 SECTION 39. Section 438-5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§438-5 Powers and duties of the board.** (a) In addition
8 to any other powers and duties authorized by law, the board may
9 give examinations for the issuance of licenses to practice
10 barbering and cosmetology; issue apprentice permits or temporary
11 permits; grant, revoke, or suspend licenses, apprentice permits,
12 or temporary permits; and establish, subject to chapter 91 and
13 with the approval of the governor and the director, rules
14 governing the practice of barbering and cosmetology that shall
15 have the force and effect of law.

16 (b) The board may require the attendance of witnesses and
17 the production of books, records, and papers as it or any person
18 involved may desire at any hearing of any matter which the board
19 has authority to investigate, and for that purpose may require
20 the executive secretary to issue a subpoena for any witness or a
21 subpoena duces tecum to compel the production of any books,



1 records, or papers directed to the sheriff or chief of police of
2 the county where the witness resides or is found which shall be
3 served and returned in the same manner as a subpoena in a
4 criminal case. Fees and mileage shall be paid from the funds in
5 the state treasury for the use of the board in the same manner
6 as other expenses of the board.

7 ~~[(c) Any investigation, inquiry, or hearing which the~~
8 ~~board is empowered by law to hold or undertake may be held or~~
9 ~~undertaken by or before any member or members of the board or an~~
10 ~~appointed hearings officer and the finding or order of that~~
11 ~~member, members, or hearings officer shall be deemed to be the~~
12 ~~finding or order of the board when approved and confirmed by it.~~

13 ~~(d)]~~ (c) The board, as prescribed by rules, may recognize
14 the equivalency of barber and hairdresser practices to allow
15 training of an apprentice by either licensee in order for the
16 apprentice to fulfill training requirements."

17 SECTION 40. Section 440-12, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) Any license to act as a physician, referee, judge,
20 matchmaker, manager, timekeeper, second, or professional boxer
21 may be suspended or revoked, or the person otherwise disciplined



1 by the [~~commission~~] office of administrative hearings
 2 established under chapter _____, after a contested case hearing
 3 held in accordance with chapter 91."

4 SECTION 41. Section 440E-8, Hawaii Revised Statutes, is
 5 amended by amending subsection (c) to read as follows:

6 "(c) Any license to act as a physician, referee, judge,
 7 manager, second, or mixed martial arts contestant may be
 8 suspended or revoked, or the person otherwise disciplined by the
 9 [~~director~~] office of administrative hearings that is established
 10 under chapter _____, after a contested case hearing held in
 11 accordance with chapter 91."

12 SECTION 42. Section 444-4, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "**§444-4 Powers and duties of board.** In addition to any
 15 other powers and duties authorized by law, the board shall:

- 16 (1) Grant licenses, including conditional licenses, to
 17 contractors pursuant to this chapter and rules;
- 18 (2) Adopt, amend, or repeal such rules as the board may
 19 deem proper fully to effectuate this chapter and carry
 20 out the purpose thereof, which is the protection of
 21 the general public. All rules shall be approved by



1 the governor and the director, and when adopted
2 pursuant to chapter 91, shall have the force and
3 effect of law. The rules may forbid acts or practices
4 deemed by the board to be detrimental to the
5 accomplishment of the purpose of this chapter. The
6 rules may require contractors to make reports to the
7 board containing any items of information as will
8 better enable the board to enforce this chapter and
9 rules, or as will better enable the board from time to
10 time to amend the rules more fully to effectuate the
11 purposes of this chapter. The rules may require
12 contractors to furnish reports to owners containing
13 any matters of information as the board deems
14 necessary to promote the purpose of this chapter. The
15 enumeration of specific matters which may properly be
16 made the subject of rules shall not be construed to
17 limit the board's general power to make all rules
18 necessary fully to effectuate the purpose of this
19 chapter;

- 20 (3) Adopt rules pursuant to chapter 91 necessary to
21 implement the provisions of this chapter relating to



