

Small Business Regulatory Review Board Meeting

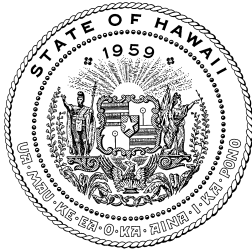
Thursday, April 18, 2019

10:00 a.m.

Leiopapa A Kamehameha Building

(State Office Tower)

**Conference Room 405 – 235 South Beretania Street,
Honolulu, HI 96813**



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrb.info@hawaii.gov
Website: dbedt.hawaii.gov/sbrb

Tel: 808 586-2419

AGENDA

Thursday, April 18, 2019 ★ 10:00 a.m.

Leiopapa A Kamehameha Building - State Office Tower

Conference Room 405

235 South Beretania Street, Honolulu, HI 96813

David Y. Ige
Governor

Michael
McCartney
DBEDT Director

Members

Anthony Borge
Chairperson
O'ahu

Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice
Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy
Atmospera-Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Introduction of New Board Members

III. Approval of March 21, 2019 Meeting Minutes

IV. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Title 8, Department of Liquor Control, Subtitle 1, Liquor Commission, promulgated by Department of Liquor Control, County of Maui, as follows – **Discussion Leader – Mary Albitz**
- Chapter 101, **Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui;**
 - Chapter 102, **Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui**
- B. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) Title 16, **Corporate Governance Annual Disclosure**, promulgated by Department of Commerce and Consumer Affairs (DCCA) – **Discussion Leader – Mark Ritchie**
- C. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 185, **Annual Audited Financial Reporting**, promulgated by DCCA – **Discussion Leader – Mark Ritchie**
- D. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 186, **Certificate of Need Program**, promulgated by Department of Health – **Discussion Leader – Harris Nakamoto**

V. Legislative Matters

A. Update on the following Legislative Measures:

- Senate Bill 1348 SD1 HD1 **Relating to the Small Business Regulatory Review Board** – Clarifies the intent of the small business regulatory review board when reviewing state and county administrative rules and ordinances that impact small business, and appropriates funds
- Governor's Message 559 Submitting for Consideration of the Gubernatorial Nomination of **Mr. Jonathan Shick** to the Small Business Regulatory Review Board for a term to expire June 30, 2022

- c. Governor's Message 624 Submitting for Consideration of the Gubernatorial Nomination of **Mr. James Lee** to the Small Business Regulatory Review Board for a term to expire June 30, 2020
- d. Governor's Message 625 Submitting for Consideration of the Gubernatorial Nomination of **Mr. Garth Yamanaka** to the Small Business Regulatory Review Board for a term to expire June 30, 2023

VI. Administrative Matters

- A. Update on the following Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes, as follows
 - a. Meetings with Board Members and State Department Directors
 - b. Changes to the Board's Website
 - c. May 4, 2019 - Hawaii Small Business Fair at Leeward Community College
 - d. May 8th and 9th - Hawaii Small Business Conference at Maui Arts & Cultural Center

VII. Next Meeting: Thursday, May 16, 2019, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

VIII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2419 at least three (3) business days prior to the meeting so arrangements can be made.

II. Introduction of New Board Members

III. Approval of March 21, 2019 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

March 21, 2019

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building
(State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:01 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto
- Nancy Atmospera-Walch
- Mary Albitz
- Mark Ritchie

ABSENT MEMBERS:

- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

- II. **APPROVAL OF FEBRUARY 26, 2019 MINUTES**

Mr. Nakamoto made a motion to accept the February 26, 2019 minutes, as presented.

Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

- III. **OLD BUSINESS – After Public Hearing**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 235 Income Tax Law, promulgated by Department of Taxation (DoTax)

- a. Section 235-98 Returns; form, verification; time of filing

Discussion leader and Second Vice Chair Yamamoto stated that the proposed amendments provide an automatic six-month extension for the deadline to file income tax returns to businesses without filing an application first; whereas prior to the amendments, only consumers were given an automatic extension. The amendments are straight-forward, non-controversial, and there was no testimony at the public hearing.

Second Vice Chair Yamamoto made a motion to forward the proposed rules to the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

b. Section 235-1.14(d) Substantial gainful business or occupation; defined

Discussion leader and Second Vice Chair Yamanaka explained that the purpose of the amendments is to prevent taxpayers who are blind, deaf or totally disabled, with substantially large gross business income from taking business deductions to reduce net income below \$30,000 and to receive income and general excise tax benefits designed for persons and businesses incapable of generating substantial income for themselves due to disability.

During the public hearing, there were no testimonies or feedback for or against the changes. Ms. Albitz stated that DoTax does not do a very good job at reaching out to the stakeholders. Chair Borge noted that that Board's response letter to DoTax and the Governor should include the recommendation that, in the future, DoTax reach out to the stakeholders, particularly situations like this where there is a blind vendor association; Mr. Ritchie added that it should not be difficult to determine who these stakeholders would be.

Ms. Albitz made a motion to move the proposed amendments to the Governor for adoption and to recommend that the department try to engage small businesses impacted by the rule changes through various means of outreach including business organizations and trade associations. Second Vice Chair Yamamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 237, Income Tax Law, Section 29-57-01 Exemption for intangible property used outside the state, promulgated by DoTax

Discussion leader and Second Vice Chair Yamamoto explained that the new section defines where intangible property is used for purposes of the general excise tax exemption for gross income received from intangible property used outside the state. Specifically, the section allows when intangible property is used, it is based on whether the customer is a business, individual, military, or government. It was noted that the law was intended to close a "loophole" for clarification purposes when different states are involved. Chair Borge stated that there was no commentary made during the public hearing; Ms. Albitz added that, again, DoTax did not do a very good job at reaching out to the stakeholders.

Second Vice Chair Yamamoto made a motion to move the proposed rules to the Governor for adoption and to recommend that in the future DoTax attempt to engage small businesses impacted by the proposed rule changes. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 157, Examination and Immunization – promulgated by Department of Health (DOH)

Dr. Sarah Park, Chief, and Mr. Ronald Balajadia, Branch Chief, at DOH's Disease Outbreak Control Division, explained that the proposed changes to the rules are to update and insure that, going forward, physicians are able to refer to and follow ACIP (Advisory Committee on Immunization Practices). ACIP is a national, mandated committee that includes consumer

groups, experts, ex officio members, and others who discuss vaccines on a regulator basis. The rules, by default, exclude the tuberculosis control portion because those regulations have since split off into its own rules. Discussion leader, Mr. Nakamoto explained that the rule changes are intended to align and create specific guidelines which is a benefit to small businesses.

Public hearings were held on Oahu and on the neighbor islands. Multiple testifiers, individuals, organizations and small businesses attended the public hearings with many both in opposition as well as in support of the rule changes. Those against the rules were mostly against immunization, and the small businesses, such as physicians, provided mostly support for the immunization.

Testifier, Ms. Theresa Chao, a pharmacist for 30+ years, has worked with vaccines over the past several years so she understands how and why they have evolved. She stated that the public hearing notice was limited to DOH's and the Lieutenant Governor's websites, so daycare centers and other similar-type centers would not be privy to the notice; she added that Senator Russell Ruderman was instrumental in having public hearings on the neighbor islands. She believes that at some of the public hearings because individual testimonies were limited to short periods of time and to smaller venues, it resulted in not hearing the full testimonies that were provided. Ms. Chao paraphrased her written testimony which she left with the Board.

Ms. Dawn Poicuni, individual testifier and a representative of HFIC (Hawaii for Informed Consent) expressed the impact of these rules on small business/pre-schools as well as the risks and concerns about giving flu shots and other vaccines to children. She recommended that this Board delay its recommendation of these rules and invite principals of public and private schools to discuss resulting effects of vaccinations.

Ms. Albitz made a motion to go into executive session at 10:44 a.m.; Mr. Nakamoto seconded the motion, and the Board members unanimously agreed. The motion was passed under Section 92-5(a)(4), to consult with the Board's attorney concerning the Board's powers, duties, immunities, privileges and liabilities as it relates to discussing HAR Chapter 11-157, Examination and Immunization. The executive session ended at 10:48 a.m.

In response to the question as to what State of Hawaii exemptions are available, Dr. Park stated that there are medical exemptions; for example, if someone is undergoing chemotherapy he/she may be requested by the patient's physician for an exemption. Another automatic exemption is for religious purposes where a parent simply states that it is against their religious beliefs. Dr. Park also explained that DOH is not privy to "who" the people are requesting exemptions because only the "number" of exemptions from the schools are conveyed to the State; this is done on a yearly basis.

Mr. Nakamoto made a motion to move the proposed rules to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Discussion and Action on Governor's Message 624, Submitting for Consideration for the Gubernatorial Nomination of Mr. James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2020

Second Vice Chair Yamamoto referred Mr. Lee as a member of this Board because he believed Mr. Lee would be a good candidate due to his affiliation with W.H. Shipman, Ltd. W.H. Shipman is a large landowner in the Hilo District of the Big Island that has a wide-range of access to farmers, businesses, and industrial and commercial entities.

Vice Chair Cundiff made a motion to support the gubernatorial nomination of Mr. James (Kimo) Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2020. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Governor's Message 625, Submitting for Consideration for the Gubernatorial Nomination for Mr. Garth Yamanaka to the Small Business Regulatory Review Board for a term to expire June 30, 2023

Ms. Albitz made a motion to support the gubernatorial nomination of Mr. Garth Yamanaka to the Small Business Regulatory Review Board. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Update on Governor's Message 559, Submitting for Consideration of the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2022

This measure has yet to be scheduled for a hearing with the Senate Committee on Energy, Economic Development and Tourism.

D. Update on Senate Bill 1348 Relating to the Small Business Regulatory Review Board – Clarifies the intent of the small business regulatory review board's powers when reviewing state and county administrative rules that impact small business by changing "ordinance" to "rules" when making recommendations to the county council or the mayor for appropriate action

Chair Borge reminded the members that in the original bill, "ordinances" was deleted so there would be no question as to what the Board reviews; other changes to the bill reflect some minor housekeeping measures. However, Senate Bill 1348 SD1 brought "ordinances" back into the bill. Therefore, Chair Borge met with House Representative Angus McKelvey to go over why the Board wanted "ordinances" out of the statute. Additionally, funding of \$50,000 will be added to the bill to assist the Board with travel and outreach expenses.

Mr. Ritchie made a motion to go into executive session at 11:04 a.m.; Mr. Nakamoto seconded the motion, and the Board members unanimously agreed. The motion was passed under Section 92-5(a)(4), to consult with the Board's attorney concerning the Board's powers, duties, immunities, privileges and liabilities as it relates to discussing Senate Bill 1348 SD1. The executive session ended at 11:12 a.m.

Mr. Ritchie stated that in order for small businesses to object to an ordinance that is passed by one of the Counties, they would need to work with their County Council members and the Mayors. It was noted that while ordinances are County Council specific, the Board does review County administrative rules.

Second Vice Chair Yamanaka recommended that the Board support the removal of the term "ordinances" under Chapter 201M-5(a), HRS, to clarify the statute, verify the Board's intended purview, and to avoid the potential heavy workload. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

a. Review and Action on the Board's Website Changes, to date

The members reviewed and discussed the Board's mock webpage that was created by Hawaii Information Consortium. Although the website is not yet interactive, Phase 1 is now complete; the \$5,000 payment is in process.

Because the Budget & Finance Department approved the funding for the final payment of \$12,052.35, Phase II is now in the beginning stages.

VI. NEXT MEETING – The next meeting is scheduled for Thursday, April 18, 2019, in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Mr. Nakamoto made a motion to adjourn the meeting and Ms. Albitz seconded the motion; the meeting adjourned at 11:35 a.m.

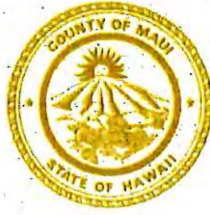
IV. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Title 8 Department of Liquor Control, Subtitle 1, Liquor Commission, promulgated by Department of Liquor Control, County of Maui, as follows:**
- a. Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui;**
 - b. Chapter 102, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui**

MICHAEL P. VICTORINO
Mayor

GLENN MUKAI
Director

GEORGETTE C.R. TYAU
Deputy Director



RECEIVED

By JetaimeA at 12:05 pm, Apr 02, 2019

DEPARTMENT OF LIQUOR CONTROL
COUNTY OF MAUI
2145 KAOHU STREET, ROOM 105
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 243-7753
FACSIMILE: (808) 243-7558

MEMORANDUM

TO: Anthony Borge, Chairperson
Small Business Regulatory Review Board/DBEDT

FROM: Glenn Mukai, Director
Department of Liquor Control, County of Maui

DATE: April 2, 2019

SUBJECT: **Proposed Rule Amendments for Department of Liquor Control, County of Maui, Title 8, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, and Chapter 102, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui**

Pursuant to Chapters 91 and 92, Hawaii Revised Statutes, the County of Maui Liquor Commission has provided notice of a public hearing for the purpose of amending certain subsections of the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui and Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui. Enclosed is the Notice of Public Hearing which includes the proposed rule amendments and a summary for your review, comments and suggestions.

The Department of Liquor Control, County of Maui, Small Business Review and Advisory Committee met on 01/14/19 and 02/25/19 to review the proposed amendments and made the following findings:

1. The proposed rule amendments will not cause any direct or significant economic burden upon small business.
2. The proposed rule amendments will not impact or be directly related to the formation, operation or expansion of a small business.
3. The proposed rule amendments will greatly assist and not adversely affect small business.

The Department of Liquor Control, County of Maui, Small Business Review and Advisory Committee consists of individuals representing various classes of liquor licenses and Lisa Paulson, Executive Director of the Maui Hotel & Lodging Association.

Should you require further information or assistance, please do not hesitate to call me at (808) 243-7754.

RECEIVED
By JetaimeA at 12:15 pm, Apr 02, 2019

**PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Department or Agency: Department of Liquor Control, County of Maui
Administrative Rule Title and Chapter: (Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui Chapter 101 and Chapter 102, Rules Governing
Chapter Name: Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui
Contact Person/Title: Glenn Mukai, Director
Phone Number: 1-808-243-7485
E-mail Address: liquor@mauicounty.gov **Date:** April 2, 2019

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No (If Yes, please provide webpage address and when and where rules may be viewed in person)
<http://mauicounty.gov/1004/RulesLaws>
(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business? Yes No (If No, no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes No (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes No (If Yes, no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
 - b. Amount of the proposed fee or fine and the percentage increase.
 - c. Reason for the new or increased fee or fine.
 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
-
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 588-2594

Email: dbedt.sbrrb@hawaii.gov

This Statement may be found on the

SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>

RECEIVED

By JetaimeA at 12:15 pm, Apr 02, 2019

NOTICE OF PUBLIC HEARING

Pursuant to Section 91-3(a), Hawaii Revised Statutes, the Liquor Control Commission of the County of Maui (the "Liquor Commission") hereby provides notice of a public hearing for the purpose of amending the following sections of Chapter 101 of the Department's Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, and Chapter 102 of the Department's Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui.

The entire text of the proposed rule amendments is listed below, and is further summarized as follows:

SUMMARY:

1. Section 08-101-5: Definitions.
 - Adds new definitions of
 - Drink
 - Standard drink
 - Hosted bar
 - No host bar

2. Section 08-101-25: Hours for the sale, service, and consumption of liquor in licensed premises.
 - Permits dispensers and restaurants to sell liquor for off-premises consumption from 6:00 am to 11:00 pm.

 - Expands the hours of operation for manufacturers, wholesalers, and brewpubs.

 - Allows for the operation of licensed premises prior to or beyond the prescribed hours provided that an employee approved by the Director is in active charge of the premises.

3. Section 08-101-30: Application.
 - Deletes the requirements of Department of Health clearance, federal tax clearance, and guaranty or bond.

 - Provides that the Director may approve a change in location application, without hearing, for Class 9 (tour or cruise vessel) and Class 8 (transient vessel) licenses.

4. Section 08-101-31: No license issued, when.

-Allows the commission to issue a license when an applicant is validly challenging a tax assessment.

5. Section 08-101-33: Renewal of license.

-Deletes requirement of a federal tax clearance.

6. Section 08-101-35: Temporary or permanent closing of licensed premises.

-Instead of cancelling its license, allows a licensee to place its license with the commission for "safekeeping".

7. Section 08-101-50: Fees for liquor license, temporary license, duplicate license; solicitors' and representatives' permits; certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof; and others and terms.

-Provides for Special, per day, fundraising event fee of \$ 0.

-Distinguishes Classes 14, 16 and 18 for purposes of calculating the percentage fee for on premises and off premises sales.

8. Section 08-101-52: Guaranty.

-Deletes entire section.

9. Section 08-101-69: Practice to promote excessive consumption of liquor; prohibited.

-Clarifies that where pairing (food and liquor) at fundraising events occur, the volume of wine need not be disclosed.

10. Section 08-101-70: Employee approved by the director.

-Provides for an exemption for Class 8, transient vessel licensees.

11. Section 08-101-74(a): Requirement for registration of employees or as an employee approved by the director.
 - Deletes requirement of proof of social security number.
12. Section 08-101-77: Certification certificate for "employee approved by the director", counties.
 - Deletes entire section.
13. Section 08-101-84(b): Preparation of drinks; clearing of tables.
 - Deletes the prohibition of no more than two drinks at one time.
 - Permits "flights" or samplers to be served.
14. Section 08-101-86: Price list posted.
 - Deletes requirement that the volume of wine pour be disclosed for wine sold by the glass.
15. Section 08-101-87: Disposal of liquor.
 - provides for easier methods of disposing of remaining inventory by licensee.
16. Section 08-101-97: Exclusive control.
 - Unless otherwise authorized by the commission, requires licensed premises to be open to the general public.
 - Prohibits licensees from discriminatory practices in its right to deny service.
17. Section 08-101-99(a): Non-consumption areas.
 - Clarifies areas for dancing, music and entertainment.

18. Section 08-101-100: Deliveries by manufacturers, wholesalers, retailers; peddling prohibited; exception.
 - Substitutes the term "industry member" for manufacturer or wholesaler.
19. Section 08-101-106: Manufacturer, brewpub, and wholesale dealer licensees; special restrictions.
 - Substitutes the term "industry member" for manufacturer or wholesaler.
 - Provides, by permit, industry member staff to conduct tasting or sampling activities.
20. Section 08-101-112: Pool buying.
 - Clarifies pool buying arrangement and agreements.
21. Section 08-101-113: new section: "Growlers" or containers used for off-premises consumption.
 - Clarifies and defines what containers are permitted for off-premises consumption.
22. Section 08-101-114: Trade shows and/or other exhibitions.
 - Deletes the minimum size of containers used for liquor shipment purposes.
23. Section 08-102-11: Petition for adoption, amendment or repeal of rules.
 - Adds requirement that proposed rule amendments be submitted in a certain format.
24. Section 08-102-82: Transaction of business.
 - For the Liquor Adjudication Board, provide that a board member's silence or refusal to vote shall be recorded as an abstention (not as an affirmative vote), and that an abstention shall not be counted as a vote.

