

JAN 27 2021

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# A BILL FOR AN ACT

RELATING TO CONTESTED CASES.

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

1       SECTION 1. More efficient, yet still effective, contested  
2 case hearings can be conducted by interactive conference  
3 technology, which is already being utilized for public meetings  
4 in accordance with section 92-3.5, Hawaii Revised Statutes. The  
5 purpose of this Act is to authorize contested case hearings to  
6 be conducted through the use of interactive conference  
7 technology.

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

10       "**§91-9 Contested cases; notice; hearing; records.** (a)  
11 Subject to section 91-8.5, in any contested case, all parties  
12 shall be afforded an opportunity for hearing after reasonable  
13 notice.

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

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

16       (2) The legal authority under which the hearing is to be  
17 held;

1           (3) The particular sections of the statutes and rules  
2           involved;

3           (4) An explicit statement in plain language of the issues  
4           involved and the facts alleged by the agency in  
5           support thereof; provided that if the agency is unable  
6           to state such issues and facts in detail at the time  
7           the notice is served, the initial notice may be  
8           limited to a statement of the issues involved, and  
9           thereafter upon application a bill of particulars  
10          shall be furnished;

11          (5) The fact that any party may retain counsel if the  
12          party so desires and the fact that an individual may  
13          appear on the individual's own behalf, or a member of  
14          a partnership may represent the partnership, or an  
15          officer or authorized employee of a corporation or  
16          trust or association may represent the corporation,  
17          trust, or association.

18          (c) The hearing may be held by interactive conference  
19 technology that allows interaction by the agency, any party, and  
20 counsel if retained by the party, and the notice identifies all  
21 of the locations where the agency, party, and counsel if  
22 retained by the party can be physically present. A contested

1 case hearing held by interactive conference technology shall be  
2 recessed for up to one hour when audio communication cannot be  
3 maintained; provided that the hearing may reconvene when only  
4 audio communication is reestablished. If audio-only  
5 communication is reestablished, then each speaker shall be  
6 required to state the speaker's name prior to making remarks.  
7 Interactive conference technology means any form of audio or  
8 audio and visual conference technology, including  
9 teleconference, videoconference, and voice over internet  
10 protocol, that facilitates interaction between the agency, any  
11 party, and counsel if retained by the party.

12       ~~[(+e)]~~ (d) Opportunities shall be afforded all parties to  
13 present evidence and argument on all issues involved~~[-]~~;  
14 provided that, if the hearing is held by interactive conference  
15 technology that evidence can be submitted and exchanged by email  
16 or facsimile.

17       ~~[(+d)]~~ (e) Any procedure in a contested case may be modified  
18 or waived by stipulation of the parties and informal disposition  
19 may be made of any contested case by stipulation, agreed  
20 settlement, consent order, or default.

21       ~~[(+e)]~~ (f) For the purpose of agency decisions, the record  
22 shall include:

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- (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;
- (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."

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

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_



BY REQUEST

# S.B. NO. 1126

**Report Title:**

Contested Cases; Interactive Conference Technology

**Description:**

Authorizes contested case hearings to use interactive conference technology.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Hawaiian Home Lands

TITLE: A BILL FOR AN ACT RELATING TO CONTESTED CASES.

PURPOSE: Authorize contested case hearings to use interactive conference technology.

MEANS: Amend section 91-9, Hawaii Revised Statutes.

JUSTIFICATION: The use of interactive conference technology even in court proceedings is becoming more common. Efficient, and still effective, contested case hearings may be conducted by allowing the use of interactive conference technology, which would allow for remote hearings and increase access for all parties.

Impact on the public: The contested case hearing process will be more efficient.

Impact on the department and other agencies: All state agencies would have the option to conduct contested cases by using interactive conference technology.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HHL 625.

OTHER AFFECTED AGENCIES: State agencies.

EFFECTIVE DATE: Upon approval.