

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**BEFORE THE SENATE COMMITTEE ON
GOVERNMENT OPERATIONS**

**Thursday, January 31, 2019
2:45 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 757
RELATING TO ADMINISTRATIVE PROCEDURE**

Senate Bill 757 proposes to require agencies to maintain a website with a list of open contested cases and requires access to all documents filed. It also requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and offers comments.**

First, the Department understands the bill's intent is to ensure that all parties before a regulatory agency enjoy equal access to information, but believes that the proposed procedures are not necessary as far as the Department is concerned. The Department's administrative procedure rules currently require the Department and all parties in a contested case to timely serve the hearing officer, the counsel to the tribunal, and all other parties their filings with a certificate of service. In addition, the hearing officer in a Department contested case often requires or allows service by E-Mail delivery, depending on the parties' technical capability. This practice allows the hearing officer to determine the best way to handle the record and ensure fair and timely access by all parties, including those who appear in the proceedings pro se and could be disadvantaged in an all-digitized case process. The Department is not aware of any past cases in which a party was not able to timely receive or gain access to information or documentation in a contested case proceeding.

Second, the Department's administrative rules regarding practice and procedure allow us to quickly identify the parties to a contested case hearing. This is different from the experience of some other state departments as described in the preamble of the bill. For those parties who may be interested in participating in a pending contested case proceeding of the Department as an additional party or intervenor, they can always find the case information of the relevant Land Board action on the

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Department's website. It should also be noted that the Department's rules preclude a third party who is not a cited violator from participating in an enforcement case.

Third, the Department believes that, if the two tasks in this bill were to be implemented, it would create a substantial need for additional funding and staff positions as the aggregate volume of the Department's contested case filings can be sizable. In fact, the Department processes contested cases that vary in size. Some cases are in lengthy proceedings with multiple parties and voluminous filings, mostly involving land uses and development. Others are short and simple proceedings with few filings, mostly enforcement cases that are contested by the cited violators, but the number of these cases is large. The Department believes that requiring online posting of all filings in those large cases may take substantial staff time and unnecessarily further prolong the already lengthy process. On the other hand, in those small enforcement cases, the Department sees little value in posting all the filings online as required by this bill.

The Department further believes that, if online access to a listing of the contested cases and/or filings in all contested cases should be provided to indefinite parties or the general public, it should be developed and hosted centrally at the state level instead of by the individual agencies. It may adopt the model of the State of Hawaii eProcurement system (HIePro). This will provide optimal uniform accessibility experience for the users and much savings from system development and maintenance.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
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SCOTT T. MURAKAMI
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STATE OF HAWAII
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830 PUNCHBOWL STREET, ROOM 434
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Chair Thielen, Vice Chair Inouye, and Members of the Committee:

The Hawai'i Labor Relations Board (HLRB or Board) recognizes the intent of SB 757 and supports public access and transparency in government. **However, the HLRB has serious reservations regarding the measure, and respectfully requests the Committee's consideration of the Board's comments.** Specifically, SB 757 raises concerns about the privacy of personal and highly confidential information contained in the HLRB case records.

The language of SB 757 would require public access to all pleadings, correspondence, and other documents filed by the parties appearing before the Board. In some cases, this may include personal information such as financial records and work personnel files.

To address privacy concerns, the HLRB notifies and requires that the parties submitting such documents electronically or manually redact or encrypt all personal information, including "social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest[;] and further, that to the extent that any personal information is relevant to the Board's consideration of the case that the submitting party submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended." The HLRB additionally informs the parties that failure to redact or encrypt such personal information is grounds for sanctions. However, this system relies on the compliance of the parties and is thus not foolproof; documents that are not in conformance with these requirements are at times submitted.

Further, the HLRB case files may include documents which have been placed under seal to protect the privacy rights of individuals involved in the case. When these documents are transferred to circuit court for the appeals process, they are not available for public viewing because of the privacy concerns. However, at this time, the HLRB has no protocol in place to ensure that documents filed under seal would not be disclosed with public access to the HLRB's case files.

In addition, pursuant to Hawai‘i Revised Statutes (HRS) § 396-3 and 396-11(h), the HLRB is the appeals board for HRS Chapter 396, Hawai‘i’s Occupational Safety and Health law. Under that authority, the HLRB conducts de novo hearings on any notice of contest, except where the rules require a prior formal hearing at the department level (HRS § 396-11(h)). The Office of Information Practices (OIP) in OIP Op. Ltr. No. 95-17 (July 26, 1995) has determined that, in the absence of a unique emergency situation, the records or determination in any HIOSH administrative proceedings may be withheld from public inspection and copying.

