

JAN 23 2026

A BILL FOR AN ACT

RELATING TO DUE PROCESS.

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

1 SECTION 1. The legislature finds that article I, section
2 5, of the Hawaii State Constitution and the Fourteenth Amendment
3 of the United States Constitution provide that no person shall
4 be deprived of life, liberty, or property without due process of
5 law. These guarantees apply fully to the administrative actions
6 of state agencies when the actions materially affect protected
7 liberty, property, or livelihood interests.

8 The legislature further finds that state executive
9 departments exercise substantial authority over matters
10 including agricultural land tenure, natural resource management,
11 biosecurity enforcement, public assistance eligibility, child
12 welfare, professional licensure, unemployment benefits,
13 educational services, environmental permitting, and
14 infrastructure development. Actions taken in these domains can
15 impose significant economic, legal, and personal consequences on
16 affected individuals and entities.



1 The legislature recognizes that judicial decisions,
2 legislative audits, investigative reporting, and sworn testimony
3 have identified recurring procedural due process deficiencies
4 across multiple state departments. These deficiencies include
5 inadequate or untimely notice, denial of contested case
6 hearings, lack of impartial adjudication, opaque decision-
7 making, and the implementation of adverse actions while appeals
8 remain pending. Collectively, these practices have resulted in
9 avoidable financial harm to affected parties, including lost
10 income, disrupted operations, civil penalties, fines, and
11 litigation costs.

12 The legislature additionally finds that, under existing
13 law, the financial consequences of unconstitutional or
14 procedurally deficient agency actions are frequently borne by
15 affected persons or by the State's general fund, rather than by
16 the department whose conduct caused the violation. This
17 structure, which does not subject the responsible department to
18 fiscal consequences, weakens institutional incentives for
19 compliance, diffuses accountability, and allows recurring
20 procedural failures.

21 Accordingly, the purpose of this Act is to:



- 1 (1) Require state agencies to provide an affected person
- 2 with written notice containing certain information
- 3 before taking final administrative actions that
- 4 materially and adversely affect the person's protected
- 5 liberty or property interest;
- 6 (2) Prohibit a state agency from implementing a final
- 7 adverse action until the completion of any timely
- 8 requested contested case proceeding unless the state
- 9 agency makes certain written findings;
- 10 (3) Require state agencies to take certain steps to ensure
- 11 impartial decision-making;
- 12 (4) Require each state agency to submit an annual report
- 13 to the legislature and make the report available on
- 14 the agency's website;
- 15 (5) Require a claim against the State for a violation of a
- 16 procedural due process requirement to be satisfied
- 17 from the operating budget of the state agency whose
- 18 action or omission gave rise to the violation and not
- 19 from the general fund; and



1 (6) Clarify that reporting of due process rights
2 violations is protected under the State's
3 Whistleblowers' Protection Act.

4 SECTION 2. Chapter 91, Hawaii Revised Statutes, is amended
5 by adding three new sections to be appropriately designated and
6 to read as follows:

7 "§91-A Procedural due process; minimum requirements for
8 state agencies. (a) Before taking any final administrative
9 action that materially and adversely affects a protected liberty
10 or property interest, a state agency shall provide the affected
11 person with written notice that includes:

12 (1) A clear description of the proposed action and the
13 factual basis supporting the action;
14 (2) Citation to any statute, rule, or formally adopted
15 policy the state agency relied on to take the proposed
16 action;
17 (3) Notice of the person's right to request a contested
18 case hearing or administrative appeal, whichever is
19 applicable; and
20 (4) A clear statement of the deadlines and procedures for
21 exercising the rights listed in paragraph (3).



1 (b) Where a contested case hearing is timely requested in
2 response to a proposed state agency action implicating a
3 protected liberty or property interest, the state agency shall
4 not implement the final adverse action until completion of the
5 contested case proceeding unless the state agency makes written
6 findings that immediate action is necessary to prevent imminent
7 harm to public health, safety, or the environment.

8 (c) Each state agency shall, to the extent practicable,
9 maintain functional separation between investigative,
10 prosecutorial, and adjudicatory roles to ensure impartial
11 decision-making.

12 (d) Nothing in this section shall be construed to expand
13 or diminish any substantive right but shall be interpreted to
14 ensure the meaningful availability of due process protections
15 guaranteed by the United States Constitution and Hawaii State
16 Constitution.

17 (e) For the purposes of this section, "state agency" means
18 any board, commission, department, office, bureau, agency, or
19 other establishment or institution of the state government, and
20 any officer, employee, or member thereof, authorized by law to
21 adopt rules, adjudicate contested cases, or otherwise take final



1 administrative actions that may materially or adversely affect
2 the liberty or property interest of a person protected under the
3 due process clause of the United States Constitution and Hawaii
4 State Constitution except those in the legislative or judicial
5 branches.

