

A Bill for an Act Relating to Contested Cases.

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

SECTION 1. Chapter 91, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§91- Mediation in contested cases. (a) An agency may encourage parties to a contested case hearing under this chapter to participate in mediation prior to the hearing subject to conditions imposed by the agency in rules adopted in accordance with this chapter. The agency may suspend all further proceedings in the contested case pending the outcome of the mediation.

(b) No mediation period under this section shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the agency.

(c) The parties may jointly select a mediator within ten days of the referral to mediation, the agency shall select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the agency, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this section shall constitute a meeting under section 92-2. Any mediator notes under this section shall be exempt from section 92-21 and chapter 92F. Section 91-10 shall not apply to mediation proceedings.”

SECTION 2. Section 91-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [H] Subject to section 91-____, in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.”

SECTION 3. Section 91-10, Hawaii Revised Statutes, is amended to read as follows:

“§91-10 Rules of evidence; official notice. In contested cases:

- (1) [Any] Except as provided in section 91-____, 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[-];
- (2) 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[-];
- (3) 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[-];

- (4) 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[-]; and
- (5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.’’

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

SECTION 5. Statutory material to be repealed is bracketed and ~~stricken~~. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 20, 2003.)

Note

- 1. Edited pursuant to HRS §23G-16.5.