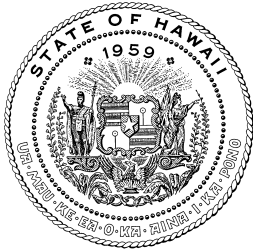


Small Business Regulatory Review Board Meeting

August 20, 2020

10:00 a.m.



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.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 586-2419

AGENDA

Thursday, August 20, 2020 ★ 10:00 a.m.

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Garth Yamanaka
Vice Chairperson
Hawai'i

William Lydgate
2nd Vice Chairperson
Kaua'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Taryn Rodighiero
Kaua'i

Director, DBEDT
Voting Ex Officio

As authorized under the Governor's July 17, 2020, Tenth Supplementary Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/94477719320>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2020>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or via postal mail to **SBRRB 250 South Hotel Street, Room 506A, Honolulu, Hawaii 96813.**

Please include the word "Testimony" and the subject matter following the address line. All written testimony should be **received no later than 4:30 p.m., Wednesday, August 19, 2020.**

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

I. Call to Order

II. Approval of July 16, 2020 Meeting Minutes

III. Old Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing of Hawaii Administrative Rules (HAR) Title 19 Chapter 17, **Rules and Regulations Governing Recreational Stops**, promulgated by Department of Parks and Recreation - City and County of Honolulu – **Discussion Leader – Jonathan Shick**

IV. New Business – After Public Hearing

- A. Discussion and Action on Amendments to HAR Title 19 Chapter 108, **High Occupancy Vehicle Lanes**, promulgated by Department of Transportation – **Discussion Leader – James Kimo Lee**
- B. Discussion and Action on Amendments to HAR Title 12 Subtitle 8 **Hawaii Occupational Safety and Health Division, Part 11 Elevators and Related Systems Chapter 229 General, Administrative, and Legal Provisions**, promulgated by Department of Labor and Industrial Relations – **Discussion Leader – Mary Albitz**

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, Hawaii Revised Statutes

VI. Next Meeting: Thursday, September 17, 2020, at 10:00 a.m.

VII. Adjournment

II. Approval of July 16, 2020 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - DRAFT

July 16, 2020

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walsh
- William Lydgate
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Jonathan Shick

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF JUNE 18, 2020 MINUTES**

Mr. Ritchie made a motion to accept the June 18, 2020 meeting minutes, as amended. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on the Amendments and the Small Business Statement After Public Hearing of HAR Title 13 Chapter 146-6, Fees, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader and Vice Chair Albitz explained that the post public hearing rule changes reflect an increase in fees at state parks. While most people were in support of the increases, some wanted to increase the fees even higher, which was not done.

Mr. Curt Cottrell, Administrator at DLNR's Division of State Parks, stated that COVID-19 has changed the context and dynamics of tourism and the visitors attending Hawaii's state parks. The public hearing was the first "remote" hearing in the State, which turned out to be very successful.

Comments made at the public hearing were as expected with no negative feedback. Thirteen testifiers attended and five testifiers submitted written testimonies, all of which approved the proposed fee increases. Mr. Cottrell confirmed that State Parks cannot egregiously increase the admittance fees to visitors at a sufficiently higher rate than to residents.

Chair Cundiff reminded the members that at the pre-public hearing meeting with this Board, State Parks provided a very detailed presentation. He expressed that this was a long process and due to the detailed information, as well as DLNR engaging stakeholders, the rule-making process went through quite seamless. Mr. Cottrell agreed but expressed the challenges currently being experienced from COVID-19; he appreciated this Board's review of the proposed rules.

Vice Chair Albitz made a motion to move the proposed amendments to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on the following proposals to Title 11, promulgated by Department of Health (DOH)

1. New HAR Chapter 53, Section 401, Water Quality Certifications

Chair Cundiff expressed that the information provided by DOH is excellently summarized, thoroughly laid out, informative, and easy to follow considering the extensive volume of information. Discussion leader Mr. Nakamoto affirmed that the DOH team did a great job with the presentation of the proposed rules, which are all pre-public hearing. He recently met with the DOH team members to discuss the proposals.

Mr. Alec Wong, Manager at DOH's Clean Water Branch, summarized the proposed new rule section by explaining that the proposal is not new as it is currently part of Chapter 54. The proposal reorganizes and streamlines the rules to be consistent with the minimum federal requirements. Overall, these rules are expected to be positive regarding the economic impact to the State as the rules will reduce the cost of preparing applications for certifications.

Mr. Nakamoto made a motion to move the proposed new rule section to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

2. Amendments to HAR Chapter 54, Water Quality Standards

Mr. Alec Wong summarized the proposal, which entails conforming the State's water quality standards to the minimum federal requirements by updating Hawaii's existing numeric human health water quality standards with the latest criteria recommended by EPA (Environmental Protection Agency). One of the main reasons for maintaining regular updates to the rules is to continue receiving federal grant funding from EPA.

Forty new toxic chemical pollutants will be added to the toxic chemical pollutants list per the current EPA Human Health Criteria Table. Mr. Darryl Lum, Clean Water Branch's Engineering Section Supervisor, acknowledged the new chemical pollutants and explained that when a new standard is incorporated into a permit, the rules allow for a period of time where the standards become the "back-drops" to the permits. Thus, the rules then provide for an opportunity, when businesses that have new requirements imposed upon them, to allow for time to adapt to and comply with the changes.

The proposed amendments will largely impact twenty major permittees/businesses; these are mostly the wastewater sewer plants but the militaries and municipalities are also included. There are no foreseeable impacts to the small business community. GCA (General Contractors Association) members and others were approached on these rules.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

3. Amendments to HAR Chapter 55, Water Pollution Control

Mr. Wong explained that the changes to this chapter incorporate provisions from Chapter 54. The rules are intended to improve upon and clarify the permitting procedures and are expected to be more transparent for small businesses. Many of the changes are based on stakeholders' comments and concerns which will help expedite the permitting process and procedures when a discharge occurs.

Mr. Lum stated that prior to the public hearings, there is a mailing list of businesses that are interested in receiving information on the rule changes. Recently, an email blast was sent out to all those on the list including permittees and the counties.

Regarding who the dischargers are, Mr. Lum explained that dischargers are described as those releasing pollutants into the State waters. They include wastewater treatment plants, Hawaiian Electric power generating stations, refineries and other industrial-type discharging businesses. However, most of the permittees are from construction-related businesses; two to four permit applications a day are received from these types of companies.

Mr. Lum further explained that pollution for regulatory purposes is broken out into industrial and non-industrial businesses. The permits given to these businesses are considered "pro-active" tools. This means that permits are given first and then subsequently a business may comply by either not polluting or polluting to a level where it would impact a community whereby it would be mandated by DOH to cease discharging.

When a permit is not complied with or the business is polluting without a permit, DOH will invoke enforcement and order corrections. If there is an immediate issue, but it is remediated by the company and subsequently discharge reoccurs, it still may be treated as an acceptable discharge. While this does not always occur, Mr. Lum noted that in the sixteen years he has been with DOH, there was only one time when a business was shut down by DOH. This was because the remediation required was no longer economically viable for that business' type of facility. He also noted that closing of a facility in Hawaii is very rare.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

4. New HAR Chapter 56, Nonpoint Source Pollution Control

Mr. Wong explained that Chapter 56 is new although the state law governing these rules Chapter 342E, HRS, has been in existence for several years. The rules' purpose is to ensure that Hawaii's waters are adequately protected from all sources of water pollution, including NPS (nonpoint source) pollution.

Specifically, Chapter 342 provides the framework for the prevention, abatement and control of new and existing NPS pollution from activities conducted by State agencies; i.e., the departments of land and natural resources and agriculture. It also identifies known NPS water pollution and requires registration, development of a water pollution prevention plan, and implementation of management measures to be used to prevent or abate NPS pollution.

Mr. Lum provided some history to these rules and explained that while NPS is largely from industrial sources, which has been regulated by the federal and state governments since the 1970's, the Clean Water Act expressly requires states and not the federal government to regulate everything else that may be a pollutant that falls outside of NPS. Thus, Chapter 342E requires DOH to comply with the federal mandates and to have adequate authority to deal with water pollution issues that are not standard industrial practices.