Furthermore, in order to implement the public access envisioned by this bill, the HLRB would require an additional staff member and sufficient funds to obtain software and training to ensure that all privacy rights are protected. At this time, the HLRB is unable to estimate the amount of additional funds that would be required for implementation of SB 757.

Finally, the HLRB notes that members of the public may in accordance with HRS Chapter 92F, the Uniform Information Practices Act, submit requests for HLRB records.

Thank you for your time and consideration of the HLRB’s comments and concerns regarding SB 757.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

January 31, 2019
Rm. 225, 2:45 p.m.

To: The Honorable Laura H. Thielen, Chair
The Honorable Lorraine R. Inouye, Vice Chair
Members of the House Committee on Government Operations

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 757, Relating to Administrative Procedure

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

S.B. No. 757 requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed. It requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

The HCRC supports the intent of this measure, but informs the Committee that as an agency we do not have the funding or resources to comply with the requirements it imposes. We support public access, and our contested case proceedings and files are open to the public. However, our agency does not have the resources to scan and upload pleadings in a timely manner, in all cases, and send them via electronic mail. An addition, all filings would need to be accessible. This process that is time consuming if exhibits contain photographs, diagrams, or hand written notes.

HCRC hearings are similar to Circuit Court hearings and can involve a large number of filings and exhibits. We would need funding and staff to comply with this bill.

Our agency does not have a method to provide an e-mail notification of filings, other than sending them individually. This would be a burdensome process. Compliance with the ADA would require an alternative method of communication for those who cannot use a computer.

Parties in a HCRC hearing may also request that confidential documents be sealed or viewed *in camera*. It is unclear if this bill provides for that possibility, or the possibility of redacting documents to protect the privacy of minors, or of a person's private information or medical records.

It is noteworthy that the Hawai'i State Circuit Courts do not have online access to all documents filed, because it is burdensome. The Federal courts do provide online access to pleadings for a fee.

The HCRC supports the intent of the bill, but would have difficulty complying with S.B. No. 757 if passed, and would request additional funding and aid from the Office of Enterprise Technology Services to ensure that all posted documents were accessible when posted.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
HONOLULU, HAWAII 96817

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Thursday, January 31, 2019
2:45 PM - Room 225, Hawaii State Capitol

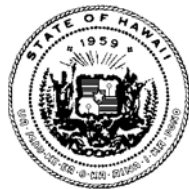
In consideration of
SB 757
RELATING TO ADMINISTRATIVE PROCEDURE

Honorable Chair Thielen and Members of the Senate Committee on Government Operations, thank you for the opportunity to provide testimony concerning Senate Bill (SB) 757, relating to administrative procedure.

The Hawaii Public Housing Authority (HPHA) offers the following **comments** for SB 757, which requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed. Requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

The HPHA administratively conducts approximately 250 public housing eviction hearings every year that involve the nonpayment of rent, criminal activities, drug use, or misconduct. The unintended consequence of this piece of legislation is that the privacy of public housing families going through the eviction hearing process will be exposed for the world to see as the HPHA will be mandated to post online all filings related to their eviction hearing such as "Finding of Facts", "Conclusion of Law", "Decision and Order", "Writs", and "Appeals". If the Committee decides to move this measure forward, the HPHA would like to humbly ask the Committee to provide an exemption for the HPHA.

The HPHA appreciates the opportunity to provide the Committee with the HPHA's testimony regarding SB 757. We thank you very much for your dedicated support.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P.O. Box 339
Honolulu, Hawaii 96809-0339

January 30, 2019

TO: The Honorable Senator Laura H. Thielen, Chair
Senate Committee on Government Operations

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 757 – RELATING TO ADMINISTRATIVE PROCEDURE**

Hearing: January 31, 2019, 2:45 p.m.
Conference Room 225, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the legislature's intent to create a website list of contested cases and access to all documents filed on the agencies websites to the public and to create a web-based filing notifications. However, DHS requests to be exempt from the web-based list of contested cases and access to documents filed as DHS hearings and documents are confidential and are not open or available to the public.

Regarding the e-mail subscription, due to the confidential nature of DHS administrative appeal matters, we ask that interested parties be limited to applicant/claimants or recipient/claimants or providers and or their authorized representatives.

To implement the e-mail subscription, and or any web-based listing, DHS will require additional IT resources, both in staff, and appropriations, to develop, upgrade, build, and secure the system.

PURPOSE: The purpose of this bill is to require agencies to maintain a website with a list of open contested cases and require public access to all documents filed. The bill also requires that each agency establish a subscription-based e-mail notification system that notifies interested parties of all filings made in a contested case proceeding.