PROPOSED RULE AMENDMENTS

Amendments to Title 08, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, and Chapter 102, Rules Governing Administrative Practices and Procedures of the Liquor Commission and Liquor Adjudication Board of the County of Maui.

1. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding definitions to be appropriately inserted and to read as follows:

"Drink" means any quantity of wine, beer, or distilled spirits served in a container.

"Standard drink" means five (5) ounces of wine, twelve (12) ounces of beer, or one and one-half ounces of distilled spirits in a container.

"Hosted bar" means a bar at an event at which the drinks are or have been paid by the host.

"No host bar" means a bar at an event at which guests are required to pay for the drinks themselves. Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp [] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-25, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (e) to read as follows:

"(a) Hours during which licensed premises may be open for the transaction of business shall be as follows:

- (1) Dispensers, [restaurants,] clubs, transient vessels, tour or cruise vessels, and specials: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day[.], and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales for special license only.
- (2) Cabarets: any hour of the day from 8:00 a.m. to 4:00 a.m., the following day.
- (3) Hotels and condominium hotels: from 6:00 a.m. to 4:00 a.m., the following day, and any hour of the day for room service.
- (4) Retailers: any hour of the day from 6:00 a.m. to 11:00 p.m.
- (5) Manufacturers [and wholesalers]: from [5:00 a.m. to 9:00 p.m.] any hour of the day for manufacture and wholesale. 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales, and any hour of the day from

- 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales.
- (6) Brewpubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.
 - (7) Small craft producer pubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales; any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.
 - (8) Caterers: any hour of the day from 6:00 a.m. to 2:00 a.m., the following day.
 - (9) Wineries: any hour of the day for manufacture and wholesale, and from 6:00 a.m. to 11:00 p.m. for off-premises retail sales and on premises wine tasting activities.
 - (10) Restaurants: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.
 - (11) Wholesalers: any hour of the day. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

(e) Licensee may operate or be open for business for other than the sale, service, or consumption of liquor prior to or beyond the hours prescribed by the commission [, upon submitting an application and obtaining prior approval from the commission.], provided an "employee approved by the Director" shall be within and in active charge of the premises at all times. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (h) to read as follows:

"(a) Applications for liquor licenses, renewals, transfers, management agreement, solicitor's permit, or change of partner(s) in a partnership, limited liability partnership, member, manager, organizer or any person of a limited liability company, or officer(s), director(s), and stockholder(s) owning or controlling twenty-five percent or more of the outstanding stock or ownership of a corporation, thereof, and all notices of public hearing sent, and affidavits filed by applicants in connection with and part of such applications, shall be in the respective original forms and accompanied by the following necessary documentation and any other original forms or documents which may be

prescribed from time to time by the commission, which shall be considered as part of the application.

- (1) Department of health clearance;
- (2) State [and federal] tax [clearances] clearance or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments;
- [(3)](2) Floor plans (not construction plans) drawn to scale;
- [(4)](3) Tax map (drawn to scale) and list of all tax map key numbers, names and addresses of property owners, and lessees and owners of record of shares in a cooperative apartment situated within a radius of five hundred feet of the proposed premises;
- [(5)](4) Personal history statement;
- [(6)](5) Verification of any corporation, partnership, association, limited liability company, limited liability partnership, or any other entity;
- [(7)](6) Affidavit of mailing of notices of public hearing and certificate of mailing as verified by the United States Postal Service;
- [(8)](7) Transferor's gross sales report;
- [(9)](8) Transferor's endorsement of transfer;
- [(10)](9) Executed copy of agreement of sale, lease, rental agreement, which states that the premises and its operation must be under the licensee's exclusive control at all times;
- [(11)](10) Additional fee assessment agreement;
- [(12)](11) Coast guard documentation;
- [(13)](12) Zoning clearance;
- [(14)](13) Building permit;
- [(15)](14) Criminal history record check;
- [(16)](15) Stockholder's list;
- [(17)](16) Certificate of occupancy, miscellaneous inspection report, and clearance from the department of fire control (miscellaneous inspection report and clearance from the department of fire control shall indicate that all governmental regulations and administrative rules have been complied with); and
- [(18)] Guaranty or bond; and
- (19) [(17)] Copy of a federal or State governmental picture identification and social security card for each person. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

(h) A change of location application is subject to all requirements and hearings as a new application for a license[.], provided the Director may approve

a change of location within the County without hearing upon the filing of the application for change of location and any required documents for a Class 9 tour or cruise vessel license and for a Class 8, transient vessel license. The liquor license for the existing premises shall become void upon the issuance of the license for the new location. Licensee shall meet all requirements as a new license, pay the prorated license fee, and if applicable, file a gross sales report on all liquor sold under the original license and pay the assessment fee prior to the issuance of the license. All records of the original license shall be part of the licensee's change of location application and record. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-31 No license issued, when. No license shall be issued:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under the rules of the commission to a partnership, trust, association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling twenty-five percent or more of the outstanding stock are fit and proper persons to have a license;
- (2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling twenty-five percent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly-traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);
- (3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation[,] showing that the

applicant or the transferor and transferee do not owe the State government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement[;] or when the applicant or the transferor or transferee, in the case of a transfer of a license, is validly challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a signed certificate from the state tax agency, the commission shall issue a license that is valid for the period of time necessary to resolve the challenge;

- (4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling twenty-five percent or more of a limited liability company, or any officer, director or any person owning or controlling twenty-five percent or more of the outstanding stock of any corporation, trust, or association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;
- (5) To any person owning or controlling twenty-five percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling twenty-five percent or more of the outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;
- (6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;
- (7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or

any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling twenty-five percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or

- (8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (f) to read as follows:

“(f) In no case shall any application for renewal of a liquor license be accepted unless it includes the completed application, basic fee payment, State [and Federal] tax [clearances,] clearance and all other required documents. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

6. Section 08-101-35, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding a new subsection to be appropriately designated and to read as follows:

“(d) If a licensee closes out of the business for which the license is held, during the term for which the license was issued, the licensee shall within five days from the date of closing the same, give commission notice thereof and surrender the licensee’s license for cancellation, unless the licensee obtains prior approval from the commission to place its license with the commission for safekeeping. For the purposes of this subsection, “safekeeping” means the holding of a liquor license at the commission office while the licensee is not operating or expired. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

7. Section 08-101-50, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (b) and (d) to read as follows:

“(b) Basic fee. This fee shall be paid in advance not later than each June 15th, prior to the fiscal year for which the license is issued. The fee paid for a license issued on any other date shall be reckoned proportionally from the first day of the month in which the business is commenced to the expiration date or to the next payment due date.

	<u>Class</u>	<u>Kind</u>	<u>Basic Fee</u>
(1)	Manufacturers (including rectifiers)	(A) Beer	\$ 600
		(B) Wine	600
		(C) Wine manufactured from fruits grown in the State	300
		(D) Alcohol	200
		(E) Other liquors	640
(2)	Restaurant	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(3)	Wholesale	(A) General	2,400
		(B) Beer and Wine	1,800
		(C) Alcohol	200
(4)	Retail	(A) General	560
		(B) Beer and Wine	260
		(C) Alcohol	200
(5)	Dispenser	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(6)	Club		320
(8)	Transient Vessel, per day		25
		Monthly	100
		Yearly	1,200
(9)	Tour or Cruise Vessel		300
(10)	Special, per day	(A) General	25
		(B) Beer and Wine	15
		(C) Beer	10
	Fundraising event		0
(11)	Cabaret		1,200
(12)	Hotel		1,200
(13)	Caterer		600
(14)	Brewpub		1,000
(15)	Condominium Hotel		1,200

- (16) Winery 1,000
 (18) Small craft producer pub 1,000
 [Eff 7/1/00; am and comp 7/15/02; am and comp 6/18/15; am and comp 9/3/16; am and comp 3/4/17; am and comp 1/14/18; am and comp]
 (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

(d) Percentage fee.

- (1) Licensees in classes 2(A), (B) and (C), 4(A) and (B), 5(A), (B) and (C), 6, 9, 11, 12, 13, [14,] 15, [16, 18,] and temporary license, as defined in subsection (b) of this section, shall be subject to the basic fee plus a percentage fee. Licensees in class 1 (other than a class 1 manufacturer, whose wine is manufactured from fruits grown in the State), and class 3, class 14, class 16 and class 18, as defined in subsection (b) of this section, shall be subject to basic fee plus the percentage fee of retail (on premises and or off premises) liquor sales to any person for private use and consumption. Licensees in class 9, as defined in subsection (b) of this section, shall be subject to basic fee plus percentage fee of four times the total amount of liquor purchased from class 1 manufacturers' licensee, class 3 wholesale dealers' licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee. Licensee shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report.
- (2) The percentage fee for each current fiscal year shall be based upon the following formula, which shall establish the percentage to be applied to the gross sales or four times the total amount of liquor purchased of each licensee:

$$\frac{EE - BF - C}{EGS} = \text{Percentage}$$

EE = Estimated Expenditures (current fiscal year)

BF = Basic Fees (current fiscal year)

C = Carryover (prior fiscal year)

(Carryover in excess of twenty per cent as provided in section 281-17.5, HRS)

EGS = Estimated Gross Sales (prior fiscal year)

- (3) Licensees in the above-mentioned classes shall file with the director on a form prescribed by the commission a report showing true and accurate gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the director and shall be completed, filed at, and accepted by the department not later than 4:30 p.m. on July 31 after the date of expiration of such licenses, and at such other times or intervals as the director may require. If the 31st of July falls on Saturday,

Sunday, or legal County of Maui holiday, the last day for the filing of the gross liquor sales report shall be 4:30 p.m. on the first County of Maui working day following. The gross sales of liquor report shall be on the original form(s) and contain the original signature; duplicates or copies shall not be accepted.

The director may reject, refuse to accept, or return any gross liquor sales report that is inaccurate, incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or chapter 281, HRS.

- (4) After a tally of all total gross liquor sales filed by the due date by the licensees, the percentage fee due and payable shall be assessed each licensee and shall be paid within thirty-one calendar days of receipt of said assessment.
- (5) In case of transfer of such licenses, the report shall be filed and paid by the transferor immediately after approval by the commission and before the actual transfer of the license and the business of the licensee-transferor. The percentage fee based on the current applicable percentage fee shall be paid prior to the issuance of the license.
- (6) Any licensee who fails to file the report or fails to pay the percentage fee due on or before the due date shall not exercise his license after the due date and until said report has been filed or percentage fee paid, or both.
- (7) Where licenses are revoked, expired, or canceled, or the licensee closes out the business for which the license is held, the report shall be filed and the percentage fee due paid within five calendar days of the revocation, expiration, cancellation or closing out the business. The percentage fee due shall be based on the current applicable percentage.
- (8) Any licensee who fails to pay the percentage fee by the due date shall be assessed a late charge of five percent per month on the balance due until such fees are paid in full. The five percent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.
- (9) Any licensee who fails to pay the percentage fee within ninety days of the due date, shall be notified and scheduled for hearing. Upon satisfactory proof of such prohibited activity, the license shall be revoked.
- (10) No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to the rules of the commission. Records shall be maintained for a period of four years.

- (11) All licensees shall have available for inspection within the County, books or records, or both, showing all income, purchases, and expenses of their liquor license business. These books and records, including but not limited to daily sales records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Licensee or its employees shall record the sale of liquor at the time of the transaction on its daily sales records.
- (12) Any licensee who fails to pay any fee due on or before the due date or when any check, money order, or the like that is utilized by the licensee for payment of such fee is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said fee and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.
- (13) Any licensee who failed to file the gross sales of liquor report by the due date, shall be assessed the percentage fee equal to the highest percentage fee due and payable by the licensee of the same class or the highest percentage fee due and payable by any licensee if there is no licensee in the same class. [Eff 7/1/00; am and comp 7/15/02; am and comp 6/18/15; am and comp 9/3/16; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

8. Section 08-101-52, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-52 [Guaranty]. (a) The applicant or licensee shall post a bond that is approved by and filed with the department. The bond shall be not less than \$5,000 or 1.5 times the total license fees paid in the current fiscal year or for any licensee that operated less than one full fiscal year, 1.5 times the prorated amount as determined by the department to reflect the basic fee and percentage fee of a year of operation, whichever is greater, shall be irrevocable and subject to the following conditions and any other conditions and restrictions set forth by the department.

- (1) The bond cannot be canceled or terminated without written permission from the department. The bond company shall pay the total sum forthwith to the department whenever there is any attempt to cancel or terminate the bond without the expressed written

consent of the department, or the failure to submit payment for renewal by the due date for renewal by the principle.

- (2) The licensee shall automatically increase the penal sum of the bond to reflect any required increase pursuant to this section upon written notification by the director.
- (3) Payment shall be immediately paid upon written demand by the director.
- (4) The bond certificate and yearly renewal certificate shall be filed with the department.
- (5) The term of the bond shall be for the entire period of the term of the license to be issued.
- (6) The bond shall contain the name of the agent and the agent's telephone number and address.

(b) In lieu of the bond, an individual, partners of the partnership, limited liability partnership, members, managers, organizers, or any person of a limited liability company, officers, directors, and stockholders owning or controlling twenty-five per cent or more of the outstanding stock of a corporation, trust, or association that is issued a liquor license shall be personal guarantor(s) of and liable for any payments or monies due to this department. The individual, partners of the partnership, limited liability partnership, members, managers, organizers or any person of a limited liability company, officers and directors of a corporation, trust, or association that is issued a liquor license, shall be personally liable for all costs associated with the enforcement or collection, including but not limited to attorneys' fees and court costs, in the event that suit is instituted to enforce this guaranty.

(c) Licensee shall not exercise its license whenever it withdraws or cancels any bond or personal guarantee, unless the licensee files a bond whenever any personal guarantee is canceled or withdrawn or files the required personal guarantee(s) whenever any bond is canceled or withdrawn, and files its gross liquor sales report and makes payment of the percentage fee due on the date of the filing of the withdrawal or cancellation of the personal guarantee or bond. [Eff 7/1/00] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)]
(Reserved)

9. Section 08-101-69, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"(a) No licensee of any premises licensed to sell liquor for consumption on the premises shall:

- (1) Sell, advertise, or offer to sell "all the liquor you can drink", or more than two drinks of alcoholic beverage for a fixed price; or encourage, sponsor, permit or have any promotion, game or contest that

involves the consumption of liquor or the awarding of liquor as a prize.

(2) Serve an unlimited amount of liquor during a set period of time for a fixed price, provided this provision does not apply to class 2, class 9, class 10, and class 12 licensees:

(A) When such function is not open to the general public and for which a hosted bar is utilized such as weddings, private parties, and fundraising functions;

(B) Where champagne may be inclusive with brunch;

(C) Where liquor may be inclusive with luaus; [or]

(D) Where liquor may be inclusive with tour or cruise vessel operations[.]; or

(E) Where at a Class 2, 10, 12 or 18 one day fundraising event, a set amount of alcoholic beverages may be sold at a fixed price as well as an open bar may be utilized provided at a pairing (food and liquor) fundraising event, Section 08-101-86(d) of the Rules of the Liquor Commission shall not apply. [Eff 7/1/00; am and comp 4/2/07; am and comp 3/4/17; am and comp 9/25/17; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

10. Section 08-101-70, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"(a) On every licensed premises, an on-duty employee duly approved by the director must be in active charge of each premises during all times that such premises is open for business[.], provided this section shall not apply to Class 8, transient vessel except for a Class 8, transient vessels that have been issued an annual license. [Eff 7/1/00; am and comp 7/15/02; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

11. Section 08-101-74, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"(a) Persons who apply to the commission for registration or as an employee approved by the director shall present:

(1) Valid positive unexpired identification in the form of a passport with photograph, a laminated state driver's license with photograph, or other laminated government identification with photograph. School identification cards, city or county identification cards, or identification cards issued for the purpose of check cashing or other

identification cards not issued by a government agency shall be unacceptable;

- (2) The department may reject any identification presented or require a second valid identification for verification;
- (3) [Proof of a social security number;
- (4)] The completed department's registration form as prescribed by the commission. [Eff 7/1/00; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §§281-17)"

12. Section 08-101-77, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-77. [Certification certificate for "employee approved by the director", counties. Any person holding a valid certificate for "employee approved by the director" or its equivalent issued by any department or commission within the State may exchange such certificate for a valid department certificate subject to verification, an expiration date set forth by the director, submission of proper documents, and any related fees. [Eff 7/1/00] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)] Reserved"

13. Section 08-101-84, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

"(b) [No more than two drinks of any liquor at one time to an individual shall be permitted; provided however, distilled] Distilled spirits may be served in container(s) up to one quart in capacity for any special occasion upon obtaining a special permit therefor from the director. Beer or wine may be served in a container, not to exceed the U.S. liquid measurement of one quart (.946 liter) to two or more persons. Flights may be utilized where liquor may be served in several containers to a person where the total combined volume of liquor in all containers does not exceed the volume of a standard drink. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 3/4/17; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

14. Section 08-101-86, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"(a) Current prices of alcoholic beverages shall be at all times posted and exposed to view of patrons within the interior of a licensed premises authorized to sell liquor for consumption on the premises.

(b) All class 5, category D licensees shall post all beverage prices, alcoholic or non-alcoholic, and any other price for services or commodities that may be charged to the patrons.

(c) For the purpose of this section, there shall be a clear and legible sign, menu, table tents, placard, or marker which shall be in the English language, situated in a conspicuous location and clearly legible from the distance of where any patron is situated.

[(d) The volume of a wine pour shall be disclosed on the price list for wine sold by the glass.] [Eff 7/1/00; am and comp 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

15. Section 08-101-87, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"(a) In case a license is revoked, cancelled, or not renewed, the remaining liquor inventory shall be offered for credit to the wholesaler or manufacturer authorized to sell such liquor. In the event the wholesaler or manufacturer declines the offer, a written request shall be made to the director for approval to sell or transfer the remaining liquor inventory[,] to the transferee in a transfer of a license, or to utilize the remaining liquor inventory for personal use, or to destroy the remaining liquor inventory[.], or to sell or transfer to a licensee as approved by the director. The value of the remaining liquor inventory shall be indicated on the request. [Eff 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17, 281-97) (Imp: HRS §281-17)"

16. Section 08-101-97, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"(a) Licensee must have and maintain exclusive control of the premises and shall be subject to all State laws and rules of the commission, at all times. Licensee must conduct, maintain and operate all its business including the payment of all taxes, liquor purchase, and all related monies due under the license issued[.], unless otherwise authorized by the commission.

(b) All licensed premises shall be considered open for business whenever there is a private party, business meeting, or its like.