Recently, there has been much concern because the major pollutant sources in Hawaii are not necessarily the same pollutants that have been dealt with in the past. For example, every time it rains, brown water advisories are given; this is run-off from some of Hawaii's major landowners. While a lot of good practices have been involuntary, from forestries to marinas and even department of agriculture, there is a need to have some form of formality and standards that all can follow for DOH to feel comfortable with.

The rules are expected to have a minimal direct impact on small businesses because the requirements target major landowners (not lessors of land) and government agencies, all of whom have been approached by DOH. It is recognized that a major effort is required for outreach purposes, particularly on the neighbor islands as many of the larger government agencies own marinas who are required to comply with the rules.

Chair Cundiff and Mr. Nakamoto appreciated all the work that was involved in preparing the proposed rules as well as being proactive in terms of the environment and the community's welfare. Chair Cundiff thanked DOH for its review and thoroughness of the rules and added that while he is confident that DOH will be reaching out to stakeholders he would like to reinforce the proactive outreach via emails, etc.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

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

1. "Discussion Leader Assignments" for Board Members' State and County Agencies' Administrative Rule Review

Chair Cundiff noted that this Board recently received good press and coverage from Kauai's *Garden Isle* newspaper. Good job to board members Will Lydgate and Taryn Rodighiero who were participants in the article.

In regard to the Board's discussion leader assignments, Chair Cundiff noted that it is important to have good representation as well as fairness and equity so that each member is assigned at least one agency or county that they are discussion leader of.

Board members reviewed the proposed discussion leader assignments and agreed to the following:

- Governor's Office
 - Back-up Discussion leader – Vice Chair Albitz
- Office of the Lieutenant Governor
 - Discussion leader – Vice Chair Albitz
 - Back-up Discussion leader – Second Vice Chair Yamanaka
- Department of Education
 - Discussion leader - Ms. Rodighiero
- Department of Hawaiian Home Lands
 - Discussion leader - Mr. Lee
- Department of Land and Natural Resources
 - Discussion leader - Ms. Rodighiero
- Department of Commerce and Consumer Affairs
 - Back-up Discussion Leader – Ms. Rodighiero
- County of Kauai
 - Discussion leader - Mr. Lydgate
- County of Hawaii
 - Discussion leader - Second Vice Chair Yamanaka
- County of Maui
 - Discussion leader - Vice Chair Albitz
 - Back-up Discussion Leader – Mr. Lee

- City & County of Honolulu
 - Discussion leader - Jonathan Shick
 - Back-up Discussion leader – Mr. Nakamoto

Vice Chair Albitz made a motion to accept the proposed changes to the Board's discussion leader assignments. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

2. Board's Outreach Opportunities:

a. Draft Letter to Business Organizations

Board members reviewed the outreach draft letter to business organizations for connecting and reconnecting with various organizations. It was agreed that a change in the letter will entail removing "Please let us know if you would be interested in scheduling a meeting" to "We will follow-up with you to see if you would be interested in scheduling a meeting."

Chair Cundiff reminded the members that a list of business organizations was emailed after the last board meeting. If members are interested in adding to this list, please let staff know. The list will be subsequently emailed to the members.

Ms. Atmospera-Walch made a motion to accept the proposed changes to the draft outreach letter to the business organizations. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

b. PowerPoint Presentation

Board members reviewed slide number 5 in the Power Point presentation, outlining the Board's "Vision" and "Mission."

Upon discussion and review, the members agreed to change the Board's vision to read, "Hawaii is the most business-friendly state in the nation."

VI. NEXT MEETING - Thursday, August 20, 2020 at 10:00 a.m.

VII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 11:56 a.m.

III. Old Business — After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 19 Chapter 17, Rules and Regulations Governing Recreational Stops, promulgated by the Department of Parks and Recreation - City and County of Honolulu

SMALL BUSINESS STATEMENT
“AFTER” PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

Phone Number: _____

E-mail Address: _____ **Date:** _____

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.)

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*

V. Please explain how the agency involved small business in the development of the proposed rules.

- a. **Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.
2. A summary of the public's and small businesses' comments.
3. A summary of the agency's response to those comments.
4. The number of persons who:
 - (i) Attended the public hearing:
 - (ii) Testified at the hearing:
 - (iii) Submitted written comments:
5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
☐ **Yes** ☐ **No**
 - (i) If "Yes," was the change adopted? ☐ **Yes** ☐ **No**
 - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

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-impact-statements- pre-and-post-public-hearing>

RECEIVED

By SBRRB at 8:21 am, Jul 24, 2020

CITY AND COUNTY OF HONOLULU

Repeal of the Amended Policy, Rules and Regulations
Governing Recreational Stops by Commercial Tour
Companies in City Parks
and the Adoption of Chapter Title 19, Chapter 17, City
and County of Honolulu Administrative Rules

,2020

SUMMARY

1. "Amended Rules and Regulations Governing Recreational Stops by Commercial Tour Companies in City Parks", is repealed.

2. Title 19, Chapter 17, City and County of Honolulu Administrative Rules, entitled "Rules and Regulations Governing Recreational Stops", is adopted.

CITY AND COUNTY OF HONOLULU
ADMINISTRATIVE RULES

DEPARTMENT OF PARKS AND RECREATION

AMENDED RULES AND REGULATIONS GOVERNING
RECREATIONAL STOPS BY COMMERCIAL TOUR COMPANIES
IN CITY PARKS

PART X

REPEALED

§§56 to 59 Repealed. [R]

CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF PARKS AND RECREATION

CHAPTER 17

RULES AND REGULATIONS GOVERNING
RECREATIONAL STOPS

Subchapter 1 General Provisions

§19-17-1	Purpose
§19-17-2	Application
§19-17-3	Definitions
§19-17-4	Penalties
§19-17-5	Severability

Subchapter 2 Special Provisions

§19-17-6	Permit required
§19-17-7	Permit application
§19-17-8	Permit fees
§19-17-9	Permit conditions
§19-17-10	Regulations governing recreational stops
§19-17-11	Closing of areas
§19-17-12	Denial or revocation of permit

SUBCHAPTER 1

GENERAL PROVISIONS

§19-17-1 Purpose. The purpose of these rules is to regulate the use of beach parks for recreational stops by commercial tour companies:

"Authorized representative" means any person authorized by the director of the department of parks and recreation to act for the department.

"Commercial tour company" shall have the same meaning as "motor carrier" as the latter term is defined herein.

"Common carrier by motor vehicles" shall have the same meaning as "common carrier by motor vehicle" as the latter term is defined in HRS chapter 271-4(11) to mean any person which holds itself out to the general public to engage in transportation by motor vehicle of passengers or property or any class or classes thereof for compensation.

"Contract carrier by motor vehicle" shall have the same meaning as "contract carrier by motor vehicle" as the latter term is defined in HRS chapter 271-4 to mean any person which engages in transportation by motor vehicle of passengers or property for compensation (other than transportation referred to in HRS chapter 271-4(11)) under continuing contracts with one person or a limited number of persons either (A) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (B) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

"Department" means the department of parks and recreation, city and county of Honolulu.

"Director" means the director of the department of parks and recreation, or duly authorized representative.

"HRS" means the Hawaii Revised Statutes.

"Licensed motor carrier" shall mean a motor carrier with a current certificate of public convenience and necessity or permit issued by the public utilities commission authorizing the transportation of persons.

"Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

"Motor vehicle" shall have the same meaning as "motor vehicle" as the latter term is defined in HRS Chapter 271.

"Park district" means a geographic area as defined in Exhibit A attached hereto.

"Parks permit" or "permit" means a non-transferrable department document granting a permittee permission to use recreational and other areas and under the control, maintenance, management and operation of the department.

"Parks permit office" means the office in the department responsible for processing of application and the issuance park permits.

"Permit application" means a department form to request a permit.

"Person" or "persons" means any individual, firm, partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"Public utilities commission" or "PUC" means a State quasi-judicial commission that regulates all chartered, franchised, certificated, and registered public utilities companies operating in the State of Hawaii.

"ROH" means the revised ordinance of Honolulu 1990, as amended.

"Recreational stop" means the use of a beach park by a commercial tour company for activities that may include, but are not limited to, sightseeing, spectating, picture taking, beach combing, swimming, guided tours and eating of prepared foods.

"State" means the State of Hawaii.

"Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage. [Eff]
(Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, §10-1.3)

§19-17-4 Penalties. Any person violating any provision of this chapter, or any term or condition of any permit issued hereunder, may upon conviction, be punished by a fine not exceeding \$500 or by imprisonment of not more than thirty days, or by both such fine and imprisonment. [Eff]
(Auth: RCH §6-1403; ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3, 10-1.6)

§19-17-5 Severability. If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. [Eff] (Auth: RCH §6-1403; ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

SUBCHAPTER 2

SPECIFIC PROVISIONS

§19-17-6 Permit required. (a) A recreational stop is permitted only in a beach park designated by the director for recreational stops.

(b) No commercial tour company may use a beach park for a recreational stop without first obtaining a park permit from the department.

(c) A permit is not required if the recreational stop does not exceed fifteen (15) minutes in duration. [Eff] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

§19-17-7 Permit application. (a) A permit to conduct a recreational stop in a beach park is available only to a licensed motor carrier.

(b) A permit that would include a recreational stop at Waimanalo bay beach park is available only to licensed motor carriers that utilize motor vehicles with passenger seating capacity of no more than fifteen passengers.

(c) A licensed motor carrier desiring a permit to conduct a recreational stop shall submit a permit application to the park permits office.

(d) The permit application shall set forth the name, address and contact phone number of the applicant, name of authorized agent and agent contact information, and list the beach parks applicant intends to use for a recreational stop.

(e) Applications must be accompanied by the following current and complete documentation:

- (1) Current licenses and certificates required to conduct business in the State which include but are not limited to business registration. The department may waive this requirement for any applicant that had submitted the required documentation with a prior application and the documentation remain valid at the time of the new application;
- (2) Proof of a current comprehensive general liability insurance policy in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence. The insurance certificate shall name the city and county of Honolulu, its officers and employees, and the State of Hawaii, its officers and employees, as additional insured. The insurance must also cover any vehicle listed on the permit application. A copy of the certificate of insurance shall be filed with the permit application;
- (3) Proof of automobile and umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any

auto (including owned, hired, and non-owned auto) used by the applicant;

- (4) Copy of valid certificate of public convenience and necessity or permit issued by the PUC authorizing the transportation of persons; and

- (5) Description of the make, body type, year of manufacture, registered owner, state license number, identifying number assigned to the applicant by the PUC, and the maximum passenger capacity of the motor vehicle that will be used by the applicant to provide recreational stops.

(f) The permitted licensed motor carrier shall only park in a marked stall with its motor vehicle engine off while in the parking stall.

(g) The department may require an applicant to provide additional information as determined necessary by the department to assist with review and processing of the application.

(h) The department may reject any application that contains false, fictitious or fraudulent information or that is incomplete.

(i) Applications must be submitted and received by the park permits office between the 1st and 5th day of the month prior to the month requested. For example, an applicant requesting a recreational stop permit for the month of March must ensure that the parks permit office receives the permit application between February 1 through February 5. Applications received before the 1st of the month or after the 5th of the month will be rejected and returned to the applicant.

(j) The maximum number of permits for recreational stops that the department may issue shall not exceed five permits per month per park district.

(k) Permits for recreational stops shall be issued on a first-come first-served basis, however, if the number of applications exceed the maximum of five permits per month, the department will conduct a lottery to award the five commercial stop permits for

the month. The permits will be awarded by random draw from properly submitted permit applications.

(1) No applicant may submit more than one application per park district. If an applicant submits more than one application per park district, all applications submitted by the applicant shall be rejected. For the purpose of these rules, applicants considered to be submitting more than one application shall include but not be limited to:

- (1) An individual submitting more than one application, whether in its own name or through an agent;
- (2) An individual or legal entity submitting an application who also owns, directly or indirectly, any interest in a joint venture, partnership or corporation, which has also submitted an application;
- (3) A joint venture partnership or corporation submitting an application where a person owning, directly or indirectly, any interest in such joint venture partnership, or corporation has also submitted an application; or
- (4) A joint venture, partnership or corporation submitting an application where a person owning, directly or indirectly, any interest in such joint venture, partnership or corporation also owns any interest in another joint venture, partnership or corporation, which has submitted an application under these rules.

(m) If there is any reasonable ground to believe that collusion exists among two or more applicants, all of the applications of the parties to such collusion shall be rejected and the parties to such collusion shall be prohibited from applying and securing future permits for one calendar year.

[Eff] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

§19-17-8 Permit fees. (a) An applicant shall pay the fees established by ordinance for a permit for a recreational stop prior to receipt of the permit. Fees to be assessed shall be the fees established in the fee ordinance effective at the time of application.

(b) Acceptable forms of payment include cash, check, money order or cashiers' check payable to the city and county of Honolulu.

(c) All fees are non-refundable except that the director may, in the director's discretion and if consistent with the purposes of these rules and in the public interest, waive the no-refund rule.

[Eff] (Auth: RCH §6-1403, ROH §1-9.1)

(Imp: ROH §§10-1.2, 10-1.3)

§19-17-9 Permit conditions. (a) The permittee is prohibited from knowingly giving false, fictitious or fraudulent information. To do so will be considered a breach of conditions and be grounds for permit revocation.

(b) The term of a recreational stop permit shall be one calendar month.

(c) A permit does not authorize recreational stops at beach parks located in state conservation districts or at any public park or beach park not listed on the permit.

(d) A permit shall be displayed in plain view on the dashboard of the motor vehicle while it is on park property and shall be presented, upon request, to any department representative or law enforcement officer. Permittee may be cited for conducting commercial stops without a permit if permittee does not display the required permit in the motor vehicle.

(e) A permittee shall not transfer, assign, or sell any or all rights granted by the permit to a third party or relinquish possession or use of the whole or any parts of the park granted to permittee under the permit.

(f) Permittee shall comply with all applicable laws, rules, and regulations of the federal, state and county governments.

(g) Permittee agrees to carry general liability insurance against claims occasioned by the action or omission of the permittee, its agents and employees in carrying out activities and operations under the recreational stop permit.

(h) Issuance of a permit is not a grant of any other approvals that may be required of the permittee for the permitted activity, nor does a permit exempt the permittee or the permitted activity from any applicable laws, rules, ordinances, and regulations of any federal, state or county government.

(i) The permit may contain such conditions as are reasonably consistent with the protection and use of the beach park for the purpose for which the park is managed. It may also contain reasonable limitations on the equipment and vehicles to be used and the time and area subject to the permit.

(j) The director may, in the director's discretion and if consistent with the purposes of this chapter and in the public's interest, change or alter the terms of the permit after it is issued.

[Eff _____] (Auth: RCH §6-1403, ROH §1-9.1)

(Imp: ROH §§10-1.2, 10-1.3)

§19-17-10 Regulations governing recreational stops. (a) A recreational stop is permitted only in beach parks designated by the director for recreational stops.

(b) A recreational stop is prohibited at any beach park located in a state conservation district or at any public park or beach park not listed on the permit.

(c) A recreational stop is prohibited at Kailua beach park, Kalama beach park, Waimanalo beach park, Kaiona beach park, Kaupo beach park, Makapuu beach park, and Kalanianaʻole beach park.

(d) A recreation stop shall not exceed ninety (90) minutes.

(e) A recreational stop is permitted only on week days, Monday through Friday, during the hours from 6:30 a.m. to 6:30 p.m., excluding state and federal holidays.

(f) No more than three motor vehicles with permits for recreational stops may be parked in a beach park at the same time.

(g) Motor vehicles shall park only in marked stalls.

(h) There shall be no cooking or preparation of food at the beach park during a recreational stop.

(i) Buffet or serving lines shall not be permitted.

(j) The use of any catering service in conjunction with a recreational stop at a beach park is prohibited.

(k) Prepared lunch, food and beverages that do not require buffet or serving lines may be distributed by the permittee to its participants during a recreational stop.

(l) The distribution of food or beverages to other park users is prohibited.

(m) Reserving of picnic sites and tables is prohibited.

(n) Litter generated by the permittee or its activity shall be picked up and placed in trash receptacles.

