

ACT 103

A Bill for an Act Concerning Procedure of Administrative Agencies and Review of Their Determinations.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Definitions. For the purpose of this Act:

(a) "Agency" means each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

(b) "Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

(c) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding.

(d) "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 8, nor intra-agency memoranda.

(e) "Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

(f) "Agency hearing" refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 14.

SECTION 2. Public Information.

(a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of the methods whereby the public may obtain information or make submittals or requests.

(2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.

(3) Make available for public inspection all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.

(4) Make available for public inspection all final opinions and orders.

(b) No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required, except where a person has actual knowledge thereof.

(c) Nothing in this section shall affect the confidentiality of records as provided by statute.

SECTION 3. Procedure for Adoption, Amendment or Repeal of Rules.

Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

(a) Give at least twenty days' notice for a public hearing. Such notice shall include a statement of the substance of the proposed rule, and of the date, time and place where interested persons may be heard thereon. The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rule-making proceedings, and published at least once in a newspaper of general circulation in the state for state agencies and in the county for county agencies.

(b) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date as to when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency shall, if requested to do so by an interested person, issue a concise statement of the principal reasons for and against its determination.

(c) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

SECTION 4. Filing and Taking Effect of Rules.

(a) Each agency adopting, amending, or repealing a rule shall file forthwith certified copies thereof with the lieutenant governor in the case of the State, or with the clerk of the county in the case of a county. In addition the clerks of all of the counties shall file forthwith certified copies thereof with the lieutenant governor. A permanent register of such rules open to

public inspection shall be kept by the lieutenant governor and the clerks of the counties.

(b) Each rule hereafter adopted, amended, or repealed shall become effective ten days after filing with the lieutenant governor in the case of the state, or with the respective county clerks in the case of the counties.

(1) If a later effective date is required by statute or specified in the rule, such later date shall be the effective date, provided, however, that no rule shall specify an effective date in excess of thirty days after the filing of the rule as provided herein.

(2) An emergency rule shall become effective upon filing with the lieutenant governor in the case of the state, or with the respective county clerks in the case of the counties for a period of not longer than one hundred twenty days without renewal unless extended in compliance with the provisions of subsections (a) and (b) of section 3, if the agency finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety or morals. The Agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the state for state agencies and in the county for county agencies within five days from the date of filing of such rule.

SECTION 5. Publication of Rules.

(a) Each agency shall, as soon as practicable after the effective date of this Act, compile, index and publish all rules adopted by such agency and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years.

(b) Compilations and supplements shall be made available free of charge upon request by the state officers in the case of a state agency and by the county officers in the case of a county agency. As to other persons each agency may fix a price to cover mailing and publication costs.

SECTION 6. Petition for Adoption, Amendment or Repeal of Rules.

Any interested person may petition an agency requesting the adoption, amendment, or repeal of any rule stating reasons therefor. Each agency shall adopt rules prescribing the form for such petitions and the procedure for their submission, consideration and disposition. Upon submission of such petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for such denial or initiate proceedings in accordance with section 3.

SECTION 7. Declaratory Judgment on Validity of Rules.

(a) Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) herein by bringing an action against the agency in the circuit court of the county in which petitioner resides or has its principal place of business. Such action may be maintained whether or not petitioner has first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.

SECTION 8. Declaratory Rulings by Agencies. Any interested person may petition an agency for a declaratory order as to the applicability of any

statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of such petitions and the procedure for their submission, consideration and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

SECTION 9. Contested Cases; Notice; Hearing; Records.

(a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of :

- (1) The date, time, place and nature of hearing ;
- (2) The legal authority under which the hearing is to be held ;
- (3) The particular sections of the statutes and rules involved ;

(4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof ; provided, however, that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.

(5) The fact that any party may retain counsel if he so desires.

(c) Opportunity shall be afforded all parties to present evidence and argument on all issues involved.