(c) Licensee may not discriminate or exclude anyone due to race, gender, or any other discriminating classification.

(d) Licensed premises shall be open to the general public at all times unless otherwise authorized by the Commission.

(e) Nothing in this rule shall be construed or interpreted to prohibit a licensee from exercising the right to deny service to any person for failure to conform to the usual and regular requirements, standards, and regulations for the licensed premises so long as the denial, requirements, standards and regulations are uniformly applied to all persons without regard to race, color, disability, religion, sex, sexual orientation or ancestry. [Eff 7/1/00; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

17. Section 08-101-99, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) No liquor consumption and/or service shall be allowed in the following areas[:], except as otherwise approved by the commission:

- (1) Food and beverage preparation areas, except for Chef's Table events approved by special permit;
- (2) Storerooms, walk-in refrigerators and freezers, except for wine cellar events approved by special permit;
- (3) Elevators and stairwells;
- (4) Employee and service corridors;
- (5) Employee lounges, employee dining rooms and employee locker rooms;
- (6) Restrooms; and
- (7) Areas for dancing, music, and entertainment[.], when utilized for dancing, music and entertainment. [Eff 4/22/12; am and comp 3/4/17; am and comp] (Auth: HRS §§91-2, 281-17, 281-78) (Imp: HRS §281-17)”

18. Section 08-101-100, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-100 Deliveries by [manufacturers, wholesalers, retailers;] industry member and retailers; peddling prohibited; exception.

(a) Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing any liquor from a licensed premises for delivery to a customer under the [manufacturer's or wholesaler's,] industry member's and/or retail dealer's license, the licensee must have in hand in his office, store, or warehouse, a bona fide order therefor. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefor, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquors at retail in their original packages or dispense liquor for consumption on the premises.

(b) [A manufacture or wholesaler licensee] An industry member shall deliver any liquor ordered or purchased by a retailer into the retailer's premises. Delivery of any liquor to any other location except the retailer's licensed premises is strictly prohibited. Provided, however, any retailer or its duly authorized employee may pick up any order of liquor directly from the [wholesaler's or manufacturer's] industry member's licensed premises, and such liquor must come to rest within the retailer's premises prior to any sale.

(c) An industry member may make [Deliveries] deliveries to a licensee's catered or other location by permit. [Eff 7/1/00; am and comp 3/4/17; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

19. Section 08-101-106, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending the title to read as follows, and further to amend subsection (h) to read as follows:

"§08-101-106 [Manufacturer, brewpub, and wholesale dealer licensees;] Industry members; special restrictions.

(h) [Manufacturers' or wholesale dealers' licensee,] Industry member, may:

- (1) Furnish or give a sample of distilled spirits, wine or malt beverages to a retailer who has not purchased the brand from that industry member within the last twelve months. Industry member may give a sample of not more than three gallons of malt beverage, not more than three liters of any brand of wine, and not more than three liters of distilled spirits, which shall be invoiced and clearly marked "sample" on each container.
- (2) Conduct tasting and sampling activities at a licensed premises authorized for on-premises consumption. Industry member must purchase the products used from the licensee, but may not purchase them from the licensee for more than the ordinary retail price. Industry members may, conduct tasting and sampling activities upon its licensed premises for the introduction of new products, upon obtaining a permit from the director. Industry member staff may taste sample liquor while conducting the tasting and sampling activities or education seminar to assess the quality controls, blending decision, the various other attributes of the liquor for quality control, training or education seminar purposes by permit from the director. Taste shall mean taking a sip of said sample of liquor, and swirling within one's mouth, without swallowing or consuming of said liquor.
- (3) Give or sponsor educational seminars for employees of retailers either at the [wholesaler's or manufacturer] industry member's premises or at the retailer's premises. Examples would be seminars dealing with the use of a retailer's equipment, training seminars for employees of retailers, or tours of wholesaler's or manufacturer's premises. This section does not authorize the wholesaler or manufacturer to pay a retailer's or its employee's expense in conjunction with an educational seminar such as travel and lodging, nor does it allow the consumption of liquor by any on-duty employee. This does not preclude providing nominal hospitality during the event.
- (4) Give or sell point of sale advertising specialties to a retailer if these items bear advertising matter and are primarily valuable to the retailer as point of sale advertisement. These items include such

things as posters, placard, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, backbar mats, thermometers, clocks, t-shirts, hats, and calendars. An industry member may add the name or name and address of the retailer to the advertising specialty.

- (A) The total value of all advertising specialties furnished by an industry member to a retailer may not exceed \$300 per brand in any one calendar year per licensed premises. The value of the advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded;
 - (B) Industry members may not pool or combine their dollar limitation in order to provide a retailer with retail advertising specialties valued in excess of \$300 per brand;
 - (C) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed; or
 - (D) Industry members and retailers are required to keep and maintain records on the licensed premises for a three-year period of all items furnished to retailers.
- (5) Accept the return of any liquor product from a retailer for "ordinary and usual commercial reasons" after the product has been purchased, so long as the product meets the following conditions and limitations for such returns:
- (A) Defective products which are unmarketable due to product deterioration, leaking containers, damaged labels, or mutilated and missing strip stamps;
 - (B) Error in products delivered where there is a discrepancy between products ordered and delivered may be corrected within a reasonable period of time of not more than five calendar days;
 - (C) Products which may no longer be lawfully sold due to a change in law or regulation, a particular size or brand is no longer permitted to be sold; or there is a change in the formula, proof, label or container of the product, or where the industry member has discontinued the production or importation of a product; or
 - (D) Termination of business where the licensee may return products on hand at the time the licensee terminates the operation of the business.

An industry member is under no obligation nor required to accept the return of products for the reasons listed.

(6) Give or sell product displays to a retailer; subject to the following limitations:

(A) The total value of all product displays furnished by an industry member under this section may not exceed \$300 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it, with transportation and installation costs excluded;

(B) Product display means any wine racks, bins, barrels, casks, shelving and the like from which distilled spirits, wine, or malt beverages are displayed on and sold;

(C) Industry member may not pool or combine their dollar limitations in order to provide a retailer a product display in excess of \$300 per brand;

(D) Product display shall bear conspicuous and substantial advertising matter; and

(E) Industry member may assist a retailer in setting a product display in a retail premises.

(7) Give or sell outside signs to a retailer, providing:

(A) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(B) The retailer is not compensated, directly or indirectly, such as through a sign company, for displaying the signs; and

(C) The cost of the signs may not exceed \$400.

(8) Provide a recommended shelf plan or shelf schematic for distilled spirits, wine or malt beverages.

(i) Manufacturers' or wholesale dealers' licensee, shall, at all liquor establishments, stock, rotate, and affix the prices to distilled spirits, wine, or malt beverages which they sell, and check for outdated or spoiled liquor products, at least once a month and at the time of delivery of any liquor product, unless the retailer requests in writing that this service not be provided or be discontinued. [Eff 7/1/00; am and comp 7/15/02; am and comp 3/4/17; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

20. Section 08-101-112, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"(a) [Any] No holder of a class 3, wholesale dealers' licensee, or a class 1, manufacturer's license [who is a liquor licensee in other counties within the State, may] shall refuse to sell liquor to two or more licensees [participate in pool

buying of liquor products] pursuant to any pool buying agreement between [the same licensee] licensees [from different counties,] which has been filed with and approved by the commission; provided that:

- (1) The pool buying agreement is in writing and designates one of the licensees as the agent of the others for the purpose of pool buying;
- (2) Any order for pool buying from the holder of a manufacturer's license shall be placed by the agent and payment for that order shall be made by the agent;
- (3) Each pool buying order shall contain an inventory and cost of the liquor products purchased by each liquor license number of the different counties;
- (4) The holder of a manufacturer's license in selling to the agent shall follow invoice, record keeping, and delivery procedures which are in compliance with this chapter and the rules of the commission of each county having jurisdiction over the seller;
- (5) Licensee of the pool buying agreement shall maintain invoices and any records of the liquor products purchased pursuant to the pool buying agreement within the licensed premises for a period of four years and shall be made available forthwith for inspection by the department or its authorized personnel; and
- (6) Each pool buying transaction shall be completed on the day transacted, and where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensees. [Eff 7/1/00; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

21. Section 08-101-113, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-113 [(Reserved)] "Growlers" or containers used for off-premises consumption. A growler or other glass, ceramic, or metal container used by manufacturers, restaurants, retail dealers, brewpubs, wineries, and small craft producer pubs for sale of product for off-premise consumption by patrons shall be a single-use container that is filled on-premises or a container that is resealable once opened, and intended for multiple fills and use. [Eff] (Auth: HRS §) (Imp: HRS §281-17)"

22. Section 08-101-114, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-114 Trade shows and/or other exhibitions. Any trade exhibitor, trade organization or other exhibitor shall apply for the issuance of a permit,

without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to the following terms and conditions:

- (1) Liquor shipped into the County under this section shall be in [750 milliliter-sized] containers, be appropriately marked "Sample - Not For Sale or Resale," and shall come to rest at the warehouse of a holder of a class 3, wholesale dealers' license, within the County, and be held in the licensed premises for at least forty-eight hours before delivery to or picked up by the person who was issued a permit to receive such liquor;
- (2) The applicant shall submit an inventory of all liquor shipped into the County at the time of the application, and a closing inventory of all liquor used during the event within five working days after the close of the event. Any liquor not utilized at the event shall become the property of the department and it shall be the permit holder's responsibility to transport all liquor not utilized at the event to this department for disposal;
- (3) The applicant shall obtain and certify that all necessary clearances from other governmental agencies have been obtained for the event;
- (4) The applicant shall be subject to and shall comply with the rules of the commission, State liquor laws, and shall be subject to any penalties as provided by law;
- (5) Sample tasting shall be limited to one ounce per person per brand, but not more than three ounces of liquor in total shall be provided to any person;
- (6) Liquor may be sampled on a complimentary basis only and at no time under any circumstances shall any holder of a permit or its employee, directly or indirectly, sell or be compensated for such sample;
- (7) At no time under any circumstances shall any holder of a permit or its employee sell, serve, or furnish any liquor to, or allow the consumption of any liquor by any person at the time under the influence of liquor, drugs, or any combination thereof, or to any person under twenty-one years of age;
- (8) Liquor shall be consumed on the approved area that the holder of the permit have exclusive control and clear view of, and any liquor shall not be removed from the area, except as may be approved by the director;
- (9) The director shall not approve any permit application unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted

at least ten working days prior to the event. [Eff 7/1/00; am and comp _____] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

23. Section 08-102-11, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui, is amended by amending subsection (b) to read as follows:

“(b) The petition shall be submitted in thirteen copies and shall include:

- (1) A statement of the nature of petitioner’s interest;
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; [and]
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal[.] and
- (4) Proposed rule, amendment, or deletion shall be written and submitted in its entirety in ramsever and standard formats or any other format as may be required by the rules of the commission and/or the Hawaii Revised Statutes. [Eff 2/7/00; am and comp _____] (Auth: HRS section 91-2, 281-17) (Imp: HRS section 281-17)”

24. Section 08-102-82, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui, is amended to read as follows:

“Section 08-102-82 Transaction of business. A majority of the board shall constitute a quorum for the transaction of business. The concurring vote of the majority of the members shall be necessary to take any action.

- (1) If the board is unable to render a decision on any complaint heard before the board, and no other motion regarding the matter is passed, the complaint shall be considered dismissed.
- (2) Whenever the board is ready to vote on any question, the chairperson shall state the question, put the question to vote, and announce the results to the board.
- (3) Unless a present board member states that the board member is disqualified or excused from voting pursuant to sections 08-102-98 and/or 08-102-99 of the rules of the commission, the board member’s silence or refusal to vote shall be recorded as an [affirmative vote] abstention. An abstention is not a vote and is not counted as a vote.

(4) The board or its designee shall render a written decision within a reasonable time from the date of the public hearing. [Eff 2/7/00; am and comp] (Auth: HRS sections 91-2, 281-17) (Imp: HRS section 281-17) "

25. Material, except source notes, to be repealed is bracketed. New material is underscored.

26. Additions to update source notes to reflect these amendments are not underscored.

27. These amendments to Chapters 101 and 102 shall take effect ten days after filing with the Office of the County Clerk.

Copies of the proposed amendments may be viewed or downloaded from the Department of Liquor Control web page at www.mauicounty.gov/liquor and selecting the Rules/Laws tab.

Copies of the proposed amendments will be mailed to any interested person who requests a copy and pays the required fees for copying and postage. Requests for a copy may be made at the Department of Liquor Control, 2145 Kaohu Street, Room 105, Wailuku, Hawaii 96793, or by calling (808)244-4666.

The Liquor Commission will conduct a public hearing on the proposed amendments on May 8, 2019, at 10:00 a.m. at the Department of Liquor Control Conference Room, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii.

Any interested person may submit oral or written testimony on the proposed amendments at the public hearing. Also, written testimony may be submitted by mail to: Liquor Commission, 2145 Kaohu Street, Room 105, Wailuku, Maui, Hawaii 96793. Written testimony must be received by the Liquor Commission before the public hearing closes on May 8, 2019.

Any person requesting accommodations due to disabilities must call (808) 244-4666 at least six (6) days before the date of the scheduled public hearing.

Please contact the Commission Secretary at (808) 244-4666 if further information is needed.

By: 

NANE ALULI

Chair

Liquor Commission

IV. New Business – Before Public Hearing

B. Discussion and Action on Proposed New HAR Title 16, Corporate Governance Annual Disclosure, promulgated by DCCA

**PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT
STATEMENT TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)**

Department or Agency: Division of Insurance

Administrative Rule Title and Chapter: Title 16, Chapter XXX

Chapter Name: Corporate Governance Annual Disclosure

Contact Person/Title: Glenn Yamashita

Phone Number: (808) 586-8150

E-mail Address: gyamashi@dcca.hawaii.gov Date: 04-01-19

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business?

Yes No (If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

Yes No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

Yes No

(If "Yes" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

See attachment.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

See attachment.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

N/A

- b. Amount of the proposed fee or fine and the percentage increase.

N/A

- c. Reason for the new or increased fee or fine.

N/A

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

N/A

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

See attachment.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

See attachment.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

See attachment.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

See 2. above

7. How the agency involved small business in the development of the proposed rules.

Proposed hearings to be scheduled upon passage of bill in 2019 Legislature.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Proposed hearings to be scheduled upon passage of bill in 2019 Legislature.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

See Attachment.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

N/A

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

N/A

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

N/A

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

N/A

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

N/A

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT_sbrrb.info@hawaii.gov
This Statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

RECEIVED

By JetaimeA at 7:01 am, Apr 02, 2019

Attachment to Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board

Corporate Governance Annual Disclosure (CGAD)

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

The National Association of Insurance Commissioners' CGAD Model Act and CGAD Model Regulation both require an insurer or group of insurers to provide a confidential disclosure regarding its corporate governance practices to the lead state and/or domestic regulator on an annual basis. The proposed administrative rules set forth the procedures for filing and the required contents of the corporate governance annual disclosure.

Also, this is a NAIC accreditation requirement that is effective from 1/1/2020.

- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Webpage Address: XXXXXXXXXX

Address: XXXXXXXXXXXXXX

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

There are 27 domestic insurance companies in Hawaii that will be subject to the proposed rules. As stated in 2. below, costs are not expected to be overly significant.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

It is the understanding of insurance regulators that insurers currently summarize and describe their corporate governance practices to a number of various stakeholders on a regular basis. In addition, the disclosure requirements allow reference to existing documents and filings and provide guidance for filing changes from the prior year to simplify the reporting process.

Therefore, the costs for insurance companies to comply with the proposed rule are not expected to be overly significant.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

Monetary costs should be nominal as regulators can incorporate the corporate governance annual disclosure with their annual review, financial analysis and assessment of the insurer's solvency.

As a benefit, the annual filing ensures regulators are provided with sufficient information on governance practices to assess the solvency of insurer.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

The insurer may reference other existing documents (e.g., the Own Risk and Solvency Assessment (ORSA) Summary Report, holding company Form B or Form F filings, U.S. Securities and Exchange Commission (SEC) proxy statements, foreign regulatory reporting requirements, etc.) to the regulator in fulfillment of the information requested in various areas.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

The intent of the models is to provide more information to regulators on insurers' corporate governance practices on an annual basis. Currently, regulators obtain a significant amount of information on insurers' corporate governance practices during full-scope examinations, which typically occur once every 3-5 years. However, information on governance practices, including changes that can have a substantial impact on current and prospective solvency, is not widely available to regulators in the period between onsite examinations. Through the adoption of proposed rules, regulators can ensure that sufficient information on governance practices is available to assess the solvency of insurers on an annual basis.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

We are not aware of any more stringent standards imposed by this proposed rule. The proposed rule is an accreditation requirement of the National Association of Insurance Commissioners that is effective from 1/1/2020.

RECEIVED
By JetaimeA at 6:02 am, Apr 04, 2019

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-XXX,
Hawaii Administrative Rules

[Month Day, Year]

1. Chapter 16-XXX, Hawaii Administrative Rules, entitled "Corporate Governance Annual Disclosure", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER XXX

CORPORATE GOVERNANCE ANNUAL DISCLOSURE

- \$16-XXX-101 Purpose and authority
- \$16-XXX-102 Definitions
- \$16-XXX-103 Filing procedures
- \$16-XXX-104 Contents of corporate governance annual disclosure
- \$16-XXX-105 Severability clause

\$16-XXX-101 Purpose and authority. The purpose of these rules is to set forth the procedures for filing

and the required contents of the corporate governance annual disclosure, deemed necessary by the Commissioner and authorized by [insert statutory reference to Corporate Governance Annual Disclosure].

[Eff _____] (Auth: HRS §§431:2-201, 431:XX-XXX-CGAD re Rules) (Imp: HRS §§431:2-101, 431:XX-XXX-CGAD re Purpose and scope)

§16-XXX-102 Definitions. For purposes of this chapter:

"Commissioner" means the insurance commissioner of the State.

"Insurance group" means the insurers and affiliates included within an insurance holding company system as defined in section 431:XX-XXX, HRS. [CGAD statute re definitions]

"Insurer" shall have the same meaning as set forth in section 431:XX-XXX, HRS, [CGAD statute re definitions], except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"Senior management" shall mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer, chief financial officer, chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other "C" level executive.

[Eff _____] (Auth: HRS §§431:2-201, 431:XX-XXX-CGAD re Rules) (Imp: HRS §§431:1-202, 431:2-101, 431:XX-XXX-CGAD re Definitions)

§16-XXX-103 Filing Procedures. (a) An insurer, or the insurance group of which the insurer is a member, required to file a corporate governance annual disclosure by the [insert reference to Corporate Governance Annual Disclosure Model Act], shall, no later than June 1 of each calendar year, submit to the Commissioner a corporate governance annual disclosure that contains the information described in section 16-XXX-104, Hawaii Administrative Rules.