1 CFCs, including, but not limited to, procedures for
2 the disposal of air conditioning units utilizing CFCs
3 that include mandatory recovery and recycling of CFCs;
4 (4) Enforce this chapter and rules adopted pursuant
5 thereto;
6 (5) Suspend or revoke any license for any cause prescribed
7 by this chapter, or for any violation of the rules,
8 and refuse to grant, renew, restore, or reinstate any
9 license for any cause which would be grounds for
10 revocation or suspension of a license;
11 (6) Publish and distribute pamphlets and circulars
12 containing any information as the board deems proper
13 to further the accomplishment of the purpose of this
14 chapter;
15 (7) Contract for professional testing services to prepare,
16 administer, and grade the examinations for applicants
17 as may be required for the purposes of this chapter.
18 The board shall determine the scope and length of the
19 examinations, whether the examinations shall be oral,
20 written, or both, and the score that shall be deemed a
21 passing score;



H.B. NO. 11

1 (8) Order summary suspension of a license; provided that
 2 summary suspensions may be delegated in accordance
 3 with section 436B-23;

4 (9) Issue informal nonbinding interpretations or
 5 declaratory rulings, ~~[and]~~ but not conduct contested
 6 case proceedings pursuant to chapter 91; and

7 (10) Subpoena witnesses and documents, administer oaths,
 8 receive affidavits and oral testimony, including
 9 telephonic communications."

10 SECTION 43. Section 444-10.5, Hawaii Revised Statutes, is
 11 amended as follows:

12 1. By amending subsection (e) to read:

13 "(e) If the person cited under this section timely
 14 notifies the director of the request for a hearing, the director
 15 shall ~~[afford an opportunity]~~ refer the matter to the office of
 16 administrative hearings established under chapter _____ for a
 17 hearing under chapter 91. The hearing shall be conducted by
 18 ~~[the director or the director may designate]~~ a hearings officer
 19 ~~[to hold the hearing-]~~ appointed pursuant to chapter _____. The
 20 ~~[director or any]~~ hearings officer ~~[designated by the director]~~
 21 shall have the power to issue subpoenas, administer oaths, hear



1 testimony, find facts, and make conclusions of law and issue a
2 final order."

3 2. By amending subsections (g) and (h) to read:

4 "(g) The director may apply to the appropriate court for a
5 judgment to enforce the provisions of any final order issued by
6 the [~~director or designated~~] hearings officer pursuant to this
7 section, including the provisions to cease and desist and for
8 civil penalties imposed. In any proceeding to enforce the
9 provisions of the final order of the [~~director or designated~~]
10 hearings officer, the director need only show that notice was
11 given, a hearing was held or the time granted for requesting a
12 hearing has run without such a request, and a certified copy of
13 the final order of the [~~director or designated~~] hearings
14 officer.

15 (h) If any party is aggrieved by the decision of the
16 [~~director or the designated~~] hearings officer, the party may
17 appeal in the manner provided in chapter 91 to the circuit court
18 of the circuit in which the party resides or has the party's
19 principal place of business or in which the action in question
20 occurred; provided that the operation of a cease and desist
21 order shall not be stayed on appeal unless specifically ordered



1 by a court of competent jurisdiction after applying the stay
2 criteria enumerated in section 91-14(c)."

3 SECTION 44. Section 444-23.5, Hawaii Revised Statutes, is
4 amended by amending subsections (i), (j), and (k) to read as
5 follows:

6 "(i) Hearings shall be subject to chapter 91 and shall be
7 conducted by [~~the director or~~] a hearings officer [~~designated by~~
8 ~~the director.~~] appointed pursuant to chapter . The [~~director~~
9 ~~or designated~~] hearings officer may issue subpoenas, administer
10 oaths, hear testimony, find facts, make conclusions of law, and
11 issue a final order of forfeiture. The department shall have
12 the burden to show by clear and convincing evidence that the
13 property is subject to forfeiture. In determining whether the
14 property is subject to forfeiture, the [~~director or~~] hearings
15 officer shall consider evidence of ownership, the description of
16 the property, and any other relevant evidence.

