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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. The legislature finds that requiring agencies  
2 to hold multiple contested case hearings on matters that are  
3 identical or arise from the same factual situation that have  
4 been previously adjudicated impedes agencies from acting to  
5 address critical issues, could lead to conflicting decisions  
6 creating ambiguity, and is unduly burdensome on agency  
7 resources.

8           The purpose of this Act is to clarify that a contested case  
9 hearing is not required under such circumstances and to include  
10 administrative contested case proceedings to be within the scope  
11 of the vexatious litigant statute, chapter 634J, Hawaii Revised  
12 Statutes.

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

15           "**§91-9 Contested cases; notice; hearing; interactive**  
16 **conference technology; records.** (a) Subject to section 91-8.5,



1 in any contested case, all parties shall be afforded an  
2 opportunity for hearing after reasonable notice.

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

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

5 (2) The legal authority under which the hearing is to be  
6 held;

7 (3) The particular sections of the statutes and rules  
8 involved;

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

17 (5) The fact that any party may retain counsel if the  
18 party so desires and the fact that an individual may  
19 appear on the individual's own behalf, or a member of  
20 a partnership may represent the partnership, or an  
21 officer or authorized employee of a corporation or



1 trust or association may represent the corporation,  
2 trust, or association.

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

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

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



1 (f) For the purpose of agency decisions, the record shall  
2 include:

- 3 (1) All pleadings, motions, intermediate rulings;
- 4 (2) Evidence received or considered, including oral  
5 testimony, exhibits, and a statement of matters  
6 officially noticed;
- 7 (3) Offers of proof and rulings thereon;
- 8 (4) Proposed findings and exceptions;
- 9 (5) Report of the officer who presided at the hearing; and
- 10 (6) Staff memoranda submitted to members of the agency in  
11 connection with their consideration of the case.

12 (g) It shall not be necessary to transcribe the record  
13 unless requested for purposes of rehearing or court review.

14 (h) No matters outside the record shall be considered by  
15 the agency in making its decision except as provided herein.

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



1        (j) A contested case hearing may be denied when a  
2 requesting party alleges or raises a cause of action, claim,  
3 controversy, issue, fact, or substantive law that is identical  
4 or arising from the same factual situation as another  
5 administrative matter that has been finally adjudicated as  
6 follows:

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

11        (2) A final decision has been issued by a court of last  
12 resort reviewing a decision or order from a contested  
13 case;

14 unless the proponent of the new contested case is able to show  
15 newly discovered evidence that could not, with reasonable  
16 diligence, have been discovered and offered at the prior  
17 contested case hearing that changes the outcome of the case.

18        (k) A denial issued pursuant to this section shall include  
19 the agency's findings of facts and conclusions of law within the  
20 body of the decision; provided that a previous contested case  
21 may be utilized in whole or in part.



1        (1) As used in this section, "a final decision has been  
2 issued by a court of last resort" means a final decision or  
3 judgment from a Hawaii court of competent jurisdiction in which  
4 an appeal or further review is not or no longer available."

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

7        "[+]§634J-1[+] **Definitions.** Unless otherwise clear from  
8 the context, as used in this chapter:

9        "Court" includes a tribunal in a contested case proceeding  
10 under chapter 91.

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

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

19        "Litigation" means any civil action or contested case  
20 proceeding, commenced, maintained, or pending in any state or



1 federal court of record[-], or pending before an agency under  
2 chapter 91.

3 "Plaintiff" means the person, including an attorney at law  
4 acting on the attorney's own behalf, who commences, institutes,  
5 or maintains litigation or causes it to be commenced,  
6 instituted, or maintained, [~~including an attorney at law acting~~  
7 ~~on the attorney's own behalf.~~] or the petitioner who commences,  
8 institutes, or maintains a contested case proceeding or hearing  
9 or causes it to be commenced, instituted, or maintained.

10 "Security" means an undertaking to assure payment, to the  
11 party for whose benefit the undertaking is required to be  
12 furnished, of the party's reasonable expenses, including  
13 attorney's fees, and not limited to taxable costs incurred in or  
14 in connection with a litigation instituted, caused to be  
15 instituted, or maintained or caused to be maintained by a  
16 vexatious litigant.

17 "Vexatious litigant" means a plaintiff who does any of the  
18 following:

19 (1) In the immediately preceding seven-year period has  
20 commenced, prosecuted, or maintained in propria  
21 persona at least five civil actions other than in a



1           small claims court [~~that have been:~~], or at least five  
2           administrative contested case proceedings that have  
3           been:

- 4           (A) Finally determined adversely to the plaintiff; or
- 5           (B) Unjustifiably permitted to remain pending at
- 6                 least two years without having been brought to
- 7                 trial or hearing;

8           (2) After litigation has been finally resolved against the  
9           plaintiff, relitigates or attempts to relitigate in  
10           propria persona and in bad faith, either:

- 11           (A) The validity of the determination against the
- 12                 same defendant or defendants as to whom the
- 13                 litigation was finally determined; or
- 14           (B) The cause of action, claim, controversy, or any
- 15                 of the issues of fact or law, determined or
- 16                 concluded by the final determination against the
- 17                 same defendant or defendants as to whom the
- 18                 litigation was finally determined;

19           (3) In any litigation while acting in propria persona,  
20           files, in bad faith, unmeritorious motions, pleadings,  
21           or other papers, conducts unnecessary discovery, or





1 engages in other tactics that are frivolous or solely  
2 intended to cause unnecessary delay; or  
3 (4) Has previously been declared to be a vexatious  
4 litigant by any state or federal court of record, or  
5 by a tribunal in a contested case proceeding in any  
6 action or proceeding based upon the same or  
7 substantially similar facts, transaction, or  
8 occurrence."

9 SECTION 4. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

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

14 SECTION 6. This Act shall take effect on April 14, 2112.



**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 contested case proceeding arising from the same factual situation 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. Takes effect 4/14/2112.  
(SD1)

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