6 **S91-B Procedural due process; state agency reporting**

7 requirements. (a) Each state agency shall submit an annual
8 report to the legislature no later than twenty days prior to the
9 convening of each regular session detailing:

- 10 (1) The number of contested case hearings and
11 administrative appeals requested;
- 12 (2) The number of contested case hearing and
13 administrative appeal requests granted, denied, or
14 withdrawn;
- 15 (3) The average time each contested case hearing or
16 administrative appeal took to resolve; and
- 17 (4) The number of state agency decisions reversed,
18 remanded, or modified after administrative or judicial
19 review.



1 (b) Each state agency shall make the report required
2 pursuant to subsection (a) available on the agency's publicly
3 accessible website.

4 (c) For the purposes of this section, "state agency" has
5 the same meaning as defined in section 91-A.

6 **§91-C Procedural due process violations; fiscal**
7 accountability. (a) Where a court of competent jurisdiction or
8 a final administrative or appellate decision determines that a
9 state agency has violated procedural due process requirements
10 under the United States Constitution, Hawaii State Constitution,
11 or this chapter, and the violation results in:

12 (1) Monetary damages, fines, penalties, restitution, or
13 settlements;
14 (2) Attorneys' fees or costs awarded against the State; or
15 (3) Documented financial harm requiring compensation or
16 remedial payment,
17 the financial obligation shall be satisfied, to the extent
18 permitted by law, from the operating budget of the state agency
19 whose action or omission gave rise to the violation, and not
20 from the general fund.



1 (b) The department of budget and finance shall, upon
2 notice of a determination satisfying the requirements of
3 subsection (a), adjust departmental allotments or impose
4 internal accounting transfers as necessary to effectuate
5 subsection (a); provided that no adjustment shall impair any
6 constitutionally or federally mandated service.

7 (c) Nothing in this section shall be construed to:
8 (1) Waive sovereign immunity beyond any existing law;
9 (2) Create a private right of action; or
10 (3) Limit the authority of the legislature to appropriate
11 funds.

12 (d) Each state agency shall include in the state agency's
13 annual budget submission a summary of:

14 (1) Any expenditures made or determinations satisfying the
15 requirements of subsection (a); and
16 (2) The nature of the violation resulting in the
17 expenditure or determination and any corrective
18 measures the state agency has implemented to prevent
19 repetition of similar violations.

20 (e) For the purposes of this section, "state agency" has
21 the same meaning as defined in section 91-A."



1 SECTION 3. Section 378-62, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§378-62 Discharge of, threats to, or discrimination**
4 **against employee for reporting violations of law.** An employer
5 shall not discharge, threaten, or otherwise discriminate against
6 an employee regarding the employee's compensation, terms,
7 conditions, location, or privileges of employment because:

8 (1) The employee, or a person acting on behalf of the
9 employee, reports or is about to report to the
10 employer, or reports or is about to report to a public
11 body, verbally or in writing, a violation or a
12 suspected violation of:

13 (A) A law, rule, ordinance, or regulation, adopted
14 pursuant to law of this State, a political
15 subdivision of this State, or the United States[~~or~~,
16 including any procedural due process right
17 or requirement of chapter 91, such as improper
18 denial of a right to a hearing or abuse of
19 discretion; or

20 (B) A contract executed by the State, a political
21 subdivision of the State, or the United States,



1 unless the employee knows that the report is
2 false; or

3 (2) An employee is requested by a public body to
4 participate in an investigation, hearing, or inquiry
5 held by that public body, or a court action."

6 SECTION 4. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 5. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: *Mark W. Parker*



S.B. NO. 2744

Report Title:

Due Process; State Agencies; Public Proceedings; Minimum Requirements; Fiscal Accountability; Reports; Whistleblowers' Protection Act

Description:

Requires state agencies to provide an affected person with written notice containing certain information before taking final administrative actions that materially and adversely affect the person's protected liberty or property interest. Prohibits a state agency from implementing a final adverse action until the completion of any timely requested contested case proceeding unless the state agency makes certain written findings. Requires state agencies to take certain steps to ensure impartial decision-making. Requires each state agency to submit an annual report to the Legislature and make the report available on the agency's website. Requires a claim against the State for a violation of a procedural due process requirement to be satisfied from the operating budget of the state agency whose action or omission gave rise to the violation and not from the general fund. Clarifies that reporting of due process rights violations is protected under the State's Whistleblowers' Protection Act.

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