17 (j) Any person aggrieved by the decision of the [~~director~~
18 ~~or designated~~] hearings officer may appeal the decision in the
19 manner provided in chapter 91, to the circuit court of the
20 circuit in which:

21 (1) The person resides;



1 (2) The person's principal place of business is located;
2 or

3 (3) The activity in question occurred.

4 (k) The director may file an action in the circuit court
5 for a judgment to enforce any final order issued by the
6 [~~director or designated~~] hearings officer pursuant to this
7 section. A judgment enforcing the final order shall issue upon
8 a showing by the director either that notice was given and a
9 hearing was held, or, that the time granted for requesting a
10 hearing has run without the timely filing of a request."

11 SECTION 45. Section 449-1.9, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§449-1.9 Powers of commissioner. In addition to any
14 other powers provided by law, the commissioner may:

15 (1) Administer and enforce the provisions and requirements
16 of this chapter;

17 (2) Adopt, amend, or repeal rules or declaratory rulings
18 pursuant to chapter 91 to effectuate the purposes of
19 this chapter;

20 (3) Issue informal nonbinding interpretations to
21 effectuate the purposes of this chapter;



- 1 (4) Investigate [~~and conduct hearings regarding~~] any
2 violation of this chapter or any rule or order of the
3 commissioner;
- 4 (5) Contract with or employ qualified persons, including
5 investigators, examiners, or auditors who shall be
6 exempt from chapter 76 and who shall assist the
7 commissioner in exercising the commissioner's powers
8 and duties;
- 9 (6) Deposit all fees, fines, and charges collected by the
10 commissioner under this chapter into the compliance
11 resolution fund established pursuant to section
12 26-9(o);
- 13 (7) Process and investigate complaints, subpoena witnesses
14 and documents, administer oaths, and receive
15 affidavits and oral testimony, including through
16 electronic means, [~~and~~] but not conduct contested case
17 proceedings;
- 18 (8) Report any violation of this chapter or violation of
19 federal or state law to the United States Commissioner
20 of Housing and Urban Development or any other federal
21 agency having jurisdiction over the licensee; and



1 (9) Enter into agreements or contracts with the operators
2 of NMLS or other entities designated by NMLS to
3 collect and maintain records and process transaction
4 fees or other fees related to licensees or other
5 persons subject to this chapter; provided that:

6 (A) For the purpose and the extent necessary to use
7 NMLS, the commissioner may:

8 (i) Require all escrow depositories to register
9 with NMLS; and

10 (ii) Waive or modify, in whole or in part, by
11 rule or order, any or all of the
12 requirements of this chapter and establish
13 new requirements as reasonably necessary to
14 participate in NMLS; and

15 (B) In addition to other uses of NMLS, the
16 commissioner may use NMLS as an agent for:

17 (i) Requesting information from and distributing
18 information to the United States Department
19 of Justice or any other governmental agency;
20 and



1 (ii) Requesting and distributing information to
 2 and from any source directed by the
 3 commissioner."

4 SECTION 46. Section 454F-4.8, Hawaii Revised Statutes, is
 5 amended to read as follows:

6 " ~~[†]§454F-4.8[†]~~ Decision denying application subject to
 7 administrative hearing. (a) Within fifteen days following
 8 receipt of a decision denying an application, an applicant may
 9 petition the commissioner for an administrative hearing that
 10 shall be held in accordance with chapter 91 ~~[and the rules of~~
 11 ~~the department of commerce and consumer affairs]~~. If a petition
 12 for an administrative hearing is not filed within the time
 13 specified, the commissioner's decision denying the application
 14 shall become a final decision and order denying the application.