The Administrative Appeals Office (AAO) of DHS conducts administrative hearings for the Benefit Employment and Support Services (BESSD) division, Social Services Division (SSD), Med-QUEST Division (MQD), and the Division of Vocational Rehabilitation (DVR). The hearing issues involve claimant's confidential information and unless both DHS and the claimant agree, the hearings are closed to the public. Hearing issues involve food stamps (SNAP), Medicaid, and financial assistance application denials, reduction, suspension, or termination of benefits, fraudulent receipt of benefits, recovery of benefit overpayments, or vocational rehabilitation issues. For Child Welfare Services (CWS) hearings, the issues involve minor children and claimants are individuals identified as perpetrator of physical and/or sexual abuse of children. Similar to Family Court, issues regarding minor children are confidential. For Adult Protective Services (APS), issues involve individuals identified as perpetrator of physical abuse and/or financial exploitation of seniors or physically or mentally disabled adults.

If the DHS administrative hearing decisions are appealed to Circuit Court pursuant to section 91-14, Hawaii Revised Statutes (HRS), the AAO hearing records are filed as "confidential" at Circuit Court pursuant to section 346-10, HRS, to protect the confidential information.

Additionally, the legislature has recognized the significant privacy interest of individuals regarding the potential subject matter of DHS administrative hearings. Section 92F-14 (b) provides "[t]he following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;
- (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels; ...
- (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness; ...

- (8) Information comprising a personal recommendation or evaluation; ...
- (9) Social security numbers; and
- (10) Information that if disclosed would create a substantial and demonstrable risk of physical harm to an individual.

Further, different program administrative rules limit access to administrative hearings and information to the parties. Hawaii Administrative Rules (HAR) §17-602.1-13(b) for BESSD states, in relevant part:

...Unless both DHS-BESSD and the claimant agree to the presence of other individuals, the hearing officer and other person conducting the hearing shall limit attendance to the following individuals necessary for the conduct of the hearing:

- (1) The claimant, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;
- (2) Representatives of the branch or unit office;
- (3) Representatives of DHS-BESSD; and
- (4) Hearing officer and members of the hearing office staff.

Hawaii Administrative Rules §17-602.1-38 for SNAP states, in relevant part:

Persons who may attend the hearing.

(a) The following persons shall attend the hearing:

- (1) The hearing officer;
- (2) The household and its representative;
- (3) A person charged with recording the proceedings;
- (4) The branch representatives; and
- (5) Attorneys assigned to the department.

(b) Persons whose presence have been requested, or to whom consent has been given by the household, may also attend the hearing.

Hawaii Administrative Rules §17-1703.1-12(c) for MQD states, in relevant part:

(c) Unless both the department and the individual agree to the presence of other persons in the hearing room, the hearing officer and other person conducting the hearing shall limit attendance to the following individuals necessary for the conduct of the hearing:

- (1) The individual, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;

- (2) Representatives of the section or unit offices;
- (3) Representatives of Med-QEUST Division; and
- (4) Hearing officer and staff.

Hawaii Administrative Rules §17-1402-11(b) for APS states, in relevant part:

...Unless both department and the claimant agree to the presence of other individuals, the hearing officer and other person conducting the hearing shall limit attendance to the following individuals necessary for the conduct of the hearing: interpreter

- (1) The claimant, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;
- (2) Representatives of the adult and community care services branch;
- (3) representative of the social services division; and
- (4) Hearing officer and members of the hearing office staff.

In addition, AAO is mandated by federal regulations (7 C.F.R. 272.8, 45 CFR 205.51, et al.) to keep AAO documents confidential and secured. AAO documents received from the divisions contain information from the Income & Eligibility Verification System (IEVS). AAO must adhere to strict federal guidelines to keep documents confidential. Therefore, in addition to the DHS rules, the IEVS prohibits AAO from making documents public.

Finally, if required DHS requests a one-year Pilot Project to determine the number of DHS clients who may be subscribing to e-mail notification and calculate additional resources needs required to design, implement and maintain the service that remains timely and secure.

Thank you for this opportunity to provide comments on this bill.



DAVID Y. IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

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Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
Senate Committee on Government Operations

Thursday January 31, 2019
2:45 PM
State Capitol, Conference Room 225

In consideration of
SB 757
RELATING TO ADMINISTRATIVE PROCEDURE

Chair Thielen; Vice Chair Inouye; and members of the Committee on Government Operations:

The Land Use Commission (LUC) supports the intent of SB 757 in that it seeks to make information regarding contested cases readily available to interested parties electronically and enhances transparency. However, the LUC is concerned that the provision requiring that all interested parties be notified of every filing in a proceeding will create an undue burden on Commission staff resources.

