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# 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. Approximately twenty-nine state



1 and 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, on February 3, 1997, approved a  
7 model act that provides guidance to states intending to create  
8 central panels. The American Bar Association enunciated a goal  
9 of separation of functions in section 1-2(a) which states that  
10 the "Office of Administrative Hearings is created as an  
11 independent agency in the Executive Branch of State Government  
12 for the purpose of separating the adjudicatory function from the  
13 investigatory, prosecutorial, and policy-making functions of  
14 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 have the legislative  
4 reference bureau conduct a study relating to the establishment  
5 of a centralized office of administrative hearings in the  
6 executive branch of state government and report to the  
7 legislature prior to the convening of the regular session of  
8 2018. The study and report shall be based on the guidelines  
9 established by this Act.

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

14 (1) Be based on the guidelines stated in the February 3,  
15 1997 model of the American Bar Association House of  
16 Delegates that relate to the establishment of a state  
17 central hearing agency, unless otherwise provided  
18 herein; and

19 (2) Operate as an independent agency in the executive  
20 branch of state government for the purpose of  
21 separating the adjudicatory function from the



1           investigatory, prosecutorial, and policy-making  
2           functions of agencies in the executive branch.

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

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

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

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



- 1           (5) Identify and determine the process to appeal a  
2           decision of each agency's administrative hearing,  
3           including chapter 91, Hawaii Revised Statutes, and  
4           rights to and process for judicial appeals; and  
5           (6) Identify potential legal conflicts and barriers that  
6           affect each agency's administrative hearings  
7           jurisdiction.

8           SECTION 4. The legislative reference bureau shall submit a  
9 report of:

- 10           (1) Findings and recommendation from studies conducted  
11           pursuant to sections 2 and 3;  
12           (2) The appropriateness, feasibility, and cost effects of  
13           establishing and operating an office of administrative  
14           hearings that is based on the guidelines stated in the  
15           February 3, 1997 model of the American Bar Association  
16           House of Delegates, as modified; and  
17           (3) Recommendations, including proposed legislation to  
18           establish and implement an office of administrative  
19           hearings.



1 The report shall be provided to the legislature no later than  
2 twenty days prior to the convening of the regular session of  
3 2018.

4 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Office of Administrative Hearings; Legislative Reference Bureau;  
Report

**Description:**

Requires the Legislative Reference Bureau to study the feasibility and cost effect of establishing an Office of Administrative Hearings that conducts administrative hearings for the State's executive branch agencies. A report of findings and recommendations, including proposed legislation shall be presented to the Legislature prior to the Regular Session of 2018. (HB77 HD1)

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