15 (b) Upon the receipt of a petition for an administrative
 16 hearing, the commissioner shall ~~[assign]~~ refer the petition to
 17 ~~[a hearings officer]~~ the office of administrative hearings
 18 established under chapter _____ for further proceedings ~~[pursuant~~
 19 ~~to the rules of the department of commerce and consumer~~
 20 ~~affairs]~~. The commissioner shall issue a written final decision
 21 and order, following the ~~[hearings officer's]~~ transmittal by the



1 office of administrative hearings to the commissioner of the
2 entire record together with the recommended decision, any timely
3 filed exceptions, and any timely filed statements in support of
4 the recommended decision."

5 SECTION 47. Section 454F-18, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) In addition to any other powers provided by law, the
8 commissioner shall have the authority to:

- 9 (1) Administer and enforce the provisions and requirements
10 of this chapter;
- 11 (2) Adopt, amend, or repeal rules and issue declaratory
12 rulings or informal nonbinding interpretations;
- 13 (3) Develop requirements for licensure through rules,
14 including establishing the content of the written
15 tests required under section 454F-7;
- 16 (4) Investigate [~~and conduct hearings regarding~~] any
17 violation of this chapter or any rule or order of, or
18 agreement with, the commissioner;
- 19 (5) Create fact-finding committees that may make
20 recommendations to the commissioner for the
21 commissioner's deliberations;



- 1 (6) Require an applicant or any of its control persons,
2 officers, directors, employees, partners, members,
3 managers, and agents to disclose their relevant
4 criminal history and request a criminal history record
5 check in accordance with chapter 846;
- 6 (7) Contract with or employ qualified persons, including
7 investigators, examiners, or auditors who may be
8 exempt from chapter 76 and who shall assist the
9 commissioner in exercising the commissioner's powers
10 and duties;
- 11 (8) Require that all fees, fines, and charges collected by
12 the commissioner under this chapter, except for fees
13 designated for deposit into the mortgage loan recovery
14 fund pursuant to section 454F-41, be deposited into
15 the compliance resolution fund established pursuant to
16 section 26-9(o);
- 17 (9) Process and investigate complaints, subpoena witnesses
18 and documents, administer oaths, and receive
19 affidavits and oral testimony, including telephonic
20 communications, and do any and all things necessary or
21 incidental to the exercise of the commissioner's power



H.B. NO. 11

1 and duties, but not including the authority to conduct
2 contested case proceedings under chapter 91; and
3 (10) Require a licensee to comply with any rule, guidance,
4 guideline, statement, supervisory policy or any
5 similar proclamation issued or adopted by the Federal
6 Deposit Insurance Corporation to the same extent and
7 in the same manner as a bank chartered by the State or
8 in the alternative, any policy position of the
9 Conference of State Bank Supervisors."

10 SECTION 48. Section 454M-8, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§454M-8 Powers of commissioner.** In addition to any other
13 acts or conditions provided by law, the commissioner may:

- 14 (1) Adopt, amend, or repeal rules, issue declaratory
15 rulings or informal nonbinding interpretations, and
16 investigate and act upon written consumer complaints;
17 (2) Grant, deny, forfeit, renew, reinstate, or restore the
18 license of any mortgage servicer;
19 (3) Revoke, suspend, or otherwise limit the license of any
20 mortgage servicer for any violation of the provisions



H.B. NO. 11

- 1 in this chapter, or any rule or order of, or agreement
- 2 with the commissioner;
- 3 (4) Report any violation of this chapter or violation of
- 4 federal or state law to the Consumer Financial
- 5 Protection Bureau or other federal agency having
- 6 jurisdiction over the licensee;
- 7 (5) Investigate and conduct hearings regarding any
- 8 violation of this chapter, or any rule or order of or
- 9 agreement with the commissioner; and
- 10 (6) Do any and all things necessary or incidental to the
- 11 exercise of the commissioner's power and duties, but
- 12 not including the authority to conduct contested case
- 13 proceedings under chapter 91."

14 SECTION 49. Section 576E-1, Hawaii Revised Statutes, is

15 amended by amending the definitions of "administrative order",

16 "hearings officer", and "office" to read as follows:

17 "Administrative order" means the order resulting from an

18 administrative adjudication by a hearings officer [~~or the~~

19 ~~attorney general, through the agency,~~] of the final disposition

20 of a matter before the agency.



