
A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE PROCEDURE.

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

1 SECTION 1. The legislature finds that technology is moving
2 in the direction where electronic documents are replacing hard
3 copies. For example, the Hawaii commission on water resource
4 management, land use commission, board of land and natural
5 resources, and the public utilities commission maintain web-
6 based listings of dockets and docket documents. The state
7 judiciary and the state legislature also have converted to
8 electronic documents. In addition, web-based public
9 notification is becoming more common, although a few tweaks are
10 still needed. The public utilities commission, for example, is
11 in the process of converting to web-based certificate of
12 service.

13 While many state agencies are moving toward electronic
14 documentation and notification, not all agencies are part of
15 this shift. The department of health does not maintain a list
16 of open dockets and even parties cannot tell what official
17 documents are part of the official record in a proceeding. In



1 addition, the department of health can take more than two years
2 to determine who the parties are, what the issues are, and to
3 determine the procedural schedule. This is because, unlike
4 other agencies, under the department of health's permitting
5 process, a permit may be approved before a contested case
6 proceeding gets underway. Thus the permit holder is indifferent
7 to how long the process drags out.

8 The legislature finds that it is important that all parties
9 before a regulatory agency receive the same access to
10 information and documentation regardless of which agency is
11 adjudicating their case.

12 The purpose of this Act is to require all agencies to:

- 13 (1) Maintain a website with a list of open contested cases
14 that are not confidential by law and provide access to
15 documents that are not confidential by law filed in
16 such cases via the website; and
- 17 (2) Establish a subscription-based email notification
18 system so that all interested parties may receive
19 notice of all filings made in a contested case
20 proceeding.



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

3 "§91-9 Contested cases; notice; hearing; records. (a)

4 Subject to section 91-8.5, in any contested case, all parties
5 shall be afforded an opportunity for hearing after reasonable
6 notice.

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

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

9 (2) The legal authority under which the hearing is to be
10 held;

11 (3) The particular sections of the statutes and rules
12 involved;

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



1 (5) The fact that any party may retain counsel if the
2 party so desires and the fact that an individual may
3 appear on the individual's own behalf, or a member of
4 a partnership may represent the partnership, or an
5 officer or authorized employee of a corporation or
6 trust or association may represent the corporation,
7 trust, or association.

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

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

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

- 16 (1) All pleadings, motions, intermediate rulings;
- 17 (2) Evidence received or considered, including oral
18 testimony, exhibits, and a statement of matters
19 officially noticed;
- 20 (3) Offers of proof and rulings thereon;
- 21 (4) Proposed findings and exceptions;



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

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

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

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

8 (h) Each agency shall maintain a website that contains a
9 list of the agency's open cases that are not confidential by
10 law. Each website shall provide access to the documents that
11 are not confidential by law filed in such cases. All documents
12 shall be uploaded in a timely manner to the website.

13 (i) Each agency shall establish a subscription-based email
14 notification system of all filings made in a contested case
15 proceeding. Any interested party may sign up for the
16 subscription. This web-based notification system shall be
17 deemed to meet the legal requirements for any certification of
18 service requirement only if a party has signed up for the
19 subscription."

20 SECTION 3. New statutory material is underscored.

21 SECTION 4. This Act shall take effect on January 1, 2050.



Report Title:

Administrative Procedure; Contested Cases

Description:

Requires agencies to maintain a website with a list of open contested cases that are not confidential by law; provide access to documents filed that are not confidential by law; and establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding. (HB274 HD1)

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