(b) The corporate governance annual disclosure must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the corporate governance annual disclosure has been provided to the insurer's or insurance group's board of directors (hereafter "board") or the appropriate committee thereof.

(c) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations and is permitted to customize the corporate governance annual disclosure to provide the most relevant information necessary to permit the Commissioner to gain an understanding of the corporate governance structure, policies, and practices utilized by the insurer or insurance group.

(d) For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are

coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(e) Notwithstanding section 16-XXX-103(a), Hawaii Administrative Rules, and as outlined in 431: - C Disclosure Requirement, HRS, if the corporate governance annual disclosure is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners. In these instances, a copy of the corporate governance annual disclosure must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(f) An insurer or insurance group may comply with this section by referencing other existing documents including, but not limited to Own Risk and Solvency Assessment Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission Proxy Statements, or foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in section 16-XXX-104, Hawaii Administrative Rules. The insurer or insurance group shall clearly reference the location of the relevant information within the corporate governance annual disclosure and attach the referenced document if it is not already filed or available to the regulator.

(g) Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state. [Eff] (Auth: HRS §§431:2-201, 431:XX-XXX-CGAD re Rules) (Imp: HRS §431:2-101)

§16-XXX-104 Contents of corporate governance annual disclosure. (a) The insurer or insurance group shall be descriptive as possible in completing the corporate governance annual disclosure, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

(b) The corporate governance annual disclosure shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(1) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs, such as the ultimate control level, an intermediate holding company level, or an individual legal entity level. The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

(2) The duties of the board and each of its significant committees and how they are governed, such as bylaws, charters, or informal mandates, as well as how the board's leadership is structured, including a discussion of the roles of the chief executive officer and chairman of the board within the organization.

(c) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(1) How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group;

- (2) How an appropriate amount of independence is maintained on the board and its significant committees;
 - (3) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance;
 - (4) How the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, for example:
 - (A) Whether a nomination committee is in place to identify and select individuals for consideration;
 - (B) Whether term limits are placed on directors;
 - (C) How the election and re-election processes function;
 - (D) Whether a board diversity policy is in place, and if so, how it functions; and
 - (5) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place).
- (d) The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:
- (1) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:
 - (A) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
 - (B) Any changes in an officer's or key person's suitability as outlined by the

insurer's or insurance group's standards and procedures to monitor and evaluate such changes;

- (2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
 - (A) Compliance with statutes and rules; and
 - (B) Proactive reporting of any illegal or unethical behavior;
- (3) The insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example:
 - (A) The board's role in overseeing management compensation programs and practices;
 - (B) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
 - (C) How compensation programs are related to both company and individual performance over time;
 - (D) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
 - (E) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which

they are based are restated or otherwise adjusted;

- (F) Any other factors in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.
- (4) The insurer's or insurance group's plans for chief executive officer and senior management succession.

(e) The insurer or insurance group shall describe the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

- (1) How oversight and management responsibilities are delegated between the board, its committees, and senior management;
- (2) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks;
- (3) How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical areas of the insurer:
 - (A) An insurer, or the insurance group of which the insurer is a member, may refer to its Own Risk and Solvency Assessment Summary Report pursuant to Article 3D, Risk Management and Own Risk and Solvency Assessment Model Act;
 - (B) Actuarial function;

- (C) Investment decision-making processes;
- (D) Reinsurance decision-making processes;
- (E) Business strategy and finance decision-making processes;
- (F) Compliance function;
- (G) Financial reporting and internal auditing; and
- (H) Market conduct decision-making processes.

[Eff] (Auth: HRS
 §§431:2-201, 431:XX-XXX-CGAD re Rules) (Imp: HRS
 §§431:1-202, 431:2-101, 431:XX-XXX-CGAD re Contents of
 corporate governance annual disclosure)

§16-XXX-105 Severability clause. If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable. " [Eff]
 (Auth: HRS §§431:2-201, 431:XX-XXX-CGAD re Rules) (Imp:
 HRS §§431:1-202, 431:2-101, 431:XX-XXX-CGAD re
 Severability)

2. The adoption of chapter 16-XXX, Hawaii Administrative rules, shall take effect ten days after filing with the Office of the Lieutenant Governor. entitled "Corporate Governance Annual Disclosure," is adopted.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [Month Day, Year], and filed with the Office of the Lieutenant Governor.

CATHERINE P. AWAKUNI COLÓN
Department of Commerce and Consumer
Affairs

APPROVED AS TO FORM:

Deputy Attorney General

IV. New Business – Before Public Hearing

C. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 185, Annual Audited Financial Reporting, promulgated by DCCA

**PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT
STATEMENT TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Department or Agency: Department of Commerce and Consumer Affairs, Insurance Division

Administrative Rule Title and Chapter: Title 16, Chapter 185

Chapter Name: Annual Audited Financial Reporting

Contact Person/Title: Glenn Yamashita, Insurance Examiner

Phone Number: 586-8150

E-mail Address: gyamashi@dcca.hawaii.gov **Date:** 04-01-19

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business?

Yes No (If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) is domiciled and authorized to do business in Hawaii; (2) is independently owned and operated; and (3) employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

Yes No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

Yes No

(If "Yes" no need to submit this form.)

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

See Attachment.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

See Attachment.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

N/A

- b. Amount of the proposed fee or fine and the percentage increase.

N/A

- c. Reason for the new or increased fee or fine.

N/A

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

N/A

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

See Attachment.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

See Attachment.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

See Attachment.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

See Attachment.

7. How the agency involved small business in the development of the proposed rules.

Proposed hearings to be scheduled upon passage of bill in 2019 Legislature.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Proposed hearings to be scheduled upon passage of bill in 2019 Legislature.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

See Attachment.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

N/A

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

N/A

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

N/A

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

N/A

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

N/A

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This Statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

RECEIVED

By JetaimeA at 7:00 am, Apr 02, 2019

Attachment to Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board

Revisions to the Annual Financial Reporting Model Regulation

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

To incorporate an internal audit function requirement for large insurers into the regulation. The revisions required individual insurers writing more than \$500 million or insurance groups writing more than \$1 billion in annual premium to maintain an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. The function is required to be organizationally independent from management and required to report at least annually to the audit committee on the results of internal audit activities.

- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Webpage Address: XXXXXXXXXX

Address: XXXXXXXXXXXXXX

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

The internal audit function requirements contain the following threshold exceptions:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and,

(2) If the insurer is a member of a Group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

There are currently 27 domestic insurers consisting of property and casualty companies, life companies, and mutual benefit societies. Four insurers do not meet the threshold exceptions.

It is important to note that all publicly-held insurers are already required to maintain an internal audit function through stock exchange listing requirements. In addition, it is a standard industry best practice for large insurers to maintain internal audit functions of their own volition. The costs for these companies to meet the new requirements are nominal, given existing practices in this area.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

See 1. above.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

The internal audit functions of insurers are already reviewed as part of each full-scope financial condition examination. The impact on state departments to enforce this new requirement would be a simple addition to the existing work plan in this area.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

If an insurer is a member of an insurance holding company system or included in a Group of insurers, the insurer may satisfy the Internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

See 1. above.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

See 1. above.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

We are not aware of any more stringent standards imposed by this proposed rule. The proposed rule is an accreditation requirement of the National Association of Insurance Commissioners that is effective from 1/1/2020.

RECEIVED

By JetaimeA at 6:58 am, Apr 02, 2019

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-185
Hawaii Administrative Rules

MMM DD, YYYY

1. Chapter 16-185, Hawaii Administrative Rules, entitled "Annual Audited Financial Reporting", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 185

ANNUAL AUDITED FINANCIAL REPORTING

\$16-185-101	Purpose and scope
\$16-185-102	Definitions
\$16-185-103	General requirements related to filing and extensions for filing of annual audited financial report and audit committee appointment
\$16-185-104	Contents of annual audited financial report
\$16-185-105	Designation of independent certified public accountant

\$16-185-106	Qualifications of independent certified public accountant
\$16-185-107	Consolidated or combined audits
\$16-185-108	Scope of audit and report of independent certified public accountant
\$16-185-109	Notification of adverse financial condition
\$16-185-110	Communication of internal control related matters noted in an audit
\$16-185-111	Accountant's letter of qualifications
\$16-185-112	Definition, availability, and maintenance of independent certified public accountants workpapers
\$16-185-113	Requirements for audit committees
\$16-185-113.1	Internal audit function requirements
\$16-185-114	Conduct of insurer in connection with the preparation of required reports and documents
\$16-185-115	Management's report of internal control over financial reporting
\$16-185-116	Exemptions and effective dates
\$16-185-117	Canadian and British companies
\$16-185-118	Severability provision

\$16-185-101 Purpose and scope. (a) The purpose of this chapter is to improve the surveillance of the financial condition of insurers by requiring the following:

- (1) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;
 - (2) Communication of internal control related matters noted in an audit, and
 - (3) Management's report of internal control over financial reporting.
- (b) Every insurer shall be subject to this chapter.
- (c) A foreign or alien insurer filing the following documents in another state, pursuant to that

state's requirement for filing of audited financial reports, is exempt from filing those reports in this State provided that the other state has substantially similar requirements to sections 16-185-103 through 16-185-112, Hawaii Administrative Rules, and those reports are filed with the commissioner of the other state within the time specified:

- (1) An audited financial report;
- (2) A communication of internal control related matters noted in an audit; and
- (3) An accountant's letter of qualifications.
- (d) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this State provided the other state has substantially similar reporting requirements in section 16-185-115, Hawaii Administrative Rules, and the report is filed with the commissioner of the other state within the time specified.

(e) This chapter shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under the rules of the insurance division.

[Eff 2/04/10; am and

comp

] (Auth: HRS

\$431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-102 Definitions. As used in this chapter:

"Accountant" or "independent certified public accountant" means a person or accounting firm licensed in good standing with the American Institute of Certified Public Accountants [~~("AICPA")~~] and in all states in which the accountant or independent certified public accountant is licensed to practice. For Canadian and British companies, these terms mean a Canadian-chartered or British-chartered accountant.

An "affiliate" of, or person "affiliated" with a specific person, is one who directly or indirectly, through one or more intermediaries, controls or is

controlled by, or is under common control with the person specified.

~~["AICPA" means the American Institute of Certified Public Accountants.]~~

"Audit committee" means a body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers, if applicable, and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls an insurer or a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person as discussed in sections 16-185-103(d) and ~~[16-185-113(f),]~~ 16-185-113(g), Hawaii Administrative Rules. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

"Audited financial report" means and includes those items specified in section 16-185-104[-] , Hawaii Administrative Rules.

"Commissioner" or "insurance commissioner" means the Hawai'i insurance commissioner, unless otherwise specified.

"Division" or "insurance division" means the Hawai'i insurance division.

"Group of insurers" means those licensed insurers included in the reporting requirements of Hawai'i Revised Statutes ("HRS"), chapter 431, article 11, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other

misrepresentations made by the insurer or its representatives.

"Insurer" means a licensed entity as defined in ~~[sections]~~ section 431:1-202, HRS, and a risk retention captive insurance company as defined in section 431:19-101, HRS.

"Internal audit function" means a person or persons that provide independent, objective, and reasonable assurance designed to add value and improvement to an organization's operations and accomplish its objectives by bringing a systematic and disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

"Internal control over financial reporting" means a process effected by an entity's board of directors, management, or other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in section 16-185-104(2) through (7), Hawaii Administrative Rules, and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
- (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in section 16-185-104(2) through (7), Hawaii Administrative Rules, and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
- (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in section 16-

185-104(2) through (7), Hawaii
Administrative Rules.

"Material weakness" has the same meaning as defined by the Statement on Auditing Standard 115, Communication of Internal Control Related Matters Identified in an Audit, as amended or replaced.

~~["NAIC" means the National Association of Insurance Commissioners.~~

~~"RBC" means risk-based capital.~~

~~"SEC" means the United States Securities and Exchange Commission.]~~

"Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

"Section 404 report" means management's report on "internal control over financial reporting" as defined by the United States Securities and Exchange Commission and the related attestation report of the independent certified public accountant.

"SOX compliant entity" means an entity that either is required to be compliant with or voluntarily is compliant with all of the following provisions of the Sarbanes-Oxley Act of 2002:

- (1) The preapproval requirements of section 201 (section 10A(i) of the Securities Exchange Act of 1934);
- (2) The audit committee independence requirements of section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934); and
- (3) The internal control over financial reporting requirements of section 404 (item 308 of United States Securities and Exchange Commission Regulation S-K). [Eff 2/04/10; am and comp]
(Auth: HRS §431:2-201) (Imp: HRS
§§431:2-201, 431:3-302.5)

§16-185-103 General requirements related to filing and extensions for filing of annual audited financial report and audit committee appointment. (a)

All insurers required by this chapter to file an annual audit by an independent certified public accountant shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1, with ninety days advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the commissioner for thirty day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension shall be submitted in writing not less than ten days prior to the due date and in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with the provisions in subsection (b), a similar extension of thirty days is granted to the filing of management's report of internal control over financial reporting.

(d) Every insurer required to file an annual audited financial report shall designate a group of individuals as constituting its audit committee, as defined in section 16-185-102[-] , Hawaii Administrative Rules. [Eff 2/04/10; am and comp .] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-104 Contents of annual audited financial report. The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital

and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance division. The annual audited financial report shall include the following:

- (1) A report by an independent certified public accountant;
- (2) A balance sheet reporting admitted assets, liabilities, capital, and surplus;
- (3) A statement of operations;
- (4) A statement of cash flow;
- (5) A statement of changes in capital and surplus;
- (6) Notes to financial statements. These notes shall be those required by the appropriate [NAIC] National Association of Insurance Commissioners Annual Statement Instructions and the [NAIC] National Association of Insurance Commissioners Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to section 431:3-302, HRS, and the annual statement filed pursuant to section 431:3-301, HRS, with a written description of the nature of these differences.
- (7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, however, the comparative data may be omitted[+]. [Eff 2/04/10; am and comp]

(Auth: HRS §431:2-201) (Imp: HRS
§§431:2-201, 431:3-301, 431:3-302.5)

§16-185-105 Designation of independent certified public accountant. (a) Each insurer required by this chapter to file an annual audited financial report shall within sixty days after becoming subject to this requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this chapter. Insurers not retaining an independent certified public accountant on the effective date of this chapter shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the statutes and the rules of the Hawai'i insurance division or the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Hawai'i insurance division or that insurance department, specifying such exceptions as he or she may believe appropriate.

(c) If an accountant, who was the accountant for the immediately preceding filed audited financial report, is dismissed or resigns, the insurer shall:

- (1) Within five business days notify the commissioner of this event;
- (2) Furnish the commissioner with a separate letter, within ten business days of the notification, stating whether in the twenty-four months preceding such event there were any disagreements with the former accountant

on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion;

- (3) Report disagreements required to be reported in response to this subsection including both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report; and
- (4) In writing, request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons why that accountant does not agree. The insurer shall furnish to the commissioner copies of its request within five business days of sending the request and the responsive letter from the former accountant within five business days after its receipt.

[Eff 2/04/10;

comp

Auth: HRS §431:2-201) (Imp: HRS
§§431:2-201, 431:3-302.5)

§16-185-106 Qualifications of independent certified public accountant. (a) The commissioner shall not recognize a person or firm as a qualified

independent certified public accountant if the person or firm:

- (1) Is not in good standing with the [AICPA] American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice or, for a Canadian or British company, that is not a chartered accountant; or
- (2) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.

(b) Except as otherwise provided in this chapter, the commissioner shall recognize an independent certified public accountant as qualified as long as that person conforms to the standards of the accounting profession, as contained in the code of professional ethics of the [AICPA] American Institute of Certified Public Accountants, [HRS] chapter 466[~~7-Hawai'i Administrative Rules~~], HRS, chapter 16-71, Hawai'i Administrative Rules, and the Hawai'i board of public accountancy, or similar statutes, rules, and code of conduct regulating the practice of accountancy in the state in which the accountant is licensed to practice.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under article 15, chapter 431, HRS, the mediation or arbitration provisions shall operate at the option of the insurer's statutory successor.

- (d) (1) The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. Thereafter, that partner shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive

years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

- (A) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
 - (B) Premium volume of the insurer; or
 - (C) Number of jurisdictions in which the insurer transacts business; and
- (2) The insurer shall file, with its annual statement filing, the approval for relief from subsection (d)(1) with the states in which it is licensed in or doing business and with the ~~[NAIC.]~~ National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the ~~[NAIC.]~~ National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the ~~[NAIC.]~~ National Association of Insurance Commissioners.
- (e) The commissioner shall neither recognize as a qualified independent certified public accountant nor accept an annual audited financial report, prepared in whole or in part, by a natural person who:
- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;
 - (2) Has been found to have violated the insurance laws of this state; or
 - (3) Has demonstrated a pattern or practice of failing to detect or disclose material

information in previous reports filed under the provisions of this chapter.

(f) Subject to sections 431:2-308 and 431:3-302.5, HRS, the commissioner may hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

(g) (1) The commissioner shall not recognize as a qualified independent certified public accountant nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

- (A) Bookkeeping or other services related to the accounting records or financial statements of the insurer;
- (B) Financial information systems design and implementation;
- (C) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (D) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement, only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an

insurer's reserves if the following conditions have been met:

- (i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
- (ii) The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and
- (iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(E) Internal audit outsourcing services;

(F) Management functions or human resources;

(G) Broker or dealer, investment adviser, or investment banking services;

(H) Legal services or expert services unrelated to the audit; or

(I) Any other services that the commissioner determines, by regulation, are impermissible.

- (2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant:

(A) Cannot function in the role of management;

(B) Cannot audit his or her own work; and

(C) Cannot serve in an advocacy role for the insurer.

(h) Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from subsection (g). The insurer shall file with the commissioner a written

statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with subsection (g) would constitute a financial or organizational hardship upon the insurer, an exemption may be granted:

(i) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in or that do not conflict with subsection (g), only if the activity is approved in advance by the audit committee, in accordance with subsection (j).

(j) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity or:

- (1) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five per cent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;
- (2) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and
- (3) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(k) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by

subsection (j). The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(1) (1) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This paragraph shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(2) The insurer shall file, with its annual statement filing, the approval for relief from subsection (1) (1) with the states that it is licensed in or doing business in and the ~~[NAIC.]~~ National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the ~~[NAIC.]~~ National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the ~~[NAIC.]~~ National Association of Insurance Commissioners. [Eff 2/04/10; am and comp]

(Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:2-308, 431:3-302.5)

§16-185-107 Consolidated or combined audits. An insurer may make written application to the

commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred per cent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

- (1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
- (2) Amounts for each insurer subject to this section shall be stated separately;
- (3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;
- (4) Explanations of consolidating and eliminating entries shall be included; and
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers. [Eff 2/04/10; comp]

(Auth: HRS §431:2-201) (Imp: HRS
§§431:2-201, 431:3-302.5)

§16-185-108 Scope of audit and report of independent certified public accountant. (a)

Financial statements furnished pursuant to section 16-185-104 shall be examined by the independent certified public accountant.