(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) For the purpose of agency decisions, the record shall include :

(1) All pleadings, motions, intermediate rulings ;
 (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed ;

(3) Offers of proof and rulings thereon ;

(4) Proposed findings and exceptions ;

(5) Report of the officer who presided at the hearing ;

(6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

(f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(g) No matters outside the record shall be considered by the agency in making its decision except as provided herein.

SECTION 10. Rules of Evidence; Official Notice. In contested cases :

(a) Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available ; provided that upon request parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

SECTION 11. Examination of Evidence by Agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

SECTION 12. Decisions and Orders. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivery or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to his attorney of record.

SECTION 13. Consultation by Officials of Agency. No official of an agency who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law.

SECTION 14. Judicial Review of Contested Cases.

(a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of such nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this Act; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to the provisions of the Hawaii rules of civil procedure, except where a statute provides for a direct appeal to the supreme court and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court. The court in its discretion, may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the agency decisions; but the agency or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within fifteen days after the designation of the record on appeal, or within such further time as the court may allow, the agency shall transmit to the reviewing court the designated record of the proceeding under review.

The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence material to the issue in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings, decision and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) The review shall be conducted by the court without a jury and shall be confined to the record, except that in the cases where a trial de novo, including trial by jury, is provided by law and also in cases of alleged irregularities in procedure before the agency not shown in the record, testimony thereon may be taken in court. The court shall, upon request by any party, hear oral argument and receive written briefs.

(g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions or orders are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) Upon a trial de novo, including a trial by jury as provided by law, the court shall transmit to the agency its decision and order with instructions to comply with the order.

SECTION 15. Appeals. An aggrieved party may secure a review of any final judgment of the circuit court under this Act by appeal to the supreme court. Such appeal shall be taken in the manner provided in the Hawaii rules of civil procedure.

SECTION 16. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 17. Repeal and Pending Proceedings.

(a) Sections 7-28 through 7-41 inclusive of the Revised Laws of Hawaii 1955 are hereby repealed as of the time this Act shall take effect.

(b) Provisions of Act 261, Session Laws of Hawaii 1959 which are inconsistent with the provisions of this Act are hereby repealed as of the time this Act shall take effect.

(c) All rules and regulations adopted prior to the time of taking effect of this Act shall continue in full force and effect; however, all statutes in-

cluding those provided in the aforesaid subsections (a) and (b), rules and regulations, or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed, and such repeal shall not affect any rights or obligations enjoyed or arising prior to the time of taking effect of this Act. Any proceeding commenced prior to the time of taking effect of this Act shall conform to the procedure as much as possible under the provisions of this Act after the Act becomes effective if the proceeding is still pending. All petitions, hearings and other proceedings pending before any agency whose procedure has been changed by this Act, and all legal proceedings or investigations by or against any agency not completed at the time this Act shall take effect, shall continue and remain in full force and effect before such agency, its successor as to its powers and functions, or court where the matter may be or has been commenced or is then pending.

SECTION 18. Section 116-11, Revised Laws of Hawaii 1955 is hereby amended to read as follows:

“Section 116-11. Rules and Forms. (a) The supreme court shall have power, consistently with the provisions of this chapter, to make rules relating to procedure, and to prescribe forms to be used, in tax appeals, including procedure and forms for the issuance of subpoenas and other process by the tax appeal court or members thereof. Such rules shall have the force and effect of law and shall be subject to change from time to time by the supreme court.

(b) The boards of review shall have power, consistently with the provisions of this chapter and the Administrative Procedure Act, to make rules relating to procedure, and to prescribe forms to be used, including procedure and forms for the issuance of subpoenas and other process by the boards of review or members thereof. Such rules shall have the force and effect of law.”

SECTION 19. **Federal Aid.** The provisions of Section 14 shall not be applicable where such applicability would jeopardize federal aid or grants of assistance.

SECTION 20. **Short Title.** This Act may be cited as the Hawaii Administrative Procedure Act.

SECTION 21. **Time of Taking Effect.** This Act shall take effect on January 2, 1962.

(Approved May 23, 1961.) **H.B. 5.**