(o) Advertising, soliciting or selling on park property is prohibited. [Eff] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

§19-17-11 Closing of areas. The director or an authorized representative may close a beach park and restrict public use of all or any portion thereof, for the protection, restoration, and preservation of areas and facilities, or the health, safety, and welfare of person or property. [Eff] (Auth: RCH §6-1403; ROH §§ 1-9.1, 10-1.3) (Imp. ROH §§10-1.2, 10-1.3)

§19-17-12 Denial or revocation of a permit. (a)

An application for a permit for a recreational stop may be denied or a permit revoked by the director or the authorized representative when:

- (1) If applicant knowingly gives false, fictitious or fraudulent statements of representations made on the permit application.
- (2) The beach park is closed or will be closed because of damage, or because of scheduled or ongoing construction, repair or maintenance activities.
- (3) The requested beach park has been reserved for city or department sponsored activity.
- (4) Issuance of a permit will result in a violation of City, State or Federal laws, rules or ordinances.
- (5) A state of emergency is declared by the director or other proper authorities.
- (6) Natural or civil disturbances including, but not limited to tsunamis, floods, earthquakes, storms, riots, demonstrations and employee strikes, which may be occurring or threatening to occur.
- (7) The beach park is inadequate to meet the needs of the anticipated activity.
- (8) A prior application for a permit for the same time and place has been made that has been or will be granted.
- (9) It reasonably appears that based upon the information provided that the anticipated activity presents a clear and present danger.
- (10) Applicant fails to pay required fees or if payment made by check is returned unpaid.
- (11) Violations of the terms and conditions of the permit.

(b) If a permit is denied or revoked, the applicant shall be informed in writing of the reasons for denial or revocation, except under emergency circumstances, when an immediate verbal revocation or

suspension of the permit may be made, to be followed by written confirmation within seventy-two hours.

(c) If a permit is revoked, the permittee shall be ineligible to apply for a recreational stop permit for a minimum of one calendar year following revocation and be subject to other penalties as set forth in this chapter. [Eff] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

DEPARTMENT OF PARKS AND RECREATION

The repeal of the Rules and Regulations Governing Amended Rules and Regulations Governing Recreational Stops by Commercial Tour Companies in City Parks and the adoption of Title 19, Chapter 17, City and County of Honolulu Administrative Rules, Department of Parks and Recreation, Rules and Regulations Governing Recreational Stops, which were adopted on _____, 2020, following a public hearing held on June 9, 2020, after public notice was given on May 10, 2020, in the Honolulu Star-Advertiser.

This chapter shall take effect ten (10) days after filing with the Office of the City Clerk.

DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU

Michele K. Nekota, Director

APPROVED AS TO
FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of
_____, 2020.

KIRK CALDWELL, Mayor
City and County of Honolulu

CERTIFICATION

I, MICHELE K. NEKOTA, in my capacity as Director of the Department of Parks and Recreation, City and County of Honolulu, do hereby certify that the foregoing is a full, true and correct copy of Title 19, Chapter 17, City and County of Honolulu Administrative Rules, entitled "Rules and Regulations Governing Recreational Stops", which were adopted on _____ following a Public Hearing held on June 9, 2020, after public notice was given on May 10, 2020, in the Honolulu Star-Advertiser.

MICHELE K. NEKOTA
Director

Received this ____ day of
_____, 2020.

City Clerk

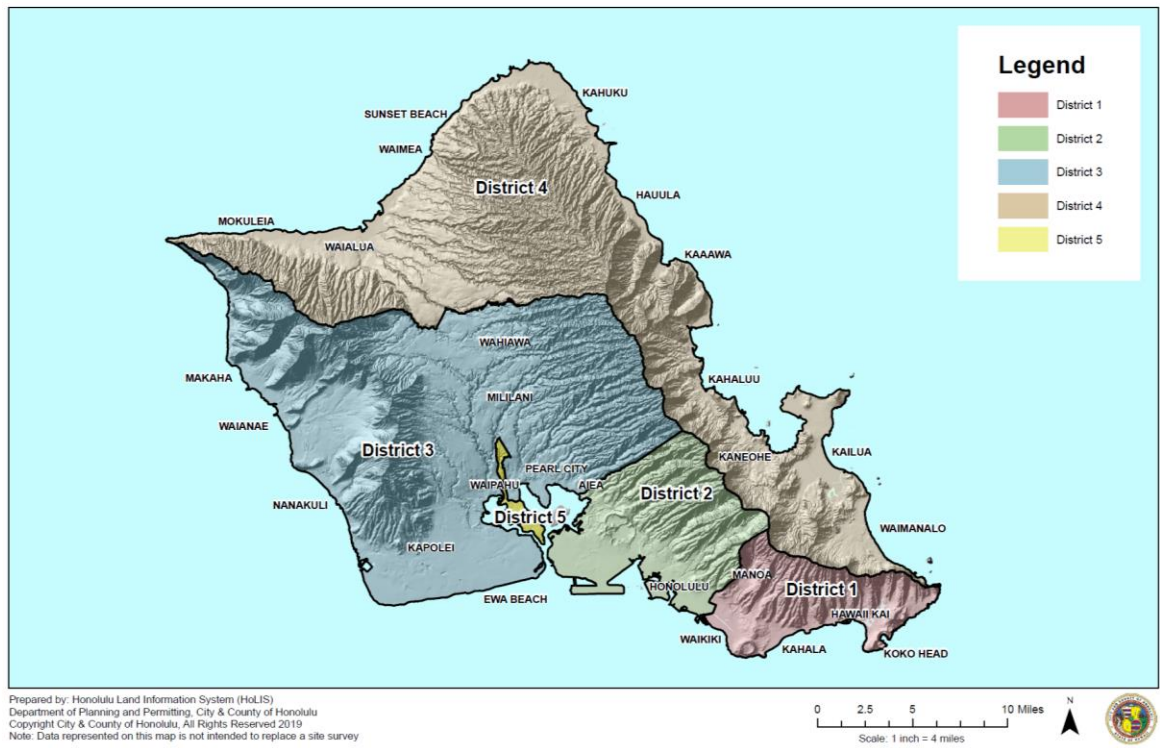
Exhibit A

Park Districts

D1 - District I - East Honolulu - west of Makapuu Point along the south shore to east of Punahou Street
D2 - District II - West Honolulu - west of Punahou Street down Kalakaua ending at the Ala Wai Canal to east of Kaonohi Street
D3 - District III - Leeward - west of Kaonohi Street to Kaena Point along the leeward coast and up to Whitmore Village in Central Oahu
D4 - District IV - Windward - west of Makapuu Point along the windward coast line and the north shore to Kaena Point
D5 - District V - Patsy T Mink Central Oahu Regional Park, Waipio Peninsula Soccer Park, and Hans L'Orange Neighborhood Park

Exhibit A

Park Districts City and County of Honolulu



IV. New Business – Before Public Hearing

A. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 108, High Occupancy Vehicle Lanes, promulgated by DOT

**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.)

*

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*

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.).
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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 SBRRB at 12:51 pm, Aug 12, 2020

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097**

IN REPLY REFER TO:

HWY-TT 20-2.0104

July 16, 2020

TO: DORI E. PALCOVICH, EXECUTIVE OFFICER
SMALL BUSINESS REGULATORY REVIEW BOARD
DEPARTMENT OF BUSINESS ECONOMIC DEVELOPMENT AND
TOURISM

FROM: JADE T. BUTAY 
DIRECTOR OF TRANSPORTATION

SUBJECT: PROPOSED AMENDMENT OF CHAPTER 19-108, HIGH OCCUPANCY
VEHICLE (HOV) LANES, HAWAII ADMINISTRATIVE RULES

We are transmitting the "Small Business Impact Statement" and a copy of the subject proposed draft rules in Ramseyer format for review by the Small Business Regulatory Review Board.

In the draft, we are seeking to amend the following sections:

1. Section 19-108-2 to add definition of "Electric Vehicle" (EV) means a vehicle as stated in HRS §291-71.
2. Section 19-108-7 to include EVs in the vehicle exceptions.

Act 168 Session Laws of Hawaii enacted in 2012 was repealed on June 30, 2020, due to the sunset clause. Part of Act 168 allowed EVs to use a HOV lane regardless of the number of persons in the vehicle. The Department of Transportation supports the continued exception for EVs to use HOV lanes and proposes to amend Chapter 19-108.

Should you have any questions, please contact Laura Manuel, Highway Safety Specialist, Traffic Branch by email at laura.manuel@hawaii.gov.