1 "Hearings officer" means a public official appointed [and
2 ~~commissioned pursuant to section 576E-10.] pursuant to
3 chapter _____.~~

4 "Office" means the office of [~~child support hearings~~
5 ~~established pursuant to section 576E-10.] administrative
6 hearings established pursuant to section _____-2."~~

7 SECTION 50. Section 576E-7, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~§576E-7 Failure to request hearing; effect.~~ If the
10 parties fail to request a hearing pursuant to section 576E-6,
11 the [~~agency or~~] a hearings officer shall sign the proposed order
12 as the final order in the action."

13 SECTION 51. Section 576E-9, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§576E-9 Hearings in contested cases.~~ Hearings in
16 contested cases shall be conducted in accordance with this
17 chapter, chapter _____, and when otherwise applicable, chapter 91,
18 and shall be presided over by a hearings officer appointed [and
19 ~~commissioned by the attorney general pursuant to section 576E-~~
20 ~~10.~~ ~~The attorney general may adopt such administrative rules~~
21 ~~pursuant to chapter 91, as may be necessary to carry out this~~



1 ~~section.]~~ pursuant to chapter ____. In any hearing conducted
 2 under this section, all parties shall have the right to confront
 3 and cross-examine witnesses, to present witnesses and evidence,
 4 to be represented by counsel or other person, and to be notified
 5 of these rights in writing. Hearings may be conducted by
 6 telephone or other electronic telecommunications methods at the
 7 discretion of the hearings officer."

8 SECTION 52. Section 576E-10, Hawaii Revised Statutes, is
 9 amended by amending subsection (a) to read as follows:

10 "(a) [~~The attorney general shall establish the office of~~
 11 ~~child support hearings, and shall appoint and commission,~~
 12 ~~without regard to chapter 76, such hearings officers as may be~~
 13 ~~necessary to]~~ The hearings officers appointed pursuant to
 14 chapter ____ carry out the purposes of this chapter."

15 SECTION 53. Section 576E-13, Hawaii Revised Statutes, is
 16 amended by amending subsection (b) to read as follows:

17 "(b) Proceedings for review shall be instituted in the
 18 family court of the circuit where the final decision and order
 19 was filed within thirty days after the preliminary ruling or
 20 within thirty days after service of the certified copy of the
 21 final decision and order of the hearings officer [~~or agency~~].



1 The filing of a notice of appeal shall not stay enforcement of
2 the administrative order."

3 SECTION 54. Section 576E-14, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) The responsible parent, the agency, or the person
7 having custody of the dependent child may file a request for
8 suspension, termination, or modification of the child support
9 provisions of a Hawaii court or administrative order with the
10 [~~agency-~~] office. Such request shall be in writing, shall set
11 forth the reasons for suspension, termination, or modification,
12 including the change in circumstances since the date of the
13 entry of the order, and shall state the address of the
14 requesting party. The agency shall thereafter commence a review
15 of the order and, if appropriate, shall commence administrative
16 proceedings pursuant to sections 576E-5 through 576E-9. The
17 need to provide for the child's health care needs through health
18 insurance or other means shall be a basis for the agency to
19 commence administrative proceedings pursuant to section 576E-5."
20 2. By amending subsections (d), (e), and (f) to read:



1 "(d) The responsible parent or custodial parent shall have
2 a right to petition the family court or the child support
3 enforcement agency not more than once every three years for
4 review and adjustment of the child support order without having
5 to show a change in circumstances. The responsible or custodial
6 parent shall not be precluded from petitioning the family court
7 or the [~~child support enforcement agency~~] office for review and
8 adjustment of child support more than once in any three-year
9 period if the second or subsequent request is supported by proof
10 of a substantial or material change of circumstances.

