

S.B. NO. 3159

JAN 24 2024

A BILL FOR AN ACT

RELATING TO CONTESTED CASES.

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

1 SECTION 1. The legislature finds that requiring agencies
2 to hold multiple contested case hearings on matters that are
3 identical or substantially similar that have been previously
4 adjudicated impedes agencies from acting to address critical
5 issues, could lead to conflicting decisions creating ambiguity,
6 and is unduly burdensome on agency resources. The purpose of
7 this Act is to clarify that a contested case hearing is not
8 required under such circumstances and to include administrative
9 contested case proceedings to be within the scope of the
10 vexatious litigant statute, chapter 634J, Hawaii Revised
11 Statutes.

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

14 "**§91-9 Contested cases; notice; hearing; interactive**
15 **conference technology; records.** (a) Subject to section 91-8.5,
16 in any contested case, all parties shall be afforded an
17 opportunity for hearing after reasonable notice.

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

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- 1 (1) The date, time, place, and nature of hearing;
- 2 (2) The legal authority under which the hearing is to be
- 3 held;
- 4 (3) The particular sections of the statutes and rules
- 5 involved;
- 6 (4) An explicit statement in plain language of the issues
- 7 involved and the facts alleged by the agency in
- 8 support thereof; provided that if the agency is unable
- 9 to state the issues and facts in detail at the time
- 10 the notice is served, the initial notice may be
- 11 limited to a statement of the issues involved, and
- 12 thereafter upon application a bill of particulars
- 13 shall be furnished; and
- 14 (5) The fact that any party may retain counsel if the
- 15 party so desires and the fact that an individual may
- 16 appear on the individual's own behalf, or a member of
- 17 a partnership may represent the partnership, or an
- 18 officer or authorized employee of a corporation or
- 19 trust or association may represent the corporation,
- 20 trust, or association.
- 21 (c) The hearing may be held by interactive conference
- 22 technology that allows interaction by the agency, any party, and

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1 counsel if retained by the party, and the notice identifies
2 electronic contact information for each agency, party, and
3 counsel if retained by the party. A contested case hearing held
4 by interactive conference technology shall be recessed for up to
5 one hour when audio communication cannot be maintained; provided
6 that the hearing may reconvene when only audio communication is
7 reestablished. If audio-only communication is reestablished,
8 then each speaker shall state the speaker's name prior to making
9 remarks.

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

14 (e) Any procedure in a contested case may be modified or
15 waived by stipulation of the parties and informal disposition
16 may be made of any contested case by stipulation, agreed
17 settlement, consent order, or default.

18 (f) For the purpose of agency decisions, the record shall
19 include:

20 (1) All pleadings, motions, intermediate rulings;

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- 1 (2) Evidence received or considered, including oral
2 testimony, exhibits, and a statement of matters
3 officially noticed;
- 4 (3) Offers of proof and rulings thereon;
- 5 (4) Proposed findings and exceptions;
- 6 (5) Report of the officer who presided at the hearing; and
- 7 (6) Staff memoranda submitted to members of the agency in
8 connection with their consideration of the case.
- 9 (g) It shall not be necessary to transcribe the record
10 unless requested for purposes of rehearing or court review.
- 11 (h) No matters outside the record shall be considered by
12 the agency in making its decision except as provided herein.
- 13 (i) For the purposes of this subsection, "interactive
14 conference technology" means any form of audio or audio and
15 visual conference technology, including teleconference,
16 videoconference, and voice over internet protocol, that
17 facilitates interaction between the agency, any party, and
18 counsel if retained by the party.
- 19 (j) A contested case hearing may be denied when a
20 requesting party alleges or raises a cause of action, claim,
21 controversy, issue, fact, or substantive law that is identical

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1 or substantially similar to another administrative matter that
2 has been finally adjudicated as follows:

3 (1) A final decision or order has been issued after a
4 contested case hearing in accordance with chapter 91
5 that has not been appealed from or for which the time
6 to seek review has lapsed; or

7 (2) A final decision has been issued by a court of last
8 resort reviewing a decision or order from a contested
9 case;

10 unless the proponent of the new contested case is able to show
11 newly discovered evidence that could not, with reasonable
12 diligence, have been discovered and offered at the prior
13 contested case hearing that changes the outcome of the case. A
14 denial issued pursuant to this section shall identify the
15 previous administrative matter and reference the previous cause
16 of action, claim, controversy, issue, fact, or substantive law
17 and include findings that it was finally adjudicated.

18 As used in this section, "a final decision has been issued
19 by a court of last resort" shall mean a final decision or
20 judgment from a Hawaii court of competent jurisdiction in which
21 an appeal or further review is not or no longer available."