Your assistance will be greatly appreciated.

Attachments

RECEIVED

By SBRRB at 12:53 pm, Aug 12, 2020

§19-108-2

Rules Amending Title 19
Hawaii Administrative Rules

Adoption Date

1. Chapter 108 of Title 19, Hawaii Administrative Rules, entitled "High Occupancy Vehicle Lanes" is amended and compiled to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 4 HIGHWAYS DIVISION

CHAPTER 108

HIGH OCCUPANCY VEHICLE LANES

§19-108-1	Purpose
§19-108-2	Definitions
§19-108-3	Applicability
§19-108-4	Designation of high occupancy vehicle lanes
§19-108-5	Demonstration sections of highways
§19-108-6	Traffic controls
§19-108-7	Vehicle exceptions
§19-108-8	Severability

§19-108-1 Purpose. The purpose of this chapter is to maximize the people moving capability of the state highway system, mitigate transportation-related

pollution, and reduce dependency on fossil fuels, through the use of high occupancy vehicle lanes. [Eff 09/18/06; comp 03/10/16] (Auth: HRS §291C-222) (Imp: HRS §291C-222)

§19-108-2 Definitions. As used in this chapter:

"Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons; and every motor vehicle, other than a school bus or a taxicab, designed and used for the transportation of persons for compensation.

"Demonstration section" means a section of roadway used as an experimental project for improvements to validate cost-benefits.

"Department" means the state department of transportation.

"Director" means the state director of transportation or an authorized representative.

"Driver" means every person who drives or is in actual physical control of a vehicle.

"Electric Vehicle" means a vehicle as stated in HRS §291-71.

"Emergency vehicle" includes such fire department vehicles, police vehicles, ambulances, and ocean safety vehicles as are publicly owned and such other publicly or privately owned vehicles as are designated by the city or county council.

"Express lane" means a rapid travel lane and may include high occupancy vehicle lanes.

"High occupancy vehicle" means a motor vehicle carrying at least two or more persons, including carpools, vanpools, and buses.

"High occupancy vehicle lane" means a designated lane of a laned roadway where the use of the

designated lane is restricted to school buses, vehicles carrying at least two persons, and other vehicles as provided herein or by county ordinance.

"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excludes a farm tractor and a moped.

"Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of the director, for the purpose of regulating, warning, or guiding traffic.

"Police Officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

"Public transit bus" means a bus used in the county bus system and owned by the county or a contractor with the county.

"School bus" means every motor vehicle as defined in section 286-181, Hawaii Revised Statutes, and any rules promulgated pursuant to that section by the department of education.

"Zip or zipper lane" means a barrier-separated high occupancy vehicle lane. [Eff 09/18/06; am and comp 03/10/16; am] (Auth: HRS §291C-222) (Imp: HRS §§291C-221, 291C-222, 291C-222.5)

§19-108-3 Applicability. This chapter shall be applicable to roadways under the jurisdiction of the department of transportation. [Eff 09/18/06; am and comp 03/10/26] (Auth: HRS §291C-222) (Imp: HRS §291C-222)

§19-108-4 Designation of high occupancy vehicle lanes. The following are designated as high occupancy vehicle lanes by the director when signed and marked by official traffic control devices:

- (1) Interstate Route H-1, Manager's Drive to Keehi Interchange;
- (2) Interstate Route H-2, Waiawa Interchange to Miliani Interchange;
- (3) Route H201, Moanalua Freeway, Halawa Interchange to Puuloa Road;
- (4) Route 72, Kalaniana'ole Highway, West Halemaumau Street to Ainakoa Avenue; and
- (5) Route 92, Nimitz Highway, Keehi Interchange to Pacific Street.[Eff 09/18/06; am and comp 03/10/16](Auth: HRS §291C-222)(Imp: HRS §291C-222)

§19-108-5 Demonstration sections of highways. The director may designate demonstration sections of other portions of highways as high occupancy vehicle lanes by the installation of official traffic control devices when deemed necessary to improve traffic conditions. Designated demonstration sections may be in operation for a period not to exceed one calendar year. In order to make a demonstration section effective beyond the one year period, the demonstration section must be designated as a high occupancy vehicle lane by an amendment of section 19-108-4. [Eff 09/18/06; am and comp 03/10/16] (Auth HRS §291C-222)(Imp: HRS §291C-222)

§19-108-6 Traffic controls. The director shall place, install, and maintain traffic signs, signals,

pavement markings, and other official traffic control devices to advise drivers of the high occupancy vehicle requirement and the hours of usage. Motor vehicles shall be operated in high occupancy vehicle lanes in conformance with the instructions on the signs and other official traffic control devices. [Eff 09/18/06; am and comp 03/10/16] (Auth: HRS §291C-222) (Imp: HRS §291C-222)

§19-108-7 Vehicle exceptions. The following vehicles or persons may use a high occupancy vehicle lane regardless of the number of persons in the vehicle:

- (1) Motorcycles, school buses, public transit buses, [and] emergency vehicles, and electric vehicles,; or
- (2) Drivers that utilize Kalanianaʻole Highway, located on the island of Oahu, by permit issued by the director to persons who reside on the east-bound, oceanside of Kalanianaʻole Highway between West Halemaumau Street and Ainakoa Avenue, and have no traffic signalized access onto Kalanianaʻole Highway.

Eff 09/18/06; am and comp 03/10/16; am
] (Auth: HRS §§291C-221.5, 291C-222, 291C-222.5)
 (Imp: HRS §§291C-221.5, 291C-222, 291C-222.5)

§19-108-8 Severability. If any provision of this chapter is held invalid, the invalidity shall not affect the remaining provisions of this chapter. Eff 09/18/06; comp 03/10/16] (Auth: HRS §291C-222) (Imp: HRS §291C-222)

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

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 19-108, 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.

JADE T. BUTAY

Director of Transportation

APPROVED AS TO FORM:

Deputy Attorney General

IV. New Business — Before Public Hearing

B. Discussion and Action on Proposed Amendments to HAR Title 12 Subtitle 8 Hawaii Occupational Safety and Health Division, Part 11 Elevators and Related Systems, Chapter 229 General, Administrative, and Legal Provisions, promulgated by DLIR

**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.)

*

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*

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.).
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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>

A. HRS §927, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

The proposed changes are essentially an increase in fees to reflect the accumulated increased costs mainly associated with collective bargaining and fringe rate. The cumulative increase in collective bargaining costs from FY2012-2019 for Bargaining Units 3 & 4 is 20.6% while the fringe rate has increased from 41.54% to 60.08% (see attached exhibits).

Also see attached pdf PowerPoint presentation.

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).

Draft rules in Ramseyer format are available at:
<https://labor.hawaii.gov/hiosh/proposed-rules/>

The rules are also available at HIOSH: 830 Punchbowl Street #425.

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

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 Elevator Rules and codes adopted therein apply to any entity, including small businesses, which own or are responsible for elevators or related systems. The initial impact of the proposed rules will be to elevator contractors, construction contractors of buildings using elevators and related systems, and building owners. The proposed rules include increased fees for inspections and safety tests. The increased fees will affect building owners, tenants and all businesses responsible for elevators or related equipment.

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.

Most of the fees were originally set with the passage of Act 102, Session Laws of Hawaii, 2012. The statutory language set the fees, but allowed the director to adopt rules pursuant to chapter 91 to amend the fees. The Legislature's intent was to provide the flexibility for the Director to change fees to ensure the self-sufficiency of the Boiler & Elevator Branch (Branch).

The last Rules fee increase became effective on January 1, 2019, and were

in varying amounts, and reflected an average increase of 7.5%.

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

Please see attached chart illustrating the current and proposed amounts of the fees as well as the percentage increase. The proposal is to increase all fees across the board by 17%, except for amusement rides (no increase) and revisits (approximately 17%).

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

The Branch funding was converted to a self-sufficiency special fund in 2012, whereby the Branch operations are only supported by revenues from the fees it charges (essentially liken to a 'small business'). Every fee increase filing since 2012 has never accounted for the Branch's full cost to operate and provide its statutory inspection services.

The Branch is currently in dire straits financially due to the cumulative operating deficits. This is the Branch's initial step to cover full operating costs to ensure the self-sufficiency of the Boiler & Elevator Branch.

