

ACT 168

S.B. NO. 873

A Bill for an Act Relating to Contested Cases.

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

SECTION 1. The legislature finds that more efficient, yet still effective, contested case hearings can be conducted by interactive conference technology, which is already being utilized for public meetings in accordance with section 92-3.5, Hawaii Revised Statutes.

The purpose of this Act is to authorize contested case hearings to be conducted through the use of interactive conference technology.

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

“§91-9 Contested cases; notice; hearing; interactive conference technology; records. (a) Subject to section 91-8.5, 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 that if the agency is unable to state ~~[such]~~ the 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; and
 - (5) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

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

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

~~[(d)]~~ (e) 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)]~~ (f) 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; and
- (6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

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

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

(i) For the purposes of this subsection, “interactive conference technology” means any form of audio or audio and visual conference technology, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the agency, any party, and counsel if retained by the party.”

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SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on October 1, 2021.

(Approved July 1, 2021.)