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1 SECTION 3. Section 634J-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+] §634J-1[+] **Definitions.** Unless otherwise clear from the
4 context, as used in this chapter:

5 "Court" includes a tribunal in a contested case proceeding
6 under chapter 91.

7 "Defendant" means a person (including a corporation,
8 association, partnership, firm, or governmental entity) against
9 whom litigation is brought or maintained, or sought to be
10 brought or maintained[-], including but not limited to a
11 respondent in a contested case proceeding initiated under
12 chapter 91.

13 "In propria persona" means on the person's own behalf
14 acting as plaintiff.

15 "Litigation" means any civil action or contested case
16 proceeding, commenced, maintained, or pending in any state or
17 federal court of record[-], or pending before an agency under
18 chapter 91.

19 "Plaintiff" means the person, including an attorney at law
20 acting on the attorney's own behalf, who commences, institutes,
21 or maintains litigation or causes it to be commenced,
22 instituted, or maintained, [~~including an attorney at law acting~~

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1 ~~on the attorney's own behalf.]~~ or the petitioner who commences,
2 institutes, or maintains a contested case proceeding or hearing
3 or causes it to be commenced, instituted, or maintained.

4 "Security" means an undertaking to assure payment, to the
5 party for whose benefit the undertaking is required to be
6 furnished, of the party's reasonable expenses, including
7 attorney's fees, and not limited to taxable costs incurred in or
8 in connection with a litigation instituted, caused to be
9 instituted, or maintained or caused to be maintained by a
10 vexatious litigant.

11 "Vexatious litigant" means a plaintiff who does any of the
12 following:

13 (1) In the immediately preceding seven-year period has
14 commenced, prosecuted, or maintained in propria
15 persona at least five civil actions other than in a
16 small claims court [~~that have been~~], or at least five
17 administrative contested case proceedings that have
18 been:

- 19 (A) Finally determined adversely to the plaintiff; or
20 (B) Unjustifiably permitted to remain pending at
21 least two years without having been brought to
22 trial or hearing;

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- 1 (2) After litigation has been finally resolved against the
2 plaintiff, relitigates or attempts to relitigate in
3 propria persona and in bad faith, either:
- 4 (A) The validity of the determination against the
5 same defendant or defendants as to whom the
6 litigation was finally determined; or
- 7 (B) The cause of action, claim, controversy, or any
8 of the issues of fact or law, determined or
9 concluded by the final determination against the
10 same defendant or defendants as to whom the
11 litigation was finally determined;
- 12 (3) In any litigation while acting in propria persona,
13 files, in bad faith, unmeritorious motions, pleadings,
14 or other papers, conducts unnecessary discovery, or
15 engages in other tactics that are frivolous or solely
16 intended to cause unnecessary delay; or
- 17 (4) Has previously been declared to be a vexatious
18 litigant by any state or federal court of record, or
19 by a tribunal in a contested case proceeding in any
20 action or proceeding based upon the same or
21 substantially similar facts, transaction, or
22 occurrence."

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

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

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

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INTRODUCED BY: *Mark D. ...*

9

BY REQUEST

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Report Title:

Administrative Procedure; Contested Cases, Vexatious Litigants

Description:

Clarifies that a contested case hearing is not required when a tribunal has already issued a final decision and order in a substantially similar contested case proceeding that was not appealed, or where a court of last resort has already issued a final decision on the proceeding or on other substantially similar matters.

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: Land and Natural Resources

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

PURPOSE: To clarify that a contested case hearing is not required when an agency has already decided a contested case proceeding involving substantially similar issues or parties which was not appealed, or where a court of last resort has already issued a final decision on other substantially similar matters.

MEANS: Amend sections 91-9 and 634J-1, Hawaii Revised Statutes.

JUSTIFICATION: Requiring agencies to hold multiple contested case hearings on matters that are substantially similar impedes agencies from acting to address critical issues and is unduly burdensome on agency resources. Additionally, having multiple contested cases on substantially similar matters could lead to conflicting decisions and greater legal ambiguity.

This bill seeks to remove the requirement of conducting multiple contested case hearings on substantially similar matters where the party or parties requesting the hearing can make no bona fide showing as to why new or additional proceedings are warranted.

Impact on the public: This bill would facilitate the Department's ability to act in the public interest by preventing the exploitation of the contested case process, while also protecting due process of a party seeking a contested case for a matter that has not previously been adjudicated.

Impact on the Department and other agencies: This bill would relieve the Department of the burden of having to conduct multiple

contested cases on substantially similar matters.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: Department of the Attorney General; agencies that conduct contested case hearings.

EFFECTIVE DATE: Upon approval.