11 (e) Upon satisfaction of a responsible parent's support
12 obligation toward the dependent child and the State, the [agency
13 ~~or~~] hearings officer without application of any party may issue
14 an order terminating child support and may concurrently, if
15 applicable, issue an order terminating existing assignments
16 against the responsible parent's income and income withholding
17 orders.

18 (f) In those cases where child support payments are to
19 continue due to the adult child's pursuance of education, the
20 agency, at least three months prior to the adult child's
21 nineteenth birthday, shall send notice by regular mail to the



1 adult child and the custodial parent that prospective child
2 support will be suspended unless proof is provided by the
3 custodial parent or adult child to the child support enforcement
4 agency, prior to the child's nineteenth birthday, that the child
5 is presently enrolled as a full-time student in school or has
6 been accepted into and plans to attend as a full-time student
7 for the next semester a post-high school university, college or
8 vocational school. If the custodial parent or adult child fails
9 to do so, prospective child support payments may be
10 automatically suspended by the child support enforcement agency
11 upon the child reaching the age of nineteen years. In addition,
12 if applicable, the [~~agency or~~] hearings officer may issue an
13 order terminating existing assignments against the responsible
14 parent's income and income assignment orders."

15 SECTION 55. All rights, powers, functions, and duties of
16 agencies in the executive branch of government, including the
17 department of accounting and general services, department of the
18 attorney general, department of budget and finance, department
19 of commerce and consumer affairs, department of health,
20 department of human services, department of labor and industrial
21 relations, and department of land and natural resources,



1 University of Hawaii, as pertaining to this Act, are transferred
2 to the office of administrative hearings.

3 All employees who occupy civil service positions and whose
4 functions are transferred to the office of administrative
5 hearings by this Act shall retain their civil service status,
6 whether permanent or temporary. Employees shall be transferred
7 without loss of salary, seniority (except as prescribed by
8 applicable collective bargaining agreements), retention points,
9 prior service credit, any vacation and sick leave credits
10 previously earned, and other rights, benefits, and privileges,
11 in accordance with state personnel laws and this Act; provided
12 that the employees possess the minimum qualifications and public
13 employment requirements for the class or position to which
14 transferred or appointed, as applicable; provided further that
15 subsequent changes in status may be made pursuant to applicable
16 civil service and compensation laws.

17 Any employee who, prior to this Act, is exempt from civil
18 service and is transferred as a consequence of this Act may
19 retain the employee's exempt status, but shall not be appointed
20 to a civil service position as a consequence of this Act. An
21 exempt employee who is transferred by this Act shall not suffer



1 any loss of prior service credit, vacation or sick leave credits
 2 previously earned, or other employee benefits or privileges as a
 3 consequence of this Act; provided that the employees possess
 4 legal and public employment requirements for the position to
 5 which transferred or appointed, as applicable; provided further
 6 that subsequent changes in status may be made pursuant to
 7 applicable employment and compensation laws. The chief hearings
 8 officer may prescribe the duties and qualifications of these
 9 employees and fix their salaries without regard to chapter 76,
 10 Hawaii Revised Statutes.

11 SECTION 56. There is appropriated out of the general
 12 revenues of the State of Hawaii the sum of \$ or so
 13 much thereof as may be necessary for fiscal year 2017-2018 and
 14 the same sum or so much thereof as may be necessary for fiscal
 15 year 2018-2019 for the establishment of the office of
 16 administrative hearings.

17 The sums appropriated shall be expended by the department
 18 of accounting and general services for the purposes of this Act.

19 SECTION 57. Statutory material to be repealed is bracketed
 20 and stricken. New statutory material is underscored.



H.B. NO. 11

1 SECTION 58. This Act shall take effect on July 1, 2019;
2 provided that section 56 shall take effect on July 1, 2017.
3

INTRODUCED BY: Scott Am

OR
[Signature]

JAN 18 2017



H.B. NO. 77

Report Title:

Administrative Hearings; Office; DAGS; Appropriations

Description:

Establishes a centralized office of administrative hearings in the department of accounting and general services to hear cases referred to it by state executive branch agencies. Appropriates funds.

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