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

To identify the Branch full operating costs, DLIR identified current payroll and added back in all needed vacancies that were left vacant due to lack of funds; averaged and normalized non-payroll costs including monthly inspection travel to the neighbor islands and IT support fees. The projected test year's full operating costs was then compared to the average revenue of 2018, 2019, and 2020 to identify the revenue shortfall. The shortfall as a percent of revenue was applied to all fees across the board.

The collective bargaining and fringe rate costs have increased substantially since Act 107 (SLH, 2012) created the special fund for the Branch. Special funds are required to pay the fringe costs of salaries. The fringe rate was 41.54% in Fiscal Year 2012-13, for Fiscal year 2018-19 the rate is 50% to 60.08%: an increase of 25% to 45%.

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.**

DLIR held a Stakeholder TEAMS meeting on July 21, 2020 where approximately 35 stakeholders consisting of elevator service companies, consultants, and owner associations were invited. A PowerPoint presentation on reasons for the fee increase was presented. (See attached PowerPoint hardcopy to this submittal)

Stakeholders discussion notes:

- (Bert Yorita – Schindler Elevator) How will increase be applied to fees?
 - Response: The 17% increase will be applied across the board to all fees.
- (Blair Suzuki – Otis Elevator) What are the next steps for this rule change, and is third party inspection still being considered?
 - Response: The next steps: SBRRB review, SBRRB approval for public hearing, public hearing, SBRRB review / determine to or not to proceed to Governor
 - Response: Third party inspection is still an option B&E is interested in since we already have it for the boiler unit
- (Blair Suzuki – Otis Elevator) Elevator owners would pay the higher fees, but would want to be able to suggest operational efficiency improvements to B&E. Otis has submitted some improvement suggestions to B&E, but they appear to have fallen on deaf ears. Stakeholders should be able to work with B&E to provide efficiency suggestions.
 - Response: Apologize for slow response, but there is very limited management for the elevator inspection unit. (No technical elevator supervisor for years until late 2016. Then person resigned December 2018. There is still no technical supervisor to date. Also, B&E manager on long term leave.) Only HIOSH Administrator trying to oversee B&E branch.
Totally agree that B&E and stakeholders should work together on the elevator inspection services.
- (Blair Suzuki – Otis Elevator) Will stakeholders get to provide input to SBRRB meeting.
 - Response: Yes. DLIR will notify stakeholders when this filing is on the SBRRB agenda.
- That was the end of Stakeholder TEAMS meeting.

RECEIVED

By SBRRB at 9:56 am, Aug 10, 2020

Department of Labor and Industrial
Relations Hawaii Occupational Safety
and Health Division
Boiler and Elevator Inspection Branch

Elevator Inspection Stakeholder Presentation

FY2020 Proposed Fee Increase

“Make Whole”

Definition: Restore to a
sound, healthy, favorable
condition.

Note: No standards to be updated in this
filing.



January 24, 2018
Audit of the Los Angeles Department of
Building & Safety Elevator Inspection
Program

Finding No. 5: LADBS has not completed a fee study or updated its elevator inspection fees since 2008.

“According to the Chief Administrative Officer’s (CAO) Financial Policies . . . ‘inspection fees should be set to support the full costs of operations for which the fees are charged, including all operating (direct and indirect) and capital costs”

Recommendation 5.1:

Complete the elevator inspection fee study and periodically monitor inspection fees to ensure they support the full costs of operations.

**Department of Labor and Industrial
Relations (DLIR)
Boiler and Elevator Safety Inspection
Branch (B&E)**

**Boiler Updated Fees to Cover
Costs**

Effective Date: January 1, 2020

The DLIR B&E branch's Boiler unit has just completed a thorough review of its rules, standards, and full costs which resulted in their recently approved increased fees schedule.

This current effort is for the DLIR B&E branch's Elevator unit to follow suit.

Introduction

In 1980, the State Legislature deemed it critical and necessary to establish safety inspections for elevators.

THE LAW FOR ELEVATOR INSPECTIONS:

Hawaii Revised Statutes HRS Section 397-2:

The legislature finds that the Hawaii occupational safety and health law does not adequately provide for the safe operation and use of boilers, pressure systems, amusement rides, and elevators and kindred equipment. The purpose of this law is to assure the safe operation and use of such apparatus in Hawaii. [L 1980, c 19, pt of §1]

Introduction

In 2012, the State Legislature converted the Boiler and Elevator source of funds from State General Funds to the current special Boiler and Elevator revolving fund.

The boiler & elevator branch was made to be SELF-SUSTAINING BY THIS CONVERSION. Their operations must pay its own way via the fees and charges it assesses (similar to a small business entity).

Included in the 2012 funding conversion, the Legislature provided “seed” start up loan with funds of \$1million to help the now SELF-SUSTAINING branch get started. This \$1 million loan was to be paid back to the state in 10 years.

Make Whole Fee Increase

- ▶ In 2012 when B&E was converted to SELF-SUSTAINING status, the proposed elevator inspection fees were developed based on estimated activity and expense levels to support projected total operating cost of the entity.
- ▶ Subsequent elevator inspection fee adjustments DID NOT ASSESS whether the resulting total revenues from the adjustment would COVER ACTUAL OPERATING COSTS.
- ▶ Since 2012, B&E operations has been financially dependent on initial “seed” start up funds and collecting on past due accounts. Normal daily operations have proven not to support the initial revenue projections and cost coverage.
- ▶ The \$1 million seed start-up loan amount has depleted down to about \$385,000 in May 2019 and then down to about \$275,000 as of May 2020.
- ▶ At a negative net income monthly burn rate of about \$40,000 the remaining balance would only support another 6 or 7 months of operation.

Operational Impact Due to Deteriorating Financials

- ▶ Vacant Elevator Inspection positions are not being filled as the incumbent departs the operations due in part to deteriorating net income. Current vacancies include:
 - ❖ Secretary
 - ❖ Elevator Inspection Supervisor
 - ❖ Elevator inspector #1
 - ❖ Elevator inspector #2
 - ❖ Elevator inspector #3
- ▶ Trips to neighbor islands for inspections must be scrutinized due to the added cost of travel.
- ▶ Non-payroll operating expenses including office supplies, COVID personal protective equipment, old equipment replacements, etc. must be kept at a minimum or eliminated.

Expense and Revenue Projection Approach

- ▶ Identified current payroll expenses for existing elevator inspections staff.
- ▶ Added in payroll for elevator inspector vacancy and pro rated payroll for branch secretary. Excluded elevator inspection supervisor to minimize expense increase due to high salary and fringe, and difficulty in recruiting such a supervisor.
- ▶ Identified average non-payroll expenses for 2018 and 2019 pre-COVID years.

Expense and Revenue Projection Approach . . .Cont'd

- ▶ Adjusted average non-payroll expenses to a normalized annual operating level.
- ▶ Identified actual elevator inspection revenue generated in 2018 and 2019. Annualized the COVID 2020 year revenue generated.
- ▶ Identified average revenue generated for 2018, 2019, and 2020. Included COVID 2020 year to reflect a “new normal” scenario that will likely be the more accurate condition going forward with more safety distancing and restrictions.

Repay remaining \$300,000 to legislature
--

Department of Labor and Industrial Relations								
Occupational Safety and Health Division								
Filing for Elevator Inspection Fee Increase.								
<u>Projected Test Year</u>								
Projected Revenues Based on Actuals								
	2018 FY	2019 FY	2020 FY	3-yr Average		TEST YEAR		
	\$1,663,815	\$1,598,398	\$1,386,468	\$1,549,560		\$ 1,549,560		
Projected Expenses Based on Actuals / Adjustments to Normal								
	Payroll and Non-Payroll Expenses					\$ 1,803,944		
Projected "Make Whole" Shortage							\$(254,384)	
Percent "Make Whole" Shortage to Projected Revenues							-0.1641651	
							0.17	rounded
							17%	
Projected "Make Whole" Revenues								
		\$ 1,549,560	X	1.17		\$ 1,812,986		
		Projected Current Revenues				Projected 17% Increased Revenues		

Rate Adjustment Method

- ▶ Identified the “Make Whole” shortage of total expenses not covered by projected average revenues.
- ▶ Applied “Make Whole” shortage percentage factor across the board to all fees.