(b) The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU section 314 of the Professional Standards of the [AICPA,] American Institute of Certified Public Accountants, Understanding the Entity and its Environment and Assessing the Risks of Material

~~[Misstatement,]~~ Misstatement, as amended or replaced, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 314, for those insurers required to file a management's report of internal control over financial reporting pursuant to section 16-185-115, Hawaii Administrative Rules, the independent certified public accountant should consider, as that term is defined in Statement on Auditing Standards [~~SAS~~] No. 102, Defining Professional Requirements in Statements on Auditing Standards as amended or replaced, the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the NAIC National Association of Insurance Commissioners as the independent certified public accountant deems necessary. [Eff 2/04/10; am and comp] (Auth: HRS §431:2-201) (Imp: HRSS§ 431:2-201, 431:3-302.5)

§16-185-109 Notification of adverse financial condition. (a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee, any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Hawaii insurance code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to

the commissioner. If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

(b) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with subsection (a).

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this chapter, becomes aware of facts that might have affected the report, the accountant shall take appropriate action as prescribed in volume 1, section AU 561 of the Professional Standards of the [AICPA-] American Institute of Certified Public Accountants.

[Eff 2/04/10; am and comp

] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-110 Communication of internal control related matters noted in an audit. (a) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness as of December 31 immediately preceding, so as to coincide with the audited financial report discussed in section 16-185-103, Hawaii Administrative Rules, in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. [~~If no unremediated material weaknesses were noted, the~~] The communication should

~~[so state.]~~ state if no unremediated material weaknesses were noted.

(b) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication. [Eff 2/04/10; am and comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-111 Accountant's letter of qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(a) That the accountant is independent with respect to the insurer and conforms to the standards of the accounting profession, as contained in the code of professional ethics of the American Institute of Certified Public Accountants, [~~HRS~~] chapter 466[~~, Hawaii Administrative Rules~~], HRS, chapter 16-71, Hawaii Administrative Rules, and the Hawai'i board of public accountancy, or similar statutes, rules, and code of conduct regulating the practice of accountancy in the state in which the accountant is licensed to practice;

(b) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this chapter shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where that use is consistent with the standards prescribed by generally accepted auditing standards;

(c) That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this chapter and that the commissioner will be relying on this

information in the monitoring and regulation of the financial position of insurers;

(d) That the accountant consents to the requirements of section 16-185-112 and consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers as defined in section 16-185-112[+] , Hawaii Administrative Rules;

(e) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the [~~AICPA~~] American Institute of Certified Public Accountants; and

(f) A representation that the accountant is in compliance with the requirements of section 16-185-106[-] , Hawaii Administrative Rules. [Eff 2/04/10; am and comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-112 Definition, availability, and maintenance of independent certified public accountants workpapers. (a) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Accordingly, workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

(b) Every insurer required to file an audited financial report pursuant to this chapter, shall require the accountant to make available for review by insurance division examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the

accountant and the insurer, at the offices of the insurer, at the insurance division or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance division has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

(c) In the conduct of the aforementioned periodic review by the insurance division examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the division. Such reviews by the division examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the division. [Eff 2/04/10; comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-113 Requirements for audit committees.

(a) This section shall not apply to foreign or alien insurers licensed in this State or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(b) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this chapter. Each accountant shall report directly to the audit committee.

(c) Beginning January 1, 2020, the audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and

resources to fulfill their responsibilities if required by section 16-185-113.1, Hawaii Administrative Rules.

~~[(e)]~~ (d) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection ~~[(f)]~~ (g).

~~[(d)]~~ (e) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

~~[(e)]~~ (f) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the commissioner, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent. In determining independence, the commissioner shall consider utilizing guidance provided in the [SEC's] Securities and Exchange Commission's Final Rule No. 33-8220, Standards Relating to Listed Company Audit Committees adopted April 9, 2003, as amended or replaced.

~~[(f)]~~ (g) To exercise the election of the controlling person to designate the audit committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the

statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded. ~~[(g)(1)]~~ (h)(1) The audit committee shall require the accountant, who performs for an insurer any audit required by this chapter, to timely report to the audit committee in accordance with the requirements of ~~[SAS]~~ Statement on Auditing Standards 114, The Auditor's Communication with those charged with Governance, as amended or replaced, including:

- (A) All significant accounting policies and material permitted practices;
 - (B) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
 - (C) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.
- (2) If an insurer is a member of an insurance holding company system, the reports required by subsection ~~[(g)(1)]~~ (h)(1) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

~~[(h)(1)]~~ (i)(1) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also paragraphs [(h)(2)] (i)(2) and [(h)(3)] (i)(3).	Majority (50% or more) of members shall be independent. See also paragraphs [(h)(2)] (i)(2) and [(h)(3)] (i)(3).	Supermajority of members (75% or more) shall be independent. See also paragraph [(h)(2)] (i)(2).

- (2) The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a ~~[RBC]~~ risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.
- (3) All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.
- (4) Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

~~[(i)]~~ (j) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the commissioner for a waiver from the section 16-185-113, Hawaii Administrative Rules, requirements

based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from section 16-185-113, Hawaii Administrative Rules, with the states that it is licensed in or doing business in and the [NAIC.] National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the [NAIC.] National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the [NAIC.] National Association of Insurance Commissioners. [Eff 2/04/10; am and comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-113.1 Internal audit function

requirements. (a) The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews, and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(b) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgement on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(c) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit

function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

(d) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

(e) An insurer is exempt from the requirements of this section if:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

(2) If the insurer is a member of a group of insurers that has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Corp Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

[Eff] (Auth:

HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-114 Conduct of insurer in connection with the preparation of required reports and documents. (a)
No director or officer of an insurer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or

communication required under this chapter;
or

- (2) Omit to state, or cause another person to omit to state, any material fact necessary, in light of the circumstances under which the statements were made, so as to mislead an accountant in connection with any audit, review, or communication required under this chapter.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(c) For purposes of subsection (b), actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant:

- (1) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;
- (2) Not to perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards;
- (3) Not to withdraw an issued report; or
- (4) Not to communicate matters to an insurer's audit committee. [Eff 2/04/10;

comp

(Auth: HRS §431:2-201) (Imp: HRS
§§431:2-201, 431:3-302.5)

§16-185-115 Management's report of internal control over financial reporting. (a) Every insurer required to file an audited financial report that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in section 16-185-102[-] , Hawaii Administrative Rules. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under section 16-185-110[-] , Hawaii Administrative Rules. Management's report of internal control over financial reporting shall be as of the December 31 immediately preceding.

(b) Notwithstanding the premium threshold in subsection (a) the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any risk-based capital level event, as defined in [~~HRS~~] section 431:3-401, HRS, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [~~HRS~~] section 431:15-103.5[-] , HRS.

- (c) An insurer or a group of insurers that is:
- (1) Directly subject to section 404;
 - (2) Part of a holding company system whose parent is directly subject to section 404;
 - (3) Not directly subject to section 404 but is a SOX compliant entity; or
 - (4) A member of a holding company system whose parent is not directly subject to section 404 but is a SOX compliant entity may file its or its parent's section 404 report and an addendum in satisfaction of this section's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the

preparation of the insurer's or group of insurers' audited statutory financial statements, those items included in section 16-185-104(2) through (7), Hawaii Administrative Rules, were included in the scope of the section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements excluded from the section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the section 404 report, the insurer or group of insurers may either file a report required by this section, or the section 404 report and this section's report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the section 404 report.

(d) Management's report of internal control over financial reporting shall include:

- (1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
- (2) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

- (3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;
- (4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
- (5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of the December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;
- (6) A statement regarding the inherent limitations of internal control systems; and
- (7) Signatures of the chief executive officer and the chief financial officer or equivalent position or title.

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions required, in subsection (d), are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities. Additionally:

- (1) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation; and
- (2) Management's report on internal control over financial reporting, required by subsection (a) and any documentation provided in

support thereof during the course of a financial condition examination, shall be kept confidential by the insurance division. [Eff 2/04/10; am and comp]
(Auth: HRS §431:2-201). (Imp: HRS §§431:2-201, 431:3-302.5, 431:3-401, 431:15-103.5)

§16-185-116 Exemptions and effective dates. (a)

Upon written application of any insurer, the commissioner may grant an exemption from compliance with any or all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with section 431:2-308, HRS.

(b) Domestic insurers retaining a certified public accountant on the effective date of this chapter who qualify as independent shall comply with this chapter for the year ending December 31, 2010, and each year thereafter unless the commissioner permits otherwise.

(c) Domestic insurers not retaining a certified public accountant who qualifies as independent on the effective date of this chapter may meet the following schedule for compliance unless the commissioner permits otherwise:

- (1) As of December 31, 2010, file with the commissioner an audited financial report; and
- (2) For the year ending December 31, 2010, and each year thereafter, such insurers shall

file with the commissioner all reports and communication required by this chapter.

(d) Foreign insurers shall comply with this chapter for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.

(e) The requirements of section 16-185-106(d), Hawaii Administrative Rules, shall be in effect for audits of the year beginning January 1, 2010, and thereafter.

(f) The requirements of section 16-185-113, Hawaii Administrative Rules, are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a super majority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium, shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, or the effective date of this section, whichever is later, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

~~[(g) Sections]~~ (g) (1) Except for risk retention captive insurers, sections 16-185-101 through [118, except for section 16-185-113,] 112, and sections 16-185-114 through 118, shall be effective beginning with the reporting period ending December 31, 2010, and each year thereafter; ~~[except that sections]~~

(2) Sections 16-185-101 through [118,] 112, and sections 16-185-114 through 16-185-118, Hawaii Administrative Rules, shall be effective for risk retention captive insurers beginning with the reporting period ending December 31, 2011, and each year thereafter.

(3) Section 16-185-113.1, Hawaii Administrative Rules, shall be effective January 1, 2020. If an insurer or a group of insurers that is exempt from the section 16-185-113.1, Hawaii Administrative Rules, requirements no longer qualifies for that exemption, it shall have one year after the year threshold is exceeded to comply with the requirements of this chapter. [Eff 2/04/10; am and comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:2-308, 431:3-302.5)

§16-185-117 Canadian and British companies. (a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(b) For such insurers, the letter required in section 16-185-105(b), Hawaii Administrative Rules, shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to section 16-185-103, Hawaii Administrative Rules, and shall affirm that the opinion expressed is in conformity with those requirements. [Eff 2/04/10; comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

§16-185-118 Severability provision. If any section or portion of a section of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the chapter or the applicability of the provision to any other person or circumstance shall not be affected." [Eff 2/04/10; comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:2-201, 431:3-302.5)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.
3. Additions to update source notes and other notes to reflect these amendments and compilations are not underscored.
4. These amendments to and compilation of chapter 16-185, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted
on _____ and filed with the
Office of the Lieutenant Governor.

CATHERINE P. AWAKUNI COLÓN
Department of Commerce and Consumer
Affairs

APPROVED AS TO FORM:

Deputy Attorney General

IV. New Business – Before Public Hearing

D. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 186, Certificate of Need Program, promulgated by DOH

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes No

If "Yes," provide details: _____

I. Rule Description:

New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business?

Yes No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

Yes No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

Yes No

(If "Yes" no need to submit this form.)

* * *

RECEIVED

By JetaimeA at 6:14 am, Apr 11, 2019

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

 - b. Amount of the proposed fee or fine and the percentage increase.

 - c. Reason for the new or increased fee or fine.

 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
-
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

RECEIVED

By JetaimeA at 6:19 am, Apr 11, 2019

Statement of the Topic of the Proposed Rules

The proposed rule amendment revises the State Health Planning and Development Agency's Certificate of Need program's rules. The Certificate of Need program is established pursuant to Chapter 323D, Hawaii Revised Statutes (HRS). The purpose of Chapter 323D, HRS is to establish a health planning and resources development program to promote accessibility for all the people of the State to quality health care services at reasonable cost.

RECEIVED

By JetaimeA at 6:16 am, Apr 11, 2019

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-186
Hawaii Administrative Rules

, 2019

1. Chapter 11-186, Hawaii Administrative Rules, entitled "Certificate of Need Program", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

CHAPTER 186

CERTIFICATE OF NEED PROGRAM

Subchapter 1 General Provisions

- § 11-186-1 Scope
- § 11-186-2 Construction of rules
- § 11-186-3 Definitions
- § 11-186-4 Total capital expenditure
- § 11-186-5 Standard categories of health care services
- § 11-186-6 Change of health care service requiring a certificate of need
- § 11-186-7 Change of beds requiring a certificate of need

Subchapter 2 Consolidation for Review

§ 11-186-10 Deadlines for filing and completion of applications

Subchapter 3 Criteria for Agency Reviews

§ 11-186-15 Criteria

§ 11-186-16 Repealed

Subchapter 4 Filing and Completion of Applications

§ 11-186-20 Letters of intent

§ 11-186-21 Technical assistance

§ 11-186-22 Filing of application

§ 11-186-23 Application forms

§ 11-186-24 When to file application

§ 11-186-25 Filing fee for application

§ 11-186-26 Number of copies filed

§ 11-186-27 File number assigned to application

§ 11-186-28 Separate applications

§ 11-186-29 Completed application required

§ 11-186-30 Determination of completeness

Subchapter 5 Review Procedures

§ 11-186-35 Written notification to persons

§ 11-186-36 Review schedule

§ 11-186-37 Length of review period

§ 11-186-38 Date of notification

§ 11-186-39 Method of notification

§ 11-186-40 Additional copies

§ 11-186-41 Extension of review period

§ 11-186-42 Burden of proof

§ 11-186-43 Order for review

§ 11-186-44 Staff review and reports

§ 11-186-45 Review of completed standard application

§ 11-186-45.1 Joint review

§ 11-186-46 Location of meetings

§ 11-186-47 Right to attend public meeting

§ 11-186-48 Appearances

§ 11-186-49 Review panel quorum

§ 11-186-50 Record of votes

§ 11-186-51 Conflicts of interest

§ 11-186-52 Repealed

§ 11-186-53 Repealed

§ 11-186-54 Request for additional information

§ 11-186-55 Technical advisory committees and experts

- § 11-186-56 Notification of status
- § 11-186-57 Amendment to application
- § 11-186-58 Prohibited conduct
- § 11-186-59 Dismissal without prejudice
- § 11-186-60 Withdrawal of application

Subchapter 6 Decision and Findings

- § 11-186-70 Decision on the merits
- § 11-186-71 Failure to act within the required time
- § 11-186-72 Repealed
- § 11-186-73 Repealed
- § 11-186-74 Terms of issuance
- § 11-186-75 Increase in project cost
- § 11-186-76 Statement of reasons
- § 11-186-77 Conditional certification

Subchapter 7 Post-Decision Procedures

- § 11-186-82 Request for reconsideration
- § 11-186-83 Repealed
- § 11-186-84 Repealed
- § 11-186-85 Prohibition on transfers
- § 11-186-86 Effect of decision on future proposal
- § 11-186-87 Periodic monitoring
- § 11-186-88 Agency's right to inspect
- § 11-186-89 Periodic reports
- § 11-186-90 Repealed
- § 11-186-91 Withdrawal of certificate of need

Subchapter 8 Emergency Situation

- § 11-186-96 Repealed
- § 11-186-97 Repealed
- § 11-186-98 Repealed
- § 11-186-99 Emergency situation
- § 11-186-99.1 Administrative review of certain proposals

Subchapter 9 Miscellaneous Provisions

- § 11-186-120 Repealed
- § 11-186-125 Severability

§11-186-1

Historical Note: Chapter 186 of Title 11, Administrative Rules, is based substantially upon the Certificate of Need Rules of the State Health Planning and Development Agency, State of Hawaii.
[Eff. 3/4/78; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§ 11-186-1 Scope. The rules in this chapter govern procedure before the state health planning and development agency, the statewide health coordinating council, the review panel, the reconsideration committee, the countywide review committee, and the subarea health planning councils. The rules in this chapter are adopted by the State pursuant to chapter 323D, Hawaii Revised Statutes, to carry out the provisions of chapter 323D, Hawaii Revised Statutes relating to the administration of the certificate of need program by the state health planning and development agency. [Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-2 Construction of rules. The rules in this chapter shall be liberally construed to promote mandatory planning for health care facilities and health care services in the State, in order to promote accessibility for all the people of the State to quality health care services at reasonable cost and to promote the development of health delivery systems that meet the people's health care needs. [Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-1)

§ 11-186-3 Definitions. Whenever used in this chapter and in proceedings brought under this chapter, unless the context requires otherwise:

~~["Abortion" services include an operation to intentionally terminate the pregnancy of a nonviable fetus.]~~

"Acute" bed services ~~[refer to]~~ means those inpatient services provided to patients whose average length of stay is usually less than thirty days.

"Acute/long term swing bed" services ~~[refer to]~~ means those acute or long term services which are provided through beds which have been designated to serve either acute or long term inpatients.

"Acute psychiatric" services means twenty-four-hour inpatient acute care services for mentally disordered patients whose length of stay is usually less than thirty days.

"Administrator" means the administrator of the state health planning and development agency as established in section 323D-11, HRS.

"Agency" means the state health planning and development agency as established in section 323D-11, HRS.

~~["Alcohol rehabilitation" services means services to a person who has been an alcohol abuser, to restore the person to the fullest physical, mental, social, vocational, and economic usefulness of which the person is capable.]~~

"Applicant" means any person who applies to the agency for a certificate of need.

~~["Birthing center" means a "free-standing birthing facility" as defined in section 11-93-51.]~~

"Burn center" services means intensive care services staffed by specially trained personnel for acute therapeutic, supportive, and rehabilitative care, including preparation for extensive grafting, for severely burned patients.

"Cardiac catheterization" means a special diagnostic procedure that is used to examine and evaluate the heart and the blood vessels which function to bring blood to, or away from, the heart. Cardiac catheterization includes left or right heart catheterization, angiography, and coronary arteriography.

~~["Care home" means a "care home" as defined in section 11-100-2.]~~

"Children's orthopedic" services means long-term therapeutic and restorative services to children with orthopedic problems.

"Chronic renal dialysis" services means services

for the treatment of irreversible kidney failure involving the removal of waste substance from a patient's blood by hemodialysis or peritoneal dialysis.

~~["Clinic" means an outpatient health care facility for diagnosis and treatment.]~~

~~["Clinical laboratory" services means services for the testing of specimens from the human body to aid in the diagnosis and treatment of diseases and in the maintenance of health.]~~

"Comprehensive outpatient rehabilitation facility (CORF)" means a comprehensive outpatient rehabilitation facility as defined in 42 Code of Federal Regulations section 485.51.

