
A BILL FOR AN ACT

RELATING TO CONTESTED CASES.

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

1 SECTION 1. The legislature finds that requiring agencies
2 to hold multiple contested case hearings on matters that are
3 identical or arising from the same factual situation as another
4 administrative matter that has been previously adjudicated
5 impedes agencies from acting to address critical issues, may
6 lead to conflicting decisions creating ambiguity, and is unduly
7 burdensome on agency resources.

8 The purpose of this Act is to:

- 9 (1) Clarify that a contested case hearing is not required
10 for matters that are identical or arising from the
11 same factual situation as another administrative
12 matter that has been previously adjudicated; and
13 (2) Include administrative contested case proceedings
14 within the scope of the vexatious litigant statute.

15 SECTION 2. Section 91-9, Hawaii Revised Statutes, is
16 amended to read as follows:



1 **"§91-9 Contested cases; notice; hearing; interactive**
2 **conference technology; records.** (a) Subject to section 91-8.5,
3 in any contested case, all parties shall be afforded an
4 opportunity for hearing after reasonable notice.

5 (b) The notice shall include a statement of:

6 (1) The date, time, place, and nature of the hearing;

7 (2) The legal authority under which the hearing is to be
8 held;

9 (3) The particular sections of the statutes and rules
10 involved;

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

19 (5) The fact that any party may retain counsel if the
20 party so desires and the fact that an individual may
21 appear on the individual's own behalf[~~, or~~]; a member



1 of a partnership may represent the partnership~~[r]~~i or
2 an officer or authorized employee of a corporation
3 ~~[e]~~r, trust~~,~~, or association may represent the
4 corporation, trust, or association.

5 (c) The hearing may be held by interactive conference
6 technology that allows interaction by the agency, any party, and
7 counsel if retained by the party, and the notice identifies
8 electronic contact information for each agency, party, and
9 counsel if retained by the party. A contested case hearing held
10 by interactive conference technology shall be recessed for up to
11 one hour when audio communication cannot be maintained; provided
12 that the hearing may reconvene when only audio communication is
13 reestablished. If audio-only communication is reestablished,
14 then each speaker shall state the speaker's name [~~prior to~~]
15 before making remarks.

16 (d) Opportunities shall be afforded to all parties to
17 present evidence and argument on all issues involved; provided
18 that, if the hearing is held by interactive conference
19 technology~~,~~, evidence may be submitted and exchanged by
20 electronic means.



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

5 (f) For the purpose of agency decisions, the record shall
6 include:

7 (1) All pleadings, motions, and intermediate rulings;

8 (2) Evidence received or considered, including oral
9 testimony, exhibits, and a statement of matters
10 officially noticed;

11 (3) Offers of proof and rulings thereon;

12 (4) Proposed findings and exceptions;

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

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

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

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

20 (i) A contested case hearing may be denied when a
21 requesting party alleges or raises a cause of action, claim,



1 controversy, issue, fact, or substantive law that is identical
2 or arising from the same factual situation as another
3 administrative matter that has been finally adjudicated as
4 follows:

5 (1) A final decision or order has been issued after a
6 contested case hearing in accordance with chapter 91
7 and the decision or order has not been appealed from
8 or the time to seek review has lapsed; or

9 (2) A final decision or judgment has been issued by a
10 court of last resort reviewing a decision or order
11 from a contested case;

12 unless the proponent of the new contested case is able to show
13 newly discovered evidence that could not, with reasonable
14 diligence, have been discovered and offered at the prior
15 contested case hearing and the evidence changes the outcome of
16 the case. A denial issued pursuant to this subsection shall
17 include the agency's findings of facts and conclusions of law
18 within the body of the decision; provided that a previous
19 contested case may be utilized in whole or in part.

20 [~~(i)~~] (j) For the purposes of this [~~subsection,~~
21 ~~"interactive]~~ section:



1 "Court of last resort" means a Hawaii court of competent
2 jurisdiction in which an appeal or further review is not or no
3 longer available.

4 "Interactive conference technology" means any form of audio
5 or audio and visual conference technology, including
6 teleconference, videoconference, and voice over internet
7 protocol, that facilitates interaction between the agency, any
8 party, and counsel if retained by the party."

9 SECTION 3. Section 634J-1, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**[+]§634J-1[+]** **Definitions.** Unless otherwise clear from
12 the context, as used in this chapter:

13 "Court" includes a tribunal in a contested case proceeding
14 under chapter 91.

15 "Defendant" means a person (including a corporation,
16 association, partnership, firm, or governmental entity) against
17 whom litigation is brought or maintained, or sought to be
18 brought or maintained[-], including but not limited to a
19 respondent in a contested case proceeding initiated under
20 chapter 91.



1 "In propria persona" means on the person's own behalf
2 acting as plaintiff.

3 "Litigation" means any civil action or contested case
4 proceeding, commenced, maintained, or pending in any state or
5 federal court of record[~~],~~ or pending before an agency under
6 chapter 91.

7 "Plaintiff" means the person, including an attorney at law
8 acting on the attorney's own behalf, who commences, institutes,
9 or maintains litigation or causes it to be commenced,
10 instituted, or maintained, [~~including an attorney at law acting~~
11 ~~on the attorney's own behalf.~~] or the petitioner who commences,
12 institutes, or maintains a contested case proceeding or hearing
13 or causes it to be commenced, instituted, or maintained.

14 "Security" means an undertaking to assure payment, to the
15 party for whose benefit the undertaking is required to be
16 furnished, of the party's reasonable expenses, including
17 attorney's fees, and not limited to taxable costs incurred in or
18 in connection with a litigation instituted[~~, caused to be~~
19 ~~instituted,~~] or maintained or caused to be instituted or
20 maintained by a vexatious litigant.



1 "Vexatious litigant" means a plaintiff who does any of the
2 following:

3 (1) In the immediately preceding seven-year period, has
4 commenced, prosecuted, or maintained in propria
5 persona at least five civil actions other than in a
6 small claims court [~~that have been:~~], or at least five
7 administrative contested case proceedings that have
8 been:

9 (A) Finally determined adversely to the plaintiff; or

10 (B) Unjustifiably permitted to remain pending at
11 least two years without having been brought to
12 trial or hearing;

13 (2) After litigation has been finally resolved against the
14 plaintiff, relitigates or attempts to relitigate in
15 propria persona and in bad faith, either:

16 (A) The validity of the determination against the
17 same defendant or defendants as to whom the
18 litigation was finally determined; or

19 (B) The cause of action, claim, controversy, or any
20 of the issues of fact or law, determined or
21 concluded by the final determination against the



- 1 same defendant or defendants as to whom the
2 litigation was finally determined;
- 3 (3) In any litigation while acting in propria persona,
4 files, in bad faith, unmeritorious motions, pleadings,
5 or other papers, conducts unnecessary discovery, or
6 engages in other tactics that are frivolous or solely
7 intended to cause unnecessary delay; or
- 8 (4) Has previously been declared to be a vexatious
9 litigant by any state or federal court of record, or
10 by a tribunal in a contested case proceeding, in any
11 action or proceeding based upon the same or
12 substantially similar facts, transaction, or
13 occurrence."

14 SECTION 4. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on April 14, 2112.



Report Title:

Administrative Procedure; Contested Cases; Vexatious Litigants

Description:

Clarifies that a contested case hearing is not required for matters that are identical or arising from the same factual situation as another administrative matter that has been finally adjudicated. Includes administrative contested case proceedings within the scope of the vexatious litigant statute. Effective 4/14/2112. (HD1)

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