Across The Board Application Rationale

- ▶ Unable to specifically identify each application of all the various fees over the thousands of different inspections, re-inspections, and any other miscellaneous situations.
- ▶ The presumption is that in the long run the mixture and frequencies related to the application of the various fees should be similar as a whole.

Across The Board Application Rationale

Cont'd

- ▶ On this basis, fees that are applied most of the time and fees that are almost never applied will continue that pattern over the years.
- ▶ The revenues generated should likewise reflect the same pattern of fee applications over the years.
- ▶ As such, an across the board percentage increase to the fees should produce the same percentage increase to the revenues generated.

Caveats Not Factored Into Calculations

(Very Conservative Increase)

- ▶ No elevator inspections supervisor or OT was included
- ▶ Several expected retirements will result in new inspectors with low learning curves; less productivity for awhile.
- ▶ Vacation cash payout not factored in for retirees' remaining unused earned vacation hours.
- ▶ Uncollectible accounts receivables run at about 6 to 11% was not factored in calculation.

Caveats Not Factored Into Calculations Cont'd

(Very Conservative Increase)

- ▶ Elevator inspectors are in a transition period of moving from paper processing to paper-less new computer system called Elevator Permit System (EPS). Learning curves vary among inspectors.
- ▶ Only nominal EPS computer commission costs included. Computer commission costs will increase as more inspections are processed through the system.
- ▶ No current HGEA collective bargaining contract pay increases included.
- ▶ Repayment of State seed money understated

Reasonable Increase

- ▶ Payroll Expense portion of total expenses: Approximately 90%
- ▶ Payroll Expense Increased from 2012 to 2019
 - ▶ Approximately 21%
- ▶ Payroll Fringe Loading Increase from 2012 to 2019
 - ▶ Approximately 25% to 45%
- ▶ Proposed Fee Increase
 - ▶ Approximately 17%

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
Boiler and Elevator Inspection Branch

Elevator Stakeholder Presentation
FY2020 Proposed Fee Increase
“Make Whole”

Future Proposed Elevator Inspection Improvements

- I. Recruit for elevator inspectors to replace retirees.
- II. Change the elevator annual inspection interval to every two (2) years under certain conditions.
- III. Strengthen collection statutes – AG Collections
- IV. Help B&E with correct billing address to improve billing process and avoid penalty
- V. Continue transition to electronic computer inspections to reduce manual processing
- VI. Help B&E recruit an Elevator Inspection Supervisor.

Mahalo
for your
time and consideration

Elevator Stakeholder Presentation
FY2020 Proposed Fee Increase
“Make Whole”

POST PRESENTATION DISCUSSION

Stakeholders discussion notes:

- (Bert Yorita – Schindler Elevator) How will increase be applied to fees?
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That was the end of Stakeholder TEAMS meeting.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendment and Compilation of Chapter 12-229
Hawaii Administrative Rules

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1. Chapter 12-229, Hawaii Administrative Rules, entitled "General, Administrative, and Legal Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 229

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

§12-229-1	Scope and application
§12-229-2	Definitions
§12-229-3	Repealed
§12-229-3.1	Codes incorporated and adopted by reference
§12-229-4	Repealed
§12-229-4.1	Installation and alteration permits

§12-229-1

§12-229-5	Repealed
§12-229-5.1	Permits to operate
§12-229-6	Repealed
§12-229-6.1	Fees
§12-229-7	Repealed
§12-229-7.1	Inspection and tests
§12-229-8	Repealed
§12-229-8.1	Rights and enforcement
§12-229-9	Repealed
§12-229-9.1	Complaints
§12-229-10	Repealed
§12-229-10.1	Reporting of accidents
§12-229-11	Repealed
§12-229-11.1	Investigations
§12-229-12	Repealed
§12-229-12.1	Violations and penalties
§12-229-13	Repealed
§12-229-13.1	Review and appeal
§12-229-14	Repealed
§12-229-14.1	Trade secrets
§12-229-15	Repealed
§12-229-15.1	Notification of transfer and location
§12-229-16	Repealed
§12-229-16.1	Variances
§12-229-17	Records

Historical Note: Chapter 12-229 is based substantially on chapter 12-241, Hawaii Administrative Rules. [Eff 7/6/98; R 6/19/00]

§12-229-1 Scope and Application. This part contains general and administrative rules and legal provisions which apply to this part. This part applies to all elevators, escalators, moving walks, dumbwaiters, material lifts, lifts for the mobility impaired, personnel hoists, and amusement rides in the State, with the following exceptions:

- (1) Equipment or apparatus installed in private

- residences provided the equipment or apparatus is not accessible to the public or to other occupants in the building;
- (2) Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;
 - (3) Material hoists used to raise or lower materials during construction, alteration or demolition. (within the scope of ANSI A10.5); and
 - (4) Equipment or apparatus installed in buildings or structures wholly owned and operated by the United States government. [Eff 6/19/00; am and comp 6/30/14; comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §394-4) (Imp: HRS §397-4)

§12-229-2 Definitions. As used in this part:

"Alteration" means any change to equipment, including parts, components, or subsystems other than maintenance, repair, or replacement.

"Amusement ride" means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement.

"ANSI" means the American National Standards Institute.

"ANSI/American Society of Safety Engineers A10.4" means ANSI/ASSE, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as adopted and incorporated by reference in section 12-229-3.1.

"Appeals board" means the labor and industrial relations appeals board, department of labor and industrial relations.

"Approved" means approved by the department.

"Appurtenance" means a device installed on and used in the normal operation of an elevator, escalator, or kindred equipment.

"ASME" means American Society of Mechanical Engineers.

"ASME A17.1" means ASME A17.1, Safety Code for Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.3" means ASME A17.3, Safety Code for Existing Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.6" means ASME A17.6, Standard for Elevator Suspension, Compensation and Governor Systems, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A18.1" means ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts, as adopted and incorporated by reference in section 12-229-3.1.

"ASTM" means American Society for Testing and Materials.

"ASTM-F24" means ASTM-F24 1997 standard on amusement rides and devices.

"Attorney general" means the attorney general of the State of Hawaii or any of the attorney general's deputies.

"Authority Having Jurisdiction" or "AHJ", means the director of labor and industrial relations or the director's designee.

"Authorized inspection agency" means the department of labor and industrial relations, elevator inspection section.

"Building code" means the currently adopted, applicable county code in the revised ordinances of the applicable county, or the code adopted by the State of Hawaii for state buildings.

"Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the director.

"Contractor" means any person, firm, or corporation installing, repairing, or servicing any amusement ride, elevator, or kindred equipment or structure inspected pursuant to chapter 397, HRS.

"Department" means the department of labor and industrial relations, State of Hawaii.

"Director" means the director of the department

of labor and industrial relations or the director's designee.

"Discrepancy" means the non-conformance to codes, standards, rules, or regulations required by this part.

"Division" means the Hawaii occupational safety and health, department of labor and industrial relations, State of Hawaii.

"Elevator" means a hoisting and lowering mechanism equipped with a car that moves within guides and serves two or more fixed landings, and is classified by elevator types as described in ASME A17.1, as adopted and incorporated by reference in section 12-229-3.1.

"Elevators and related systems" means elevators and kindred equipment and amusement rides.

"Existing installation" means any device or equipment where the application for the installation was properly filed with the department before the effective date of this chapter.

"HAW" means the registration number assigned to an elevator and kindred equipment or amusement ride by the AHJ.

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii state legislature.

"IBC" means the International Building Code, as adopted and incorporated by reference in section 12-229-3.1.

"Installation" means a complete elevator or kindred equipment, including its hoistway, hoistway enclosures and related construction, and all machinery and equipment necessary for its operation.

"Installation or alteration permit" means a document, which may be electronic, issued by the department authorizing the installation or alteration of an elevator or kindred equipment, or the department approval of a new amusement ride.

"Kindred equipment" means escalators, moving walks, dumbwaiters, permanently installed material lifts, platform lifts, inclined lifts, stage lifts, stairway chairlifts, personnel hoists, and any other similar mechanized equipment used to convey people in

places other than a public right-of-way, but does not include amusement rides.

"May" means not mandatory.

"New installation" means any device or equipment that is not an existing installation or an existing installation that is being relocated.

"NFPA" means the National Fire Protection Association.