"Computed tomography" services include diagnostic procedures involving computer analysis of a series of x-ray scans of the head or body resulting in the construction of an image.

"Countywide review committee" means a countywide review committee established pursuant to section 11-186-45.

"Critical care" services means those services which provide maximum observation and support of vital functions and definitive therapy for patients with acute but reversible life-threatening impairments of single or multiple vital organ systems.

"Diagnostic radiology" services means services for the detection of physical disease and other ill-health conditions through the use of radiant energy including x-rays, cine fluorography, ventriculography and angiocardiology.

~~["Drug rehabilitation" services means services to a person who has been dependent on licit or illicit drugs, to restore the person to the fullest physical, mental, social, vocational, and economic usefulness of which the person is capable.]~~

"Emergency room" services means services provided in a designated unit within a hospital for the immediate treatment of injury and other types of health emergencies.

"Expenditure minimum for capital expenditures" means \$4,000,000 for capital expenditures, \$1,000,000 for new or replacement medical equipment and \$400,000 for used medical equipment.

"Extracorporeal shock wave lithotripsy (ESWL)" means a non-invasive procedure by which renal and ureteral calculi are pulverized using electrohydraulic shock waves.

~~["Family planning" refers to the service that helps the family limit the family's size and the spacing of years between children and the service that helps couples who have problems related to the women bearing children.]~~

~~["Fixed wing air ambulance" services include transportation of a patient in any fixed wing aircraft specifically equipped, designed or constructed, and maintained or operated for the purpose of accommodating the medical needs of patients.]~~

"Freestanding emergency care facility" means an establishment, place or facility structurally distinct and separate from a hospital which represents itself either through advertising or name as providing emergency medical care services in life, limb, or function threatening conditions beyond the occasional emergency that occurs in the normal course of any clinical practice.

"Hansen's disease" services means therapeutic, supportive and restorative services for patients with Hansen's disease requiring long-term inpatient services.

"Health care provider" means an individual who is a direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration.

"Heart surgery" means a surgical procedure requiring the circulation of the blood by a heart lung machine while the heart or surrounding blood vessels are repaired.

~~["Helicopter air ambulance" services include transportation of a patient in any helicopter specifically equipped and operated for the purpose of accommodating the medical needs of patients.]~~

"Home health agency" means a "home health agency"

as defined in 42 Code of Federal Regulations section ~~[405.1201.]~~ 440.70(d).

"Hospice" means hospice services as defined in 42 Code of Federal Regulations section 418.3.

"Intermediate care facility" (ICF) means ~~[a]~~ an "[general] intermediate care facility" as defined in ~~[42 C.F.R. § 440.150.]~~ section 11-94-2, HAR.

~~["Intermediate care facility for the mentally retarded (ICF/MR)" means an intermediate care facility for the mentally retarded as defined in 42 C.F.R. § 440.150(e).]~~ "Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means an intermediate care facility for individuals with intellectual disabilities as defined in 42 Code of Federal Regulations section 440.150(a).

"Long term" bed care services ~~[refer to]~~ means those inpatient services provided to patients who are chronically ill, aged, disabled, or ~~[retarded]~~ intellectually disabled and whose average length of stay is usually thirty days or more.

"Magnetic resonance imaging (MRI)" means a diagnostic imaging technique that employs magnetic and radio-frequency fields to image body tissues and monitor body chemistry noninvasively.

"Medical/surgical" services include those inpatient diagnostic and treatment services utilizing medical or operative procedures.

~~["Mental health services" means the diagnosis and treatment of emotional and mental diseases and conditions or their symptoms through the administration of medication and specialized therapy.]~~

~~["Mental retardation" services means services for the diagnosis and treatment of persons who have a significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.]~~

"Neonatal intensive care" services ~~[refer to]~~ means the provision of care for newborns who require prolonged respiratory support, continuous cardiopulmonary support, intravenous therapy, major surgery, or treatment for infections.

"Neurosurgery" means surgery of any part of the nervous system.

"Nuclear medicine" services means the services of a medical specialty that uses radionuclides (elements which give off an emanation which is detectable by

various instruments) for diagnosis and treatment.

"Obstetric" services means those services for the care of women during pregnancy, childbirth, and after delivery, including prenatal care, labor, delivery, and postpartum care.

~~["Outpatient clinic" services means organized non-emergency services for the diagnosis and treatment of patients who are ambulatory and do not require hospitalization.]~~

"Outpatient surgery (surgicenter)" services means services provided to treat a medical condition by surgery in an outpatient or ambulatory surgical center where the patient is not kept overnight.

"Pediatric" services means those inpatient services for the diagnosis and treatment of diseases and conditions of children.

~~["Pharmacy" means a location where drugs are dispensed in a health care facility.]~~

~~["Prenatal" services means services provided to pregnant women.]~~

"Psychiatric" services means services for the diagnosis and treatment of mental illness or mental disorder in persons.

"Radiation therapy" services [~~include~~] means services for the treatment of physical conditions or illness, primarily cancer, through the use of external ionizing radiation.

~~["Recompression center" services means services at any location for the artificial restoration of pressure, especially the return to conditions of normal pressure after exposure to greatly diminished atmospheric pressure, for treatment of bends and related disorders.]~~

"Reconsideration committee" means the reconsideration committee as established in section 323D-47, Hawaii Revised Statutes.

"Rehabilitation" services means inpatient services to restore the ill or disabled person to achieve the fullest physical, mental, social, vocational, and economic usefulness of which the person is capable.

"Review panel" means the review panel established pursuant to chapter 323D, Hawaii Revised Statutes.

"Skilled nursing facility" (SNF) means a "skilled nursing facility" as defined in ~~[42 C.F.R. § 440.40.]~~ section 11-94-2, HAR.

~~["Social services" mean programs provided by trained personnel to enable a patient, family members,~~

~~or others to deal with the problems affecting the patient's social function and well-being.]~~

"Special treatment facility" means a "special treatment facility" as defined in section 11-98-02, HAR.

"State health services and facilities plan (SHSFP)" means the state health services and facilities plan established pursuant to [~~chapter 323D,~~] section 323D-2, Hawaii Revised Statutes.

"Statewide council" means the statewide health coordinating council established pursuant to [~~chapter 323D,~~] section 323D-2, Hawaii Revised Statutes.

"Subarea" means a geographical area designated by the agency pursuant to [~~chapter 323D,~~] section 323D-2, Hawaii Revised Statutes.

"Subarea council" means a subarea health planning council established pursuant to [~~chapter 323D,~~] section 323D-2, Hawaii Revised Statutes.

"Surface ambulance" services [~~include~~] means transportation of a patient in any motor vehicle or watercraft specifically equipped, designed or constructed, and maintained or operated for the purpose of accommodating the medical needs of patients.

"Transplant surgery" services [~~include~~] means services for the transplantation of an organ from one person to another person.

"Tuberculosis" services means therapeutic and supportive services for patients with tuberculosis who require long-term inpatient care.

~~["Ultrasound" services means services involving equipment using ultrasound (an acoustical frequency approximately 20,000 cycles per second) for medical therapy.]~~ [Eff. 2/9/81; am 7/1/82; am 1/21/88; am 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-4 Total capital expenditure. (a) For purposes of computing the amount of the total capital expenditure:

- (1) The total cost of all items to be obligated for or purchased within a twelve month period for a program, service, plan, or project, regardless of whether or not the cost of any individual item is in excess of the

expenditure minimum, is included in the computation;

- (2) The cost of equipment which is not used for diagnosis or treatment, and which does not exceed the expenditure minimum for a single item or for a system, such as office equipment, usual business equipment, and office and waiting room furniture, is exempt from the computation;
- (3) The cost of normal inventories of supplies such as glassware, chemicals, drugs, linens, and paper, is exempt from the computation;
- (4) In the case of the acquisition of equipment or capital items, the cost of installation and the cost of initial training and instruction attendants to the use of the equipment or capital items are included in the computation; and
- (5) In the case of the acquisition of equipment or capital items, the operating costs beyond the cost of installation and the cost of initial training and instruction attendant to the use of the equipment or capital items are exempt from the computation.

(b) An obligation for a capital expenditure shall be deemed to have been incurred by or on behalf of a health care facility or health maintenance organization:

- (1) When an enforceable contract is entered into by the facility or organization or by a person proposing the capital expenditure on behalf of the facility or organization for the construction, acquisition, lease, or financing of a capital asset; or
- (2) Upon the formal internal commitment of fund by the facility or organization for a force account expenditure which constitutes a capital expenditure; or
- (3) In the case of donated property, the date on which the gift vested.

(c) Studies, surveys, plans, schematic designs, and preliminary designs for a project shall not require a certificate of need unless or until their total cost for the project exceeds the expenditure minimum for capital expenditures.

(d) Final designs or working drawings, regardless of cost, shall require a certificate of need if the

facility being designed may result in a total capital expenditure in excess of the expenditure minimum for capital expenditures.

(e) If a single project or the substantial equivalent of a single project is divided into separate components, so that the project or any component does not require a total capital expenditure in excess of the expenditure minimum, the agency may combine the components for purposes of computing the amount of the total capital expenditure and may treat the combined components as a single project. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-43)

§ 11-186-5 Standard categories of health care services. The standard categories of health care services are:

- (1) Acute Bed Services
 - (A) Medical/Surgical
 - (B) Obstetrics
 - (C) Pediatrics
 - (D) Neonatal Intensive Care
 - (E) Critical Care
 - (F) Psychiatric
 - (G) Acute/long term swing
- (2) Long Term Bed Services
 - (A) Psychiatric
 - (B) Tuberculosis
 - ~~[(C) Mental Retardation]~~
 - ~~[-D-]~~ (C) Hansen's Disease
 - ~~[-E-]~~ (D) Children's Orthopedics
 - ~~[-F-]~~ (E) Rehabilitation
 - ~~[-G-]~~ (F) SNF
 - ~~[-H-]~~ (G) ICF
 - ~~[-I-]~~ (H) SNF/ICF
 - ~~[-J-]~~ (I) [~~ICF/MR~~] ICF/IID
 - ~~[-K-]~~ (J) Special Treatment Facility
 - ~~[-L-] Care Home]~~
- (3) Non-Bed Services
 - ~~[(A) Outpatient Clinic]~~
 - ~~[-B-]~~ (A) Emergency Room
 - ~~[-C-]~~ (B) Outpatient Surgery (Surgicenter)
 - ~~[-D-]~~ (C) Diagnostic Radiology

~~[-E]~~ (D) Computed Tomography Stationary
~~[-F]~~ (E) Computed Tomography Mobile
~~[-G]~~ (F) Nuclear Medicine
~~[-H]~~ Ultrasound
~~[-I]~~ Clinical Laboratory
~~[-J]~~ Pharmacy
~~[-K]~~ Social Services
~~[-L]~~ (G) Home Health Agency
~~[-M]~~ Drug Rehabilitation
~~[-N]~~ Alcohol Rehabilitation
~~[-O]~~ Recompression Center
~~[-P]~~ Mental Health Center
~~[-Q]~~ Family Planning Clinic
~~[-R]~~ Prenatal Clinic
~~[-S]~~ Abortion Clinic
~~[-T]~~ (H) Surface Ambulance
~~[-U]~~ Fixed Wing Air Ambulance
~~[-V]~~ Helicopter Air Ambulance
~~[-W]~~ Birth Center
~~[-X]~~ (I) Extracorporeal Shock Wave
Lithotripsy (ESWL)
~~[-Y]~~ (J) Magnetic Resonance Imaging
(MRI) Stationary
~~[-Z]~~ (K) Magnetic Resonance Imaging
(MRI) Mobile
~~[-AA]~~ (L) Freestanding Emergency Care
Facility
~~[-BB]~~ (M) Comprehensive Outpatient
Rehabilitation Facility

(4) Special Services

(A) Chronic Renal Dialysis
(B) Cardiac Catheterization
(C) Burn Center
(D) Neurosurgery
(E) Heart Surgery
(F) Transplant Surgery
(G) Radiation Therapy
(H) Hospice [Eff. 2/9/81; am 7/1/82; am

1/21/88; am and comp] (Auth: HRS §
323D-62) (Imp: HRS § 323D-43)

**§ 11-186-6 Change of health care service
requiring a certificate of need.** (a) The addition or
deletion of any standard category of health care

service listed in section 11-186-5 is a change of service that requires a certificate of need. If a health care facility proposes the addition or deletion of a health care service that is not clearly included in one of the standard categories, the agency shall determine whether or not the change is a change of service that requires a certificate of need.

(b) Any change of location of a health service is a change of service that requires a certificate of need unless the agency determines in writing that the change of location does not significantly affect the delivery of service to the target group. In making this determination, the agency shall consider:

- (1) The distance from the old location to the new location;
- (2) The accessibility and acceptability of the new location to the target group; and
- (3) Any other factors that the agency deems relevant to an informed determination.

(c) The addition or deletion of a mobile service shall require one certificate of need only.

(d) The termination of services by a provider of health care services that is ceasing its entire operation shall not require a certificate of need. A provider of health care services that is ceasing its entire operation shall provide written notice to the agency at least ten days before the termination of services. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-43)

§ 11-186-7 Change of beds requiring a certificate of need. (a) Each standard bed service category is listed in section 11-186-5(1) and (2). The addition or deletion of any bed service category requires a certificate of need. The increase or decrease in the number of beds in any bed service category requires a certificate of need. The relocation of beds from one physical facility or site to another physical facility or site requires a certificate of need.

(b) Any increase or decrease in the number of beds in any standard bed service category does not require a certificate of need if it is a temporary change that does not exceed ninety days. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp:

HRS § 323D-43)

SUBCHAPTER 2

CONSOLIDATION FOR REVIEW

§ 11-186-10 Deadlines for filing and completion of applications. (a) For purposes of consolidating for review completed applications that are or may be mutually exclusive or that present conflicting claims, the agency shall require that an application for a certificate of need pertaining to any of the following health care services, health care facilities, or equipment affecting the same health service area be filed and completed by the applicant on or before the following deadlines:

- (1) Acute bed services involving new construction: the agency's first business day in January, May and September.
- (2) Long term bed services involving new construction: the agency's first business day in March, July and November.
- (3) Computed tomography, Magnetic resonance imaging and extracorporeal shock wave lithotripsy: the agency's first business day in February, April, June, August, October and December.

(b) In the event that the agency determines that the same application pertains to two or more paragraphs of subsection (a), the agency shall determine the paragraph to which the application substantially belongs and the agency shall assign the application to that paragraph.

(c) Each paragraph of subsection (a) has three or more deadlines. Each deadline is the beginning of a review cycle for agency review of the applications pertaining to the same paragraph. The Agency shall consolidate for review in a review cycle those applications pertaining to the same paragraph that are filed and completed on or before an applicable deadline. If an application is not filed and completed on or before an applicable deadline, the agency shall not begin the agency review of the application until

the next applicable review cycle after the application is filed and completed.

(d) Notwithstanding anything in this section to the contrary, this section shall not apply to an application for a certificate of need that satisfies the requirements of section 323D-45.3, Hawaii Revised Statutes, for required approval or to an emergency application for a certificate of need filed pursuant to section 11-186-99.

(e) Notwithstanding anything in this section to the contrary, this section shall not apply to an application for a certificate of need from any acute inpatient facility located outside the island of Oahu. [Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-44, 323D-45.3)

SUBCHAPTER 3

CRITERIA FOR AGENCY REVIEWS

§ 11-186-15 Criteria. (a) The agency shall consider the following criteria in the review of an application for a certificate of need:

- (1) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, ~~handicapped persons,~~ persons with disabilities and other underserved groups, and the elderly, are likely to have access to those services;
- (2) In the case of reduction or elimination of a service, including the relocation of a facility or service:
 - (A) The need that the population presently served has for the service;
 - (B) The extent to which that need will be met adequately by the proposed relocation or by alternative arrangements; and
 - (C) The effect of the reduction, elimination, or relocation of the

service on the ability of low income persons, racial and ethnic minorities, women, ~~[handicapped persons,]~~ persons with disabilities, and other underserved groups, and the elderly, to obtain needed health care;

- (3) The probable impact of the proposal on the overall costs of health services to the community;
- (4) The probable impact of the proposal on the costs of and charges for providing health services by the applicant;
- (5) The immediate and long term financial feasibility of the proposal;
- (6) The applicant's compliance with federal and state licensure and certification requirements;
- (7) The quality of the health care services proposed;
- (8) In the case of existing health services or facilities, the quality of care provided by those facilities in the past;
- (9) The relationship of the proposal to the state health services and facilities plan;
- (10) The relationship of the proposal to the existing health care system of the area;
- (11) The availability of less costly or more effective alternative methods of providing service;
- (12) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health services and facilities plan. [Eff. 2/9/81; am 1/21/88; am and comp

] (Auth: HRS § 323D-62) (Imp:

HRS § 323D-43)

§ 11-186-16 **Repealed.** [R 1/21/88]

SUBCHAPTER 4

FILING AND COMPLETION OF APPLICATIONS

§ 11-186-20 Letters of intent. Any person proposing a project that requires a certificate of need [~~shall~~] may file a letter of intent with the agency at the earliest possible opportunity. The letter of intent shall describe the proposed project in such detail as may be necessary to inform the agency of the nature and scope of the proposed project. The letter of intent shall include a description of the proposed project, its estimated cost, its location, and its estimated schedule. The agency may require the person proposing the project to file additional information about the project with the agency as the information becomes available during the course of planning for the project. A letter of intent and any information filed with the agency in accordance with this section shall not constitute an application for a certificate of need. [Eff. 2/9/81; am 1/21/88; am and comp] Auth: HRS § 323D-62) (Imp: HRS §§ 323D-12, 323D-52)

§ 11-186-21 Technical assistance. The agency shall provide technical assistance to the applicant in the preparation and filing of the application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-22 Filing of application. The applicant for a certificate of need shall file an application with the agency. The application shall be filed on the form prescribed and furnished by the agency. The agency shall not accept for filing any application that is not submitted on the correct form. If the agency inadvertently accepts for filing an application that is not submitted on the correct form, the agency shall return the application to the applicant and require the applicant to submit the application on the correct form. [Eff. 2/9/81; am 1/21/88; comp]

(Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-23 Application forms. The application form prescribed by the agency may vary according to the type of project proposed. The agency may revise or amend the application forms from time to time. An application form may require the applicant to provide any information that is reasonably necessary for an informed review of the application, and the applicant shall provide the information in the form and manner that the agency may prescribe. The agency may require the application to provide supporting documentation for the information submitted in the application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-12)

§ 11-186-24 When to file application. The applicant may file the application at any time during the year, provided that if the agency has established a deadline for the application pursuant to section 11-186-10, then the applicant shall file and complete the application on or before the applicable deadline. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-25 Filing fee for application. (a) There shall be a non-refundable filing fee for each application which shall be the sum of \$200 plus .001 of the ~~[total]~~ capital ~~[cost of the project]~~ expenditure as defined in section 323D-2, Hawaii Revised Statutes up to \$1,000,000 plus .0005 of the ~~[total cost of the project]~~ capital expenditure as defined in section 323D-2, Hawaii Revised Statutes in excess of \$1,000,000.