It should be noted that the LUC has already voluntarily taken the initiative to comply with most of the requirements of this measure. The LUC has developed a website where all filings, calendars, agendas and information concerning on-going dockets, procedures and rules are located and readily accessible and downloadable by the public. The home page provides a form to subscribe to an e-mail notification list and receive regular notices from the LUC on all contested case hearing proceedings. Filings by parties in contested case hearings are organized by case, posted immediately upon receipt, and updated daily.

Requiring the LUC to notify every "interested party" to a proceeding will create a burden on staff. The LUC holds as many as 6 to 8 contested case proceedings a month, each having a multitude of filings. In some cases we have had dozens of people initially notice the LUC that they request to be notified of proceeding agendas and notices, such that they could be deemed "interested parties". Requiring additional notice of all filings could be onerous.

Given the availability of information on the LUC website, its daily updating and allowed access to all filings organized by proceeding, we do not believe any harm to the public will occur if they are not given notice of all filings. Regular review of the website by an interested party will reveal and provide access to all of the necessary information in a timely manner.

Thank you for the opportunity to testify on this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 0757, RELATING TO ADMINISTRATIVE PROCEDURE.

BEFORE THE:

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

DATE: Thursday, January 31, 2019 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Valri Lei Kunimoto, Deputy Attorney General

Chair Thielen and Members of the Committee:

S.B. No. 757 requires each agency to maintain a website with a list of open contested cases and allow public access to all of the documents filed. The bill also requires each agency to establish a subscription-based e-mail notification system that notifies interested parties of all filings made in a contested case proceeding. The purpose of the bill is to increase transparency of contested case proceedings and enable public access to documents filed in the cases. We offer the following comments on the measure.

While we agree with the intent of the bill to increase transparency in government, this bill creates public access to all agency filings without regard to whether the contested cases are public or confidential. It must be noted that there are agencies that conduct hearings that are confidential pursuant to state or federal laws and must be closed to the public. These agencies should be exempt from the public access requirement. As presently drafted, the bill would require access to documents in contested cases dealing with confidential issues, i.e., disability compensation benefits, unemployment benefits, special education services, child support payments, and benefits provided by the Department of Human Services.

In order to maintain the confidentiality of those proceedings we suggest adding wording to subsection (h) to read:

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

(Proposed language is underscored; deletion is bracketed.) This would clarify that the provision only applies to agencies which conduct hearings open to the public and the documents are not confidential by law.

In addition, we have operational concerns because the bill does not appropriate funds for additional informational technology products or services necessary to assist the agencies to create or modify their existing websites and to implement the subscription services. Finally, the effective date for implementation of the bill should be delayed to allow the agencies sufficient time to procure or modify their existing filing procedures and systems.

Thank you for the opportunity to testify on this matter.



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COMMITTEE ON GOVERNMENT OPERATIONS

Senator Laura H. Thielen, Chair

Senator Lorraine R. Inouye, Vice Chair

DATE: Thursday, January 31, 2019

TIME: 2:45 p.m.

PLACE: Conference Room 225

Aloha Chair Thielen, Vice Chair Inouye, and Members of the Committee

SB 757 RELATING TO ADMINISTRATIVE PROCEDURE.

SUPPORT

Requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed. Requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Life of the Land has two active climate change appeals before the Hawai`i Supreme Court. The court heard oral arguments on the first one in October 2018. We also have a climate change complaint before the Public Utilities Commission.

All state agencies that hold administrative hearings and contested case proceedings are bound by Hawai'i Revised Statutes Chapter 91, Administrative Procedure, and in particular, HRS § 91-9 Contested cases; notice; hearing; records.

How the different agencies handle contested case hearings vary greatly. The Public Utilities Commission has a separate web-site where they have virtually all the documents from some 7,500 dockets opened since 1998 (excluding a few files on climate change and other externalities). Recently the ability to word search across dockets was added.

Many other state agencies post files of active procedures.

By contrast, The Department of Health's Clean Air Branch agreed to a contested case proceeding regarding Puna Geothermal Ventures 5-year air permit. Madame Pele caused the docket to be suspended. In the two-and-a-half years that the docket was active, some but not all parties were identified, no listing of issues was established, no timeline was developed, and the hearing officer stated that the docket had no specific files located in no central location. When he needed a file, he asked DOH for it.

The Hawai'i Supreme Court relies only on electronic filing and electronic notifications. Simply. Easy. Paperless.

Agencies need to decrease cutting down trees to produce documents which are all in electronic format to begin with. Transparency and accountability are key.

Mahalo
Henry Curtis
Executive Director

SB-757

Submitted on: 1/30/2019 2:33:00 PM

Testimony for GVO on 1/31/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: