

ACT 159

S.B. NO. 1944-74

A Bill for an Act Clarifying the Relationship of Executive Agencies with the Judicial Branch and the Legislative Branch.

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

SECTION 1. Findings and Purpose. The Constitution of the State of Hawaii provides for three separate and co-equal branches of government, the executive branch, the judicial branch, and the legislative branch.

The legislature finds that, although the Constitution incorporates the principle of separation of powers and the principle that no one branch of government shall dominate another branch, the Hawaii Revised Statutes are not completely consistent with these constitutional principles. This is particularly the case with respect to those statutes which appear to permit the executive branch to exercise various administrative controls over the judiciary and its courts and the legislature and its agencies. Such statutes are in conflict with the constitutional status of the judicial branch and the legislative branch as separate and co-equal branches of government.

The purpose of this Act is to clarify the Hawaii Revised Statutes and to bring the statutes into conformance with the separate and co-equal status intended by the State Constitution for the executive branch, the judicial branch, and the legislative branch.

SECTION 2. Part I of Chapter 26, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 26- Services to the judiciary and legislature. Any executive department may provide services to the judiciary and the legislature, but nothing in this part and this chapter shall be construed as granting any authority to the governor or any department to exercise control over the organization, programs, functions, operations, and expenditures of the judiciary and the legislature.”

SECTION 3. Paragraph (1) of Section 37-62, Hawaii Revised Statutes, is amended to read as follows:

“(1) ‘Agency’ means any executive department, independent commission, board, bureau, office, or other establishment of the state government (except the legislature and the judiciary), or any quasi-public institution which is supported in whole or in part by state funds.”

SECTION 4. Section 40-1, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 40-1 Comptroller to supervise accounts, etc. (a) The comptroller shall be the general accountant of the State, and he shall cause to be recorded every receipt and disbursement of money made to, by, or through the treasury. He shall have the power to withhold any disbursement for which no appropriation has been made or which would cause a specific appropriation to be exceeded.

(b) With respect to the executive branch, he shall have complete supervision of all accounts. He shall pre-audit all proposed payments to determine the propriety of expenditures and compliance with such executive orders, rules and regulations as may be in effect. He shall, when necessary, withhold his approval of any payment. Whenever he withholds his approval, he shall promptly notify the department or agency concerned.

(c) With respect to the judiciary and the legislature, he shall make available to the judiciary and the legislature the total amount appropriated to each, except that the judiciary and the legislature may request his services in maintaining custody of the amount appropriated to each and in making payments therefrom. When such services are requested, he shall make all disbursements requested by the judiciary or the legislature, but he shall not make any disbursement for which no appropriation has been made or which would cause a specific appropriation to be exceeded.

(d) Any financial transaction recorded by the comptroller may be inspected by the public.”

SECTION 5. Section 40-2, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 40-2 Accounting systems and internal control; enforcing the use of and inspection of the same. The accounting system installed by the commission on public accountancy under Act 181, session laws of Hawaii 1923,

as amended by Act 220, session laws of Hawaii 1925, for use in the offices of the comptroller, director of finance, departmental and agency services of the State and the auditors, treasurers, departmental and agency services of the several counties shall be the accounting and reporting systems of the State and counties. The comptroller shall make such changes and modifications in the accounting system as shall from time to time appear to be in the best interest of the State and counties.

The departments and agencies of the executive branch are respectively charged with the responsibility to maintain an adequate system of internal control and with the further responsibility to see that the internal control system continues to function effectively as designed. The comptroller shall make such investigations and audits from time to time to enforce the use of the accounting system and internal control systems in the executive branch.

The judiciary, the legislature, and each county shall be responsible for the establishment and maintenance of its respective internal control system."

SECTION 6. Section 40-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 40-4 Publication of statements. The comptroller shall prepare and submit to the governor, and publish in a newspaper of general circulation in the State, immediately following the close of each fiscal year, a statement of income and expenditure by funds, showing the principal sources of revenue, the function or purpose for which expenditures were made, together with a consolidated statement showing similar information for all funds; also a statement showing the balance in each fund at the beginning of the fiscal year, plus the receipts, minus the disbursements, and the balance on hand at the close of the fiscal year after deducting outstanding warrants and vouchers. The comptroller may request all agencies, the judiciary, and the legislature to provide such information as may be required for the preparation of the statements."

SECTION 7. Section 40-51, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 40-51 Money drawn only on warrants. Excepting moneys paid for the redemption of bonds of the state debt, and the interest coupons of the same, and for interest on overdue warrants, and drafts against special deposits and for the expenses of the legislature and the judiciary, no money shall be drawn from or out of the treasury except upon warrants, substantially in the form of section 40-52, issued from the comptroller's office, provided that upon request, the comptroller shall provide financial services involving the issuance of warrants on behalf of the legislature and the judiciary. Every such warrant shall be signed by the comptroller or his deputy or by means of any mechanical check signer that may be adopted by the comptroller, and shall be made payable upon such date as may be approved by the director of finance to the order of the person to whom the State is directly indebted."

SECTION 8. Section 76-3, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 76-3 Uniform administration. It is the intent of the legislature that the system of personnel administration established by this chapter and chapter 77 shall be as uniformly administered as is practicable. In order to promote such uniformity, the several commissioners and directors of the state department of personnel services and of the county departments of civil service and the administrative director of the courts shall meet at least once each year at the call of the director of personnel services of the State.”

SECTION 9. Part I of Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 76- Employees of the judiciary. It is the intent of the legislature that the personnel of the judiciary are included in the system of personnel administration established by this chapter and chapter 77, unless specifically exempted by this chapter or any other law; provided that:

- (1) In the development of a position classification plan, the formulation of personnel rules and regulations, and the administration of the State personnel system, the director of personnel services shall consult with the chief justice or his representative insofar as such plan, rules and regulations, and administration affect the personnel of the judiciary;
- (2) In all cases where the action of the director of personnel services is required, including the classification, reclassification, allocation, and reallocation of a particular position, the publication of a vacancy announcement, the examination of applicants, and the preparation of an eligible list, any request for any such action submitted by the judiciary with respect to any of its positions shall be acted upon by the director within ninety days after receipt of the request. If the director takes no action within the ninety days, the chief justice, pursuant to the applicable provisions of this chapter, chapter 77, and the personnel rules and regulations, may determine the action to be taken. In case of a disagreement between the director and the chief justice as to the action to be taken on the request of the judiciary, the chief justice shall prevail. Any action taken by the director of personnel services or the chief justice may be appealed by any employee in the judiciary affected by such action or by any affected exclusive bargaining unit representative of employees of the judiciary to a board of arbitrators composed of three members, one each to be selected by the director of personnel services, the chief justice, and the employee or the exclusive bargaining unit representative concerned. Notwithstanding any other provision of this chapter and chapter 77, the decision of the majority of the arbitrators shall be final and binding on all parties. The cost of such arbitration shall be borne equally by the department of personnel services, the judiciary, and the employee or exclusive bargaining unit representative concerned; and
- (3) Nothing in chapters 76 and 77 shall be construed to require the approval of the governor or any executive agency for the judiciary

to establish such positions in the judicial branch as may be authorized and funded by the legislature.”

SECTION 10. Paragraph (4) of Section 76-11, Hawaii Revised Statutes, is amended to read:

“(4) ‘Department’ includes the judicial branch and any department, board, commission, or agency of the State;”

SECTION 11. Paragraph (5) of Section 77-1, Hawaii Revised Statutes, is amended to read as follows:

“(5) ‘Department’ includes the judicial branch and any department, board, commission, or agency of the State or any of its political subdivisions;”

SECTION 12. Paragraph (12) of Section 77-1, Hawaii Revised Statutes, is amended to read as follows:

“(12) ‘Chief executive officer’ means the governor in the case of the State, the chief justice of the supreme court in the case of the judiciary, the mayor in the case of the city and county of Honolulu or the chairman of the respective board of supervisors in the case of the counties of Hawaii, Maui, and Kauai;”

SECTION 13. Paragraph (14) of Section 77-1, Hawaii Revised Statutes, is amended to read as follows:

“(14) ‘Fiscal officer’ means the director of finance in the case of the State, the administrative director of the courts in the case of the judiciary, the director of finance in the case of the city and county of Honolulu, and the respective auditors in the case of the counties of Hawaii, Maui, and Kauai;”

SECTION 14. Section 601-1, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 601-1 Judiciary.** There shall be a branch of government, styled the judiciary.”

SECTION 15. Section 601-2, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 601-2 Administration.** (a) The chief justice shall be the administrative head of the judiciary. He shall make a report to the legislature, at each regular session thereof, of the business of the judiciary and of the administration of justice throughout the State. He shall present to the legislature a unified budget, six-year program and financial plan, and variance report for all of the programs of the judiciary. He shall direct the administration of the judiciary, with responsibility for the efficient operation of all of the courts and for the expeditious dispatch of all judicial business.

(b) He shall possess the following powers, subject to such rules as may be adopted by the supreme court:

(1) To assign circuit judges from one circuit to another;

(2) In a circuit court with more than one judge, (A) to make assign-

ments of calendars among the circuit judges for such period as he may determine and, as deemed advisable from time to time, to change assignments of calendars or portions thereof (but not individual cases) from one judge to another, and (B) to appoint one of the judges, for such period as he may determine, as the administrative judge to manage the business of the court, subject to the rules of the supreme court and the direction of the chief justice;

- (3) To prescribe for all of the courts a uniform system of keeping and periodically reporting statistics of their business;
- (4) To procure from all of the courts estimates for their appropriations; with the cooperation of the representatives of the court concerned to review and revise them as he deems necessary for equitable provisions for the various courts according to their needs and to present the estimates, as reviewed and revised by him, to the legislature as collectively constituting a unified budget for all of the courts;
- (5) To exercise exclusive authority over the preparation, explanation, and administration of the judiciary budget, programs, plans, and expenditures, including without limitation policies and practices of financial administration and the establishment of guidelines as to permissible expenditures, provided that all expenditures of the judiciary shall be in conformance with program appropriations and provisions of the legislature; and
- (6) To do all other acts which may be necessary or appropriate for the administration of the judiciary.

(c) The budget, six-year program and financial plan, and the variance report of the judiciary shall be submitted by the chief justice to the legislature in accordance with the schedule of submission specified for the governor in chapter 37 and shall contain the program information prescribed in that chapter. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the chief justice shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of the judiciary for each fiscal year of the next fiscal biennium."

SECTION 16. Section 601-3, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 601-3 Administrative director. The chief justice with the approval of the supreme court, shall appoint an administrative director of the courts to assist him in directing the administration of the judiciary. The administrative director shall be a resident of the State for a continuous period of three years prior to his appointment, and shall be appointed without regard to chapters 76 and 77 and shall serve at the pleasure of the chief justice. He shall hold no other office or employment. Effective July 1, 1970, he shall receive a salary of not more than \$22,670 a year. He shall, subject to the direction of the chief justice, perform the following functions:

- (1) Examine the administrative methods of the courts and make recommendations to the chief justice for their improvements;

- (2) Examine the state of the dockets of the courts, secure information as to their needs for assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice to the end that proper action may be taken;
- (3) Examine the estimates of the courts for appropriations and present to the chief justice his recommendations concerning them;
- (4) Examine the statistical systems of the courts and make recommendations to the chief justice for a uniform system of judicial statistics;
- (5) Collect, analyze, and report to the chief justice statistical and other data concerning the business of the courts;
- (6) Assist the chief justice in the preparation of the budget, the six-year program and financial plan, the variance report and any other reports requested by the legislature; and
- (7) Attend to such other matters as may be assigned by the chief justice.

The administrative director shall, with the approval of the chief justice, appoint such assistants as may be necessary. The assistants shall be appointed subject to chapters 76 and 77. The administrative director shall be provided with necessary office facilities.

The judges, clerks, officers, and employees of the courts shall comply with all requests of the administrative director for information and statistical data relating to the business of the courts and the expenditure of public funds for their maintenance and operation."

SECTION 17. Wherever in the Hawaii Revised Statutes appears the term "judiciary department" or "department" in reference to the judiciary, the revisor of statutes shall reword the term to read, "judicial branch," "judiciary," or "branch," as appropriate.

SECTION 18. Except as modified in Sections 8, 9, 10, 11, 12, and 13 of this Act, no part of this Act shall contravene any part of Chapters 76, 77, 89, or any collective bargaining agreement that may have been or may be negotiated under Chapter 89.

SECTION 19. **Severability.** If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this Act without such invalid or unconstitutional provision.

SECTION 20. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 21. This Act shall take effect upon its approval.

(Approved June 6, 1974.)

*Edited accordingly.