(b) The applicant shall pay the filing fee when the application is filed and the agency shall accept an application only when such application is accompanied by the filing fee paid in full. [Eff. 2/9/91; am 5/27/00; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-26 Number of copies filed. Unless the agency directs otherwise, the applicant shall file with the agency the original and [~~thirty~~] two copies of the application. In the case of a standard application which has been determined to be complete pursuant to section 11-186-30, HAR, the applicant shall mail copies of the application to members of the reviewing bodies including the subarea health planning council or the countywide review committee, the review panel and the statewide council. The agency shall provide the applicant with the names and mailing addresses of the members of the reviewing bodies. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-27 File number assigned to application. For administrative purposes, the agency shall assign a file number to each application that is filed with the agency. The file number shall indicate the year of the filing and the order of filing within the year. The agency shall not assign the same file number to any other application. A file number shall not be transferred from one application to any other application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-28 Separate applications. When the same applicant has more than one proposal, the agency may direct the applicant to file a separate application for each proposal if the agency determines that separate consideration of the proposals may assist the agency in reaching an informed decision on the merits of each proposal. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-29 Completed application required. The agency requires a completed application for review. The filing of the application with the agency does not by

itself mean that the application is complete. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

§ 11-186-30 Determination of completeness.

(a) An application is complete when the agency determines that the application is properly filled out and includes all necessary information.

(b) The agency shall determine if the application is complete within thirty days after the application is filed. If the application is incomplete, the agency shall notify the applicant of the actions or additional information required to complete the application. The applicant shall have sixty days in which to complete the application. The sixty days shall be computed from the date when the agency provides notification to the applicant.

(c) If the applicant fails to complete the application within the sixty days, the agency [~~shall~~] may dismiss the application without prejudice pursuant to section 11-186-59. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62)(Imp: HRS § 323D-12)

SUBCHAPTER 5

REVIEW PROCEDURES

§ 11-186-35 Written notification to [affected] persons.

(a) When the agency determines that the application is complete, the agency shall provide written notification of the beginning of the period for the agency review of the application to [~~affected persons~~] the applicant and to any person who has asked the agency to place the person's name on a mailing list maintained by the agency. The written notification shall include the review schedule for the application.

(b) This section shall not apply to any emergency application for a certificate of need pursuant to section 11-186-99. This section shall not apply to an

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application for a certificate of need for which the agency has established a deadline pursuant to section 11-186-10, until the beginning of the next applicable review cycle after the application is filed and completed. [Eff. 2/9/81; am 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-44)

§ 11-186-36 Review schedule. The agency shall prepare a review schedule for the application. The review schedule shall list the dates, times, and locations of the public meetings at which the appropriate subarea council or countywide review committee, the review panel, and the statewide council shall review the application. The review schedule is subject to later revision upon notice to [~~affected persons~~] the applicant and to any person who has asked the agency to place the person's name on a mailing list maintained by the agency. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-44)

§ 11-186-37 Length of review period. To the extent practicable, the period for agency review of the application shall not exceed ninety days from the date of notification to the date when the agency files its decision on the merits of the application. The agency may extend the period for agency review beyond the ninety days as provided in section 11-186-41. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-44)

§ 11-186-38 Date of notification. The date of notification is the date on which the agency mails written notification of the beginning of the period for agency review of the application to the applicant pursuant to section 11-186-39 or the date on which the written notification appears in a newspaper of general circulation pursuant to section 11-186-39, whichever date is later. The period for agency review shall

begin on the date of notification. [Eff. 2/9/81; comp
] (Auth: HRS § 323D-62) (Imp: HRS §
323D-44)

§ 11-186-39 Method of notification. The agency shall provide written notification of the beginning of the period for agency review of the application to members of the public and third party payers through a newspaper of general circulation in the State. At its discretion, the agency may provide written notification through [~~the agency's newsletter or~~] additional public information channels. The agency shall provide written notification to the applicant by mail. [Eff. 2/9/81; am 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-44)

§ 11-186-40 Additional copies. If the application is completed after it is filed, the agency may direct the applicant to provide the agency with thirty copies of the additional information required to complete the application or, if the additional information resulted in extensive revisions, additions, or deletions to the application, the agency may direct the applicant to provide the agency with thirty copies of the completed application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-41 Extension of review period. (a) The agency may extend the period for agency review of the application for an additional sixty days beyond the ninety days if the agency determines that it would not be practicable to complete the review within ninety days. If the review period is extended, the agency shall notify the applicant in writing during the ninety days. The notification shall include a statement of the reason or reasons for the extension.

(b) The agency shall extend the period for agency review fifteen days at the request of the applicant if, during the period for agency review of the application,

the agency requests the applicant to provide additional information respecting the subject of the review pursuant to section 11-186-54. If the review period is extended, the agency shall notify the applicant in writing. The extension shall apply to all other applications which have been consolidated for review with the application for which additional information is required. In that event, the agency shall notify the other applicants in writing of the extension.

(c) The agency may extend the period for agency review for a length of time equivalent to the length of time during which the period for agency review of the application did not run pursuant to section 11-186-59.

If the review period is extended, the agency shall notify the applicant in writing.

(d) The agency may extend the period for agency review if the agency and the applicant agree in writing to the extension and the length of the extension.

[Eff. 2/9/81; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp: HRS 323D-44)

§ 11-186-42 Burden of proof. The applicant for a certificate of need [~~or for an exemption from certificate of need requirements~~] shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-43 Order for review. To the extent practicable, each application shall be reviewed in the order in which the agency determined that the application was complete. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-44 Staff review and reports. The agency staff shall review the file of each application filed

with the agency. The agency staff may prepare one or more written staff reports on the application. A staff report may include an analysis of the application, identification of issues and a discussion of their relationship to the applicable criteria for a certificate of need [~~or an exemption,~~] and any staff recommendations on the application. In the case of applications consolidated for review, a staff report may include a comparative analysis of the applications, identification of issues and a discussion of their relationships to the applicable criteria for a certificate of need, and any staff recommendations of the applications. The staff report shall be made a part of the file of the application. The staff report shall be provided to the applicant, any other persons upon written request, any subarea council or countywide review committee that reviews the application, and to the review panel and the statewide council if the review panel and the statewide council review the application. The agency staff may participate in any public meeting or public hearing held on any application. [Eff. 2/9/81; am and comp]
 (Auth: HRS Sec 323D-62) (Imp: HRS Sec 323D-12)

§ 11-186-45 Review of completed standard application. (a) The agency shall refer a completed application other than an emergency application [~~or an application for an exemption~~] to the appropriate subarea council or countywide review committee, the review panel, and the statewide council for review and recommendations.

(b) The agency shall determine the primary target group for the proposal. Prior to the determination, the agency may consult with the chairperson of any subarea council or the chairperson of any countywide review committee.

- (1) If the agency determines that the application's primary target group is the population of one subarea, the application shall be referred to the subarea council for that subarea.
- (2) If the agency determines that the application's primary target group is the population of two or more subareas in a

county, the application shall be referred to a countywide review committee consisting of two members from each subarea council in the county to be appointed by the subarea council.

(3) If the agency determines that the application's primary target group is the entire population of the State, the application shall be referred to each subarea council in the State.

(c) As far as practicable, the application shall be reviewed in the following order:

(1) The appropriate subarea council or countywide review committee shall review the application at one or more public meetings called for the purpose and shall submit any recommendations to the review panel, the statewide council, and the agency.

(2) The review panel shall review the application at one or more public meetings called for the purpose and shall submit any recommendations to the statewide council and the agency.

(3) The statewide council shall review the application at one or more public meetings called for the purpose and shall submit any recommendations to the agency.

(d) Recommendations of the subarea council, the countywide review committee, the review panel, or the statewide council shall be submitted to the agency at least seven days before the period for agency review of the application expires.

(e) Recommendations of the subarea council, the countywide review committee, the review panel, or the statewide council are not binding on the agency. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-44, 323D-45)

§ 11-186-45.1 Joint Review. (a) The subarea council or the countywide review committee may join together with the review panel for a joint review of a certificate of need application.

(b) The review panel and the statewide council may join together for a joint review of a certificate of need application. [Eff. 1/21/88; comp

] (Auth: HRS § 323D-62) (Imp: SLH
1987, Act 270, § 2)

§ 11-186-46 Location of meetings. (a) The statewide council, ~~[and]~~ the review panel and the reconsideration committee may meet and exercise their powers in any part of the State.

(b) A countywide review committee may meet and exercise its powers in any part of the county.

(c) Each subarea council may meet and exercise its power in its geographical area. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-45)

§ 11-186-47 Right to attend public meeting. Each meeting of the statewide council, the review panel, a countywide review committee, or a subarea council shall be open to the public unless the meeting is closed to the public pursuant to chapter 92, Hawaii Revised Statutes. Any orderly person shall have the right to attend a meeting open to the public; provided that any person who ~~[willfully]~~ wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall be removed from the meeting. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-48 Appearances. In any proceeding before the statewide council, the review panel, a countywide review committee, ~~[or]~~ a subarea council, or the reconsideration committee, any person may appear ~~[in his or her]~~ on their own behalf or the person may appear by or with an attorney or another person designated as a representative. If a person is represented by an attorney, the attorney shall be licensed to practice law by the Supreme Court of Hawaii. The statewide council, the review panel, a countywide review committee, ~~[or]~~ a subarea council, or the reconsideration committee may at any time require any person who is appearing in a representative

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capacity to show [~~his or her~~] their authority to act in that capacity. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-49 Review panel quorum. A quorum for the review panel to transact business shall consist of a majority of the number of members to which the review panel is entitled. While a quorum is in attendance, the concurrence of a majority of the members in attendance shall make any action of the review panel valid. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-42, HRS 323D-45)

§ 11-186-50 Record of votes. An accurate record of votes and actions taken at any statewide council, review panel, countywide review committee, or subarea council public meeting shall be set forth in the minutes of the meeting. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-45)

§ 11-186-51 Conflicts of interest. (a) No member of a subarea council, a countywide review committee, the review panel, or the statewide council shall vote on any matter respecting an applicant with which the member, the member's spouse, the member's child, or the member's parent has (or within the twelve months preceding the vote, had) any substantial ownership, directorship, officership, employment, prospective employment for which negotiations have begun, medical staff, fiduciary, contractual, creditor, debtor, or consultative relationship.

(b) If such a relationship exists or has existed, the member shall make a written or oral disclosure of the relationship before any action is taken with respect to the applicant by the subarea council, countywide review committee, review panel, or statewide council, to which the member belongs and the member shall make the relationship public in any meeting in

which action is to be taken with respect to the applicant.

(c) Where any other conflict of interest exists, a member of a subarea council, countywide review committee, review panel, or statewide council shall be disqualified from voting in the review of an application. The provisions of chapter 84, Hawaii Revised Statutes, and the decisions, advisory opinions, and informal advisory opinions of the state ethics commission shall serve as guidelines in determining whether a conflict of interest exists. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-45)

§ 11-186-52 Repealed. [R 1/21/88]

§ 11-186-53 Repealed. [R 1/21/88]

§ 11-186-54 Request for additional information.

At any time during the period for agency review of the application, the agency may request the applicant to provide additional information respecting the subject of the review. If the agency does make such a request, the applicant shall have fifteen days in which to provide the information to the agency, and the period for agency review shall, at the request of the applicant, be extended fifteen days. This extension shall apply to all other applications which have been consolidated for review with the application for which additional information is requested. If the applicant fails to provide the additional information to the agency within the fifteen days, the agency may dismiss the application without prejudice pursuant to section 11-186-59. [Eff. 2/9/81; comp]
(Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-55 Technical advisory committees and experts. The agency may call upon technical advisory

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committees and individuals who have special expertise to provide technical assistance in the review of an application. [Eff. 2/9//81; comp]
(Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-56 Notification of status. Upon request, the agency shall provide information about the status of the agency's review and other appropriate information about the review to the applicant and members of the public. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-57 Amendment to application. (a) The applicant may amend the application. The applicant shall file the amendment in writing with the agency along with any other information which the agency may require.
(b) Pursuant to section 11-186-59, the agency may dismiss the application without prejudice if the agency determines that the amendment is a material change in the application, that the amendment necessitates major revisions to the application, and that there is insufficient time remaining in the period for agency review for the agency to make an informed decision on the merits of the application as amended. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-12)

§ 11-186-58 Prohibited conduct. (a) No person shall influence or attempt to influence or attempt to influence action on any application by fraud, misrepresentation, or corruption.
(b) No person shall submit or cause to be submitted false statements or information in connection with any application.
(c) No person shall disrupt or interfere with the fair and orderly review of any application.
(d) If any person violates any subsection of this section, the agency may take appropriate action to

protect the public interest, including, but not limited to, issuing a verbal or written warning to the person, excluding the person from any public meeting or public hearing on the application, denying any request made by the person in connection with the application, or dismissing without prejudice any application of the person pursuant to section 11-186-59. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-59 Dismissal without prejudice. (a)

Without reaching a decision on the merits of the application, the agency may dismiss the application for any of the following reasons:

- (1) Failure of the applicant to complete the application within the time prescribed in section 11-186-30;
- (2) Failure of the applicant to pursue the application;
- (3) Failure of the applicant to respond to written agency correspondence addressed to the applicant;
- (4) Failure of the applicant to provide any additional information requested by the agency within the time prescribed in section 11-186-54;
- (5) An amendment to the applicant, if the amendment meets the criteria prescribed in section 11-186-57; or
- (6) Prohibited conduct by the applicant pursuant to section 11-186-58.

(b) Before dismissing the application, the agency shall provide the applicant with written notice and an opportunity of ten days in which to respond, during which the period for agency review of the application shall not run.

(c) If the agency dismisses the application, the agency shall explain in the record the reason or reasons for the dismissal and shall furnish the applicant with a copy of the explanation.

(d) Except as provided in section 11-186-10, dismissal of an application for any of the reasons in subsection (a) of this section shall be without prejudice to the applicant's right to refile the

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application or to file an amended application. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-12)

§ 11-186-60 Withdrawal of application. The applicant has the right to withdraw the application at any time before the agency files a written decision on the merits of the application or before the agency dismisses the application without prejudice. [Eff. 2/9/81; comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-12)

SUBCHAPTER 6

DECISION AND FINDINGS

§ 11-186-70 Decision on the merits.

(a) Unless the application for a certificate of need has been withdrawn or dismissed, the agency shall file a decision on the merits of the application within the required time. The decision shall be in writing and shall include findings of fact and conclusions of law.

(b) On the date that the agency files its decision, the agency shall send the decision to the applicant by certified mail, return receipt requested, and deliver to addressee only. The agency shall send or make available the decision to any other person upon the person's written request.

(c) The decision on the merits of an application, other than an emergency application for a certificate of need, is not a final decision of the agency when it is filed. The decision shall become final after there is an opportunity for any person to request a public hearing for reconsideration of the decision pursuant to section 11-186-82.

(d) When the agency sends or makes available the decision to any person, a written notice shall accompany the decision. The written notice shall state that the decision is not a final decision of the agency when it is filed; that any person may request a public hearing for reconsideration of the decision pursuant to

section 11-186-82; that the decision shall become final if no person makes a timely request for a public hearing for a reconsideration of the decision; that if there is a timely request for a public hearing for reconsideration of the decision and after the agency's final action on the reconsideration, the decision shall become final. [Eff. 2/9/81; am 7/1/82; am 1/21/88; comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-44)

§ 11-186-71 Failure to act within the required time. A certificate of need [~~or an exemption from certificate of need requirements~~] shall not be issued or denied solely because the agency failed to file a decision within the required time. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-72 Repealed. [R 1/21/88]

§ 11-186-73 Repealed. [R 1/21/88]

§ 11-186-74 Terms of issuance. If a certificate of need [~~or an exemption from certificate of need requirements~~] is issued, the certificate of need [~~or the exemption~~] shall specify terms of issuance, including a description of the nature and the extent of the activity or activities authorized by the certificate of need [~~or the exemption~~]. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-75 Increase in project cost. (a) In issuing a certificate of need [~~or an exemption~~], the agency shall specify in writing the maximum capital expenditure that may be obligated under the certificate

of need [~~or exemption~~].

(b) Any increase in the cost of the approved project that exceeds or may exceed the maximum capital expenditure by fifteen per cent or by the expenditure minimum shall require the agency's prior written approval or, if the agency directs, an additional certificate of need [~~or exemption~~]. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-43)

§ 11-186-76 Statement of reasons. (a) If the agency's final decision on a certificate of need is inconsistent with a recommendation, the agency shall send to the subarea council, the countywide review committee, the review panel, or the statewide council that made the recommendation a written explanation for the inconsistency.

(b) If the agency's final decision is inconsistent with the goals of the state health plan [~~or the priorities of the annual implementation plan~~], the agency shall send a written explanation for the inconsistency to the subarea council or countywide review committee that reviewed the application, the review panel, and the statewide council. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62)
(Imp: HRS § 323D-12)

§ 11-186-77 Conditional certification. At its discretion, the agency may issue a conditional certification to an application which, by modification of specific items of the application, may successfully meet the criteria for the issuance of a certificate of need. The agency shall not make the decision subject to any condition unless the condition directly relates to criteria established by law. The agency shall notify the applicant in writing of the modifications required and of the time period within which the modifications are to be made. The agency shall establish a time period not to exceed one hundred fifty days from the date of the conditional certification within which the applicant shall certify in writing to the agency that the required modifications to the

application have been made. The agency shall deny any application in which the required modifications have not been made within the time period established by the agency. [Eff. 2/9/81; comp] (Auth: HRS § 323D-46) (Imp: HRS § 323D-46)

SUBCHAPTER 7

POST-DECISION PROCEDURES

§ 11-186-82 Request for reconsideration. (a) Any person may, for good cause shown, request in writing a public hearing before a reconsideration committee for reconsideration of the agency's decision on the merits filed in section 11-186-70. The request shall be in writing and shall include a statement of the nature of the person's interest and a statement of the reasons why the person believes that good cause exists for a public hearing for reconsideration of the decision. The request shall be filed with the committee within [~~thirty~~] ten working days [~~after~~] of the decision [~~is filed~~]. The committee shall deny any request for a public hearing for reconsideration that is not timely filed, that fails to show good cause for a public hearing for reconsideration, or that is frivolous.

(b) A request for a public hearing shall be deemed by the committee to have shown good cause, if:

- (1) It presents significant relevant information not previously considered by the agency which, with reasonable diligence, could not have been presented before the agency made its decision;
- (2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision;
- (3) It demonstrates that the agency has materially failed to follow the agency's rules in reaching its decision;
- (4) It provides any other basis for a public hearing which the agency determines constitutes good cause; or

(5) The decision of the administrator differs from the recommendation of the statewide council.

(c) If the request for a public hearing for reconsideration is denied, the committee shall file a written explanation for the denial and shall send it to the person who made the request by certified mail, return receipt requested, and deliver to addressee only. The explanation shall include a written notice stating that:

(1) The denial is the agency's final action on the reconsideration; and

(2) The decision which was sought to be reconsidered is the final decision of the agency.

(d) If good cause has been shown to exist, the committee shall schedule a public hearing for reconsideration of the decision. To the extent practicable, the public hearing shall be held within thirty days after [the request is filed with the committee] good cause has been shown to exist. Prior to the hearing, the agency shall provide written notice of the hearing to the person who made the request, the parties to the hearing, and to any other persons upon written request. The committee shall file a decision on the reconsideration within forty-five days after the conclusion of the hearing. The committee shall send the decision to the parties to the hearing and the person who requested the hearing by certified mail, return receipt requested, and deliver to addressee only. The committee shall send the decision to any other persons upon written request. A written notice shall accompany the decision. The written notice shall state that:

(1) The decision is the agency's final action on the reconsideration; and

(2) The decision is the final decision of the agency.

(e) The number of members necessary to constitute a quorum to do business shall consist of a majority of all members. When a quorum is in attendance, the concurrence of the majority of the members in attendance shall make any action of the committee valid. [Eff. 2/9/81; am 7/1/82; am 1/21/88 1988; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-47)

§ 11-186-83 Repealed. [R 1/21/88]

§ 11-186-84 Repealed. [R 1/21/88]

§ 11-186-85 Prohibition on transfers. A certificate of need [~~or an exemption from certificate of need requirements~~] is issued only to the applicant named in the application. The certificate of need [~~or the exemption~~] shall not be sold, assigned, leased, donated, or otherwise transferred to any other person [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-86 Effect of decision on future proposals. [(a)] The issuance or denial of a certificate of need for a specific project in an applicant's long-range development plan shall be without prejudice to any agency action or decision on any future or other application for a certificate of need filed by the same applicant for another project in its long-range development plan.

~~[(b) The issuance or denial of an exemption from certificate of need requirements shall be without prejudice to any agency action or decision on any future or other application for an exemption filed by the same applicant.]~~ [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-87 Periodic monitoring. After a certificate of need [~~or an exemption from certificate of need requirements~~] is [used] issued, the agency shall periodically monitor the development and progress of the project that is the subject of the certificate of need [~~or the exemption~~]. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-46.2, 323D-53)

§ 11-186-88 Agency's right to inspect. The agency or an authorized representative designated by the agency shall have the right to inspect any facility, site, location, book, document, paper, filed, or other record of the holder of the certificate of need [~~or the exemption~~] that is related to any project authorized by the certificate of need [~~or the exemption~~], in order to monitor and evaluate the holder's compliance with the certificate of need's [~~or the exemption's~~] terms of issuance. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-46.2, 323D-53)

§ 11-186-89 Periodic reports. After a certificate of need [~~or an exemption from certificate of need requirements~~] is issued, the holder of the certificate of need [~~or exemption~~] shall file with the agency such periodic reports as the agency may from time to time require on the development and progress of the project that is the subject of the certificate of need [~~or the exemption~~]. The periodic reports shall be in the format designated by the agency, shall contain the information required by the agency, and shall be filed within the deadlines specified by the agency. [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS §§ 323D-12, 323D-46.2, 323D-53)

~~[§ 11-186-90 One year deadline. Within one year after the certificate of need or the exemption from certificate of need requirements is issued, the holder of the certificate of need or the exemption shall submit to the agency trustworthy evidence that the project is the subject of the certificate of need or the exemption has been completed or trustworthy evidence that obligations for capital expenditures for the project have been incurred.]~~ [Eff. 2/9/81; R] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

§ 11-186-91 Withdrawal of certificate of need [or exemption]. (a) At any time after a certificate of need [~~or an exemption from certificate of need requirements~~] is issued, the agency may withdraw the certificate of need [~~or the exemption~~] if the agency determines that:

- (1) The holder of the certificate of need [~~or the exemption~~] is not meeting the timetable specified in the approved application and is not making a good faith effort to meet it; or
- (2) The project being implemented differs substantially from that which was authorized by the certificate of need [~~or the exemption~~].

(b) The agency may withdraw at any time a certificate of need [~~or an exemption~~] if the agency determines that the applicant procured the certificate of need [~~or the exemption~~] by fraud, misrepresentation, or corruption, or that the applicant submitted or caused to be submitted to the agency false statements or information in connection with the application for the certificate of need [~~or the exemption~~].

(c) In any proceeding brought by the agency to withdraw a certificate of need [~~or an exemption~~], the agency shall provide notice and an opportunity for a hearing in accordance with chapter 91, Hawaii Revised Statutes [~~, and the agency shall follow the procedures in section 11-186-82 and section 11-186-83~~].

~~[(d) In any proceeding brought by the agency to withdraw a certificate of need or an exemption, the agency shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence].~~ [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-46.2) (Imp: HRS § 323D-46.2)

SUBCHAPTER 8

[EXEMPTIONS AND] EMERGENCY SITUATIONS

§11-186-96

§ 11-186-96 Repealed. [R 1/21/88]

§ 11-186-97 Repealed. [R 1/21/88]

§ 11-186-98 Repealed. [R 1/21/88]

§ 11-186-99 Emergency situation. (a) If an emergency situation is believed to exist, the applicant may file an emergency application for a certificate of need on the form prescribed and furnished by the agency.

(b) For purposes of this section, an emergency situation is a state of affairs involving an actual substantial injury to public health or where there is a clear and present danger of such an injury occurring.

(c) Notwithstanding any other provision of this chapter to the contrary, when the agency determines that the emergency application is complete and before the agency files a decision on the merits of the application, the agency shall make a reasonable effort to consult with and to provide written or oral notification of the application to the chairperson of the statewide council, the chairperson of the review panel, and, in the event that the agency has determined that the application's primary target group is less than the entire population of the State, the chairperson of the appropriate subarea council or countywide review committee, or to an authorized representative of any chairperson.

(d) After consideration of any timely comments or recommendations on the emergency application, the agency shall file a decision on the merits of the application pursuant to section 11-186-70 within ten days after the agency determines that the application is complete. The agency may issue a certificate of need if the agency determines that an emergency situation exists. The agency shall deny the certificate of need if the agency determines that an emergency situation does not exist, that the proposal is indirectly related to an emergency situation, or

that other good cause exists for the denial of the certificate of need.

(e) The decision on the merits of the emergency application in subsection (d) of the section is the final decision of the agency. The decision shall become final upon its filing without an opportunity for any person to request a public hearing for reconsideration of the decision pursuant to section 11-186-82.

(f) Except as provided in section 11-186-10, the agency's denial of a certificate of need under this section is without prejudice to the applicant's right to file a non-emergency application for a certificate of need for the same proposal, on the form prescribed and furnished by the agency. [Eff. 2/9/81; comp] (Auth: HRS § 323D-44) (Imp: HRS § 323D-44)

§ 11-186-99.1 Administrative review of certain proposals. (a) The agency may review and approve, conditionally approve, or disapprove certain applications for certificate of need without referring the applications to the subarea council, the review panel, the statewide council, or the countywide review committee.

(b) Projects eligible for administrative review are:

- (1) Bed changes which will have a capital expense of \$1,000,000 or less, and which will have an increased annual operating expense of less than \$500,000;
- (2) Service changes which will have a capital expense of \$1,000,000 or less, and which will have an increased annual operating expense of less than \$500,000;
- (3) Any acquisition of a health care facility or service which will result in lower annual operating expenses for that facility or service;
- (4) Any change of ownership, where the change is from one entity to another substantially related entity;

(5) An additional location of an existing service or facility; or

(6) Any proposal which is determined by the agency not to have a significant impact on the health care system.

(c) An applicant whose proposal meets one or more of the criteria in subsection (b) may submit an application for administrative review and approval. ~~[The agency shall review and file a decision within seven working days on any application submitted under this section.]~~

(d) The agency shall deny any request for administrative review if it determines that: the application does not meet any of the criteria in subsection (b), or that the public interest will be served by requiring the application to go through the standard review process. Any application which is denied an administrative review under this subsection may be resubmitted by the applicant for review under the standard procedure. A denial of administrative review under this subsection does not constitute a certificate of need disapproval.

(e) The agency may approve a certificate of need for any application submitted under this chapter if the agency determines that the application meets one or more of the eligibility criteria in subsection (b), and that the application meets the criteria for certificate of need as established in section 11-186-15(a); and that there is no compelling public interest which will be served by requiring the application to go through the standard review process.

(f) The agency shall disapprove any application submitted under this section if it determines that the application does not meet the criteria for certificate of need established in section 11-186-15(a). The agency shall also disapprove any application for certificate of need, whether it has been submitted for administrative review or standard review, if the application is inconsistent with or contrary to the state health services and facilities plan under section 323D-15, Hawaii Revised Statutes.

(g) A decision under this section shall become final after the time expires for any person to request a public hearing for reconsideration of the decision pursuant to section 11-186-82.

(h) Sections 11-186-35 through 11-186-41, 11-186-44 through 11-186-51, and 11-186-70 shall not apply to

administrative reviews under this section. [Eff. 1/21/88; am and comp] (Auth: HRS § 323D-62) (Imp: SLH 1987, Act 270, § 2)

SUBCHAPTER 9

MISCELLANEOUS PROVISIONS

~~§ 11-186-120 Agency reports of reviews.~~

~~The agency shall prepare and publish, at least annually, reports of the reviews conducted by the agency. The reports shall be published in the agency's annual report to the governor and in the agency's newsletter. Each report shall include a statement about the status of each review being conducted by the agency, a statement about each review completed by the agency since the publication of the last report, and a general statement of the findings and decisions made in the course of the reviews.] [Eff. 2/9/81; R] (Auth: HRS § 323D-62) (Imp. HRS § 323D-12)~~

§ 11-186-125 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held ~~[valid]~~ invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff. 2/9/81; am and comp] (Auth: HRS § 323D-62) (Imp: HRS § 323D-12)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter

11-186, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, 2019 and filed with the Office of the Lieutenant Governor.

ROMALA SUE RADCLIFFE
Administrator, State Health
Planning and Development
Agency

APPROVED AS TO FORM:

Deputy Attorney General

V. Legislative Matters – Update on the following:

- a. Senate Bill 1348 SD1 HD1, Relating to the Small Business Regulatory Review Board – Clarifies the intent of the small business regulatory review board when reviewing state and county administrative rules and ordinances that impact small business**

SB1348 SD1 HD1

Measure Title: RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.
 Report Title: Small Business Regulatory Review Board; Powers
 Description: Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules and ordinances that impact small businesses. Makes an appropriation. (SB1348 HD1)
 Companion:
 Package: None
 Current Referral: EDB, FIN
 Introducer(s): K. RHOADS, Wakai

Sort by Date	Status Text
1/24/2019	S Introduced.
1/24/2019	S Passed First Reading.
1/28/2019	S Referred to EET, JDC.
1/31/2019	S The committee(s) on EET has scheduled a public hearing on 02-04-19 3:00PM in conference room 414.
2/4/2019	S The committee(s) on EET recommend(s) that the measure be PASSED, UNAMENDED. The votes in EET were as follows: 4 Aye(s): Senator(s) Wakai, Taniguchi, Inouye, J.Keohokalole; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Fevella.
2/15/2019	S Reported from EET (Stand. Com. Rep. No. 421) with recommendation of passage on Second Reading and referral to JDC.
2/15/2019	S Report adopted; Passed Second Reading and referred to JDC.
2/21/2019	S The committee(s) on JDC will hold a public decision making on 02-26-19 9:00AM in conference room 016.
2/26/2019	S The committee(s) on JDC recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDC were as follows: 4 Aye(s): Senator(s) K. Rhoads, Wakai, Gabbard, Kim; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Fevella.
3/1/2019	S Reported from JDC (Stand. Com. Rep. No. 1015) with recommendation of passage on Third Reading, as amended (SD 1).
3/1/2019	S 48 Hrs. Notice 03-05-19.
3/5/2019	S Report adopted; Passed Third Reading, as amended (SD 1). Ayes, 24; Aye(s) with reservations: none . Noes, 0 (none). Excused, 1 (Senator(s) Harimoto). Transmitted to House.
3/5/2019	H Received from Senate (Sen. Com. No. 456) in amended form (SD 1).
3/7/2019	H Pass First Reading
3/7/2019	H Referred to EDB, JUD, referral sheet 27
3/7/2019	H Bill scheduled to be heard by EDB on Wednesday, 03-13-19 10:00AM in House conference room 309.
3/13/2019	H The committee(s) on EDB recommend(s) that the measure be deferred until 03-15-19 11:30am.
3/14/2019	H Bill scheduled for decision making on Friday, 03-15-19 11:30AM in conference room 309.
3/15/2019	H The committee(s) on EDB recommend(s) that the measure be deferred until 03-20-19 11:30am.
3/15/2019	H Bill scheduled for decision making on Wednesday, 03-20-19 11:30AM in conference room 309.
3/20/2019	H The committees on EDB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 8 Ayes: Representative(s) McKelvey, Kitagawa, Eli, Ichiyama, Johanson, Quinlan, Yamashita, Matsumoto; Ayes with reservations: none; Noes: none; and Excused: none.
3/22/2019	H Reported from EDB (Stand. Com. Rep. No. 1609) as amended in HD 1, recommending passage on Second Reading and referral to JUD.

3/22/2019	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JUD with none voting aye with reservations; none voting no (0) and Representative(s) Quinlan, Yamane excused (2).
3/27/2019	H	Bill scheduled to be heard by JUD on Friday, 03-29-19 2:05PM in House conference room 325.
3/29/2019	H	This measure has been deleted from the meeting scheduled on Friday 03-29-19 2:05PM in conference room 325.
4/1/2019	H	Re-referred to EDB, FIN, referral sheet 45
4/2/2019	H	Bill scheduled to be heard by FIN on Wednesday, 04-03-19 2:30PM in House conference room 308.
4/3/2019	H	The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 13 Ayes: Representative(s) Luke, Cullen, Eli, Gates, Hashimoto, Kitagawa, B. Kobayashi, Matayoshi, Nakamura, Todd, Wildberger, Yamashita, McDermott; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Holt, Nishimoto.
4/5/2019	H	Reported from FIN (Stand. Com. Rep. No. 2151), recommending passage on Third Reading.
4/9/2019	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and none excused (0). Transmitted to Senate.
4/11/2019	S	Received from House (Hse. Com. No. 787).
4/11/2019	S	Senate disagrees with House amendments.
4/11/2019	H	Received notice of disagreement (Sen. Com. No. 893).

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

SB1348 SD1 HD1

V. Legislative Matters – Update on the following:

- b. Governor’s Message 559 Submitting for Consideration of the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2022**

GM559

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, JONATHAN SHICK, for a term to expire 06-30-2022.
Report Title: Small Business Regulatory Review Board
Description:
Companion:
Package:
Current Referral: EET
Introducer(s):

Sort by Date	Status Text
2/1/2019	S Received.
2/1/2019	S Referred to EET.
3/25/2019	S The committee(s) on EET has scheduled a public hearing on 03-29-19 2:50PM in conference room 414.
3/29/2019	S The recommendation of the committee(s) on EET is to ADVISE AND CONSENT to the nomination(s). The votes in EET were as follows: 3 Aye(s): Senator(s) Wakai, Taniguchi, J.Keohokalole; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Inouye, Fevella.
4/11/2019	S Reported from EET (Stand. Com. Rep. No. 2069) with recommendation to Advise and Consent.
4/11/2019	S One Day Notice 04-12-19.
4/12/2019	S Confirmed. Ayes, 21. Aye(s) with reservations: none. Noes, 0 (none). Excused, 4 (Senator(s) S. Chang, Ihara, Kidani, L. Thielen).

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

GM559

V. Legislative Matters – Update on the following:

- c. Governor’s Message 624 Submitting for Consideration for the Gubernatorial Nomination of Mr. James (Kimo) Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2020**

GM624

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, JAMES LEE, for a term to expire 06-30-2020.
Report Title: Small Business Regulatory Review Board
Description:
Companion:
Package:
Current Referral: EET
Introducer(s):

Sort by Date	Status Text
2/28/2019	S Received.
2/28/2019	S Referred to EET.
3/25/2019	S The committee(s) on EET has scheduled a public hearing on 03-29-19 2:50PM in conference room 414.
3/29/2019	S The recommendation of the committee(s) on EET is to ADVISE AND CONSENT to the nomination(s). The votes in EET were as follows: 3 Aye(s): Senator(s) Wakai, Taniguchi, J.Keohokalole; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Inouye, Fevella.
4/11/2019	S Reported from EET (Stand. Com. Rep. No. 2069) with recommendation to Advise and Consent.
4/11/2019	S One Day Notice 04-12-19.
4/12/2019	S Confirmed. Ayes, 21. Aye(s) with reservations: none. Noes, 0 (none). Excused, 4 (Senator(s) S. Chang, Ihara, Kidani, L. Thielen).

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

GM624

V. Legislative Matters – Update on the following:

- d. Governor’s Message 625 Submitting for Consideration of the Gubernatorial Nomination of Mr. Garth Yamanaka to the Small Business Regulatory Review Board for a term to expire June 30, 2023**

GM625

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, GARTH YAMANAKA, for a term to expire 06-30-2023.
Report Title: Small Business Regulatory Review Board
Description:
Companion:
Package:
Current Referral: EET
Introducer(s):

Sort by	Status	Text
Date		
2/28/2019	S	Received.
2/28/2019	S	Referred to EET.
3/25/2019	S	The committee(s) on EET has scheduled a public hearing on 03-29-19 2:50PM in conference room 414.
3/29/2019	S	The recommendation of the committee(s) on EET is to ADVISE AND CONSENT to the nomination(s). The votes in EET were as follows: 3 Aye(s): Senator(s) Wakai, Taniguchi, J.Keohokalole; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Inouye, Fevella.
4/11/2019	S	Reported from EET (Stand. Com. Rep. No. 2069) with recommendation to Advise and Consent.
4/11/2019	S	One Day Notice 04-12-19.
4/12/2019	S	Confirmed. Ayes, 21. Aye(s) with reservations: none. Noes, 0 (none). Excused, 4 (Senator(s) S. Chang, Ihara, Kidani, L. Thielen).

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

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GM625

VI. Administrative Matters

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS, as follows:**
 - a. Meetings with Board Members and State Department Directors**
 - b. Changes to Board's Website**
 - c. Hawaii Small Business Fair at Leeward Community Conference on May 4, 2019**
 - d. Maui Small Business Conference at Maui Arts & Cultural Center on May 8, and 9, 2019**