"NFPA 1, UFC" means the NFPA 1, Uniform Fire Code, as adopted and incorporated by reference in section 12-229-3.1.

"NFPA 70" means NFPA 70, National Electrical Code, as adopted and incorporated by reference in section 12-229-3.1.

"Operating permit" means a permit issued by the department authorizing the operation of an elevator, kindred equipment, or amusement ride.

"Order" means a command to perform a mandatory act issued by the department.

"Overtime" means hours outside a regular eight-hour working day.

"Owner" means any person, firm, or corporation with legal title to any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS.

"Permit to operate" means a document, which may be electronic, issued by the department authorizing the operation of an elevator, kindred equipment, or an amusement ride.

"Qualified elevator inspector" means an elevator inspector employed by the department holding a valid certificate of competency issued by the department and a Qualified Elevator Inspector certification that meets the criteria of the American Society of Mechanical Engineers and the standards for the qualification of elevator inspectors of the American National Standards Institute. The certificate of competency is valid only while the inspector is employed by the department.

"Regular operating permit" means an operating permit that is not indicated as temporary.

"Shall" means mandatory.

"Unsafe" means potential exposure to a recognized hazard.

"Violation" means the failure to comply with any citation, notice, or order of the department, or rule or standard promulgated under chapter 397, HRS. [Eff 6/19/00; am and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §§397-4, 397-6) (Imp: HRS §§397-4, 397-6)

§12-229-3 Repealed. [R 6/30/14]

§12-229-3.1 Codes incorporated and adopted by reference. The following codes are incorporated and adopted by reference and made a part of this chapter and shall apply to elevators, kindred equipment, and amusement rides in this part, unless otherwise modified by the rules pertaining to elevators, kindred equipment, and amusement rides:

- (1) ANSI/ASSE A10.4-2007, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, [~~as copyrighted and~~ published in 2007 by American National Standards Institute, Inc. [~~7, 25 West 43rd Street, New York, NY 10036~~]; ASME A17.1-2010/CSA-B44-10, Safety Code for Elevators and Escalators, [~~as copyrighted and~~ published in 2010 by the American Society of Mechanical Engineers [~~7, Three Park Avenue, New York, NY 10016-5990~~]; ASME A17.3-2011, Safety Code for Existing Elevators and Escalators, [~~as copyrighted and~~ published in 2011 by the American Society of Mechanical Engineers [~~7, Three Park Avenue, New York, NY 10016-5990~~];
- (2) ASME A17.5-2011, Elevator and Escalator Electrical Equipment, [~~as copyrighted and~~ published in 2011 by the American Society of Mechanical Engineers [~~7, Three Park Avenue,~~

- ~~New York, NY 10016-5990];~~
- (3) ASME A17.6-2010, Standard for Elevator Suspension, Compensation and Governor Systems, [~~as copyrighted and~~] published in 2010 by the American Society of Mechanical Engineers[~~, Three Park Avenue, New York, NY 10016-5990];~~
 - (4) ASME A18.1-2011, Safety Standard for Platform Lifts and Stairway Chairlifts, [~~as copyrighted and~~] published in 2011 by the American Society of Mechanical Engineers[~~, Three Park Avenue, New York, NY 10016-5990];~~
 - (5) International Building Code, 2012 edition, [~~as copyrighted and~~] published in 2012 by the International Code Council, Incorporated[~~, 500 New Jersey Avenue, 6th Floor, Washington, DC 20001];~~
 - (6) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, [~~as copyrighted and~~] published in 2010 by the International Code Council, Incorporated[~~, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001];~~
 - (7) NFPA 1, Uniform Fire Code, 2009 Edition, [~~as copyrighted and~~] published in 2009 by the National Fire Protection Association[~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~
 - (8) NFPA 72, National Fire Alarm and Signaling Code, 2010 edition, [~~as copyrighted and~~] published in 2010 by the National Fire Protection Association[~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~
 - (9) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 edition, [~~as copyrighted and~~] published in 2010 by the National Fire Protection Association[~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~ and
 - (10) NFPA 70, National Electrical Code, 2011 edition, as published in 2011 by the National Fire Protection Association[~~, 1 Batterymarch Park, Quincy, MA 02269-7471].~~
[Eff and comp 6/30/14; comp 11/10/16; am and

comp 2/15/19; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-4 Repealed. [R 6/30/14]

§12-229-4.1 Installation and alteration permits.

(a) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator, kindred equipment, or amusement ride subject to this part without first obtaining an installation or alteration permit from the department.

The owner shall be responsible for contracting the work with a licensed elevator contractor, and shall ensure that the contractor obtains all permits and inspections required by this part. The contractor shall be responsible for the safe operation of equipment during the installation, alteration, or relocation, until a permit to operate has been issued by the department. An amusement ride owner shall register the new apparatus or an alteration by submitting an application for review and registration.

An application on a form provided by the department shall be submitted and approved prior to commencement of work. The application shall include:

- (1) Applicant's name (elevator contractor licensed to perform the work), business address and license number, expiration date of the license, name and contact information of the licensed mechanic or supervisor in charge of the work;
- (2) Building name and complete address, including island and zip code, of the installation or alteration;
- (3) The name and complete address of the legal owner of the elevator, kindred equipment, or amusement ride;
- (4) The anticipated start date of the installation or alteration and the

- anticipated completion date;
- (5) The type of equipment to be installed or altered, manufacturer of the equipment, maximum rise and number of floors;
 - (6) The plans and specification for installation or alteration of elevators and kindred equipment together with the building details that are pertinent to the installation;
 - (7) Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department;
 - (8) For amusement rides, the application to review, approve, and register the new apparatus shall be submitted on a form authorized by the department and shall include manufacturers' drawings, and engineering and test data; and
 - (9) Any other information indicated as required by the application.

(b) Applications to install, alter, or register must be accompanied by the payment of the appropriate installation or alteration processing fee for each conveyance subject to this part as per the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter.

- (1) Refunds of the initial installation or alteration processing fee minus the department's cost to review the application thus far may be refunded upon written or electronic request to the department. A refund of the initial installation or alteration processing fee may be granted upon satisfactory showing that the withdrawal or amendment of the application was due to circumstances beyond the control

of the applicant; and

- (2) No refunds will be issued for expired permits.

(c) Only a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the Hawaii department of commerce and consumer affairs may apply for an installation permit or alteration permit, except the application to install a personnel hoist may be made by a licensed construction contractor and the application to register an amusement ride may be made by the owner.

(d) All alteration work on elevators and kindred equipment requires an alteration permit prior to the work being performed. Alteration work includes:

- (1) All alteration to elevators and kindred equipment as described in ASME A17.1, section 8.7;
- (2) Any alterations that requires the equipment or conveyance to be tested by the department prior to being returned to service, including:
 - (A) The replacement or repair of any part or parts that would require recalibration or testing per ASME A17.1, section 8.7; or
 - (B) Work performed on components or equipment affecting or necessary for fire safety (e.g., cab interiors, systems associated with fire recall, etc.); and
- (3) Any alteration, renovation, or change to the original design of the car's interior.

(e) The application shall be deemed approved if not acted on by the department within thirty calendar days following the receipt of the completed application. The maximum period of time for the department to act on an application for installation or alteration established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike that would prevent

the applicant or the department from fulfilling application review requirements until the time the emergency conditions improve or are reasonably under control.

(f) Installation or alteration permits issued by the department shall be posted in a conspicuous place on the jobsite near the elevator, kindred equipment, or amusement ride prior to the start of any work being done. They shall remain posted until the department has witnessed all acceptance tests and issued an operating permit for the elevator or kindred equipment.

(g) Installation or alteration permits shall expire within one year of the issuance date if the installation or alteration work described on the application has not yet commenced. Otherwise, the permit is valid for a period of three years.

(h) All new elevators and kindred equipment shall have the Hawaii registration number (HAW) assigned by the department painted on or permanently attached to both the car top crosshead and the controller. The owner is responsible for having the HAW number painted on or attached to the device or equipment, and ensuring that the number remains legible. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp]
(Auth: §397-4) (Imp: HRS §397-4)

§12-229-5 Repealed. [R 6/30/14]

§12-229-5.1 Permits to operate. (a) The department shall issue a "permit to operate" for any elevator, kindred equipment, or amusement ride where the inspection and tests required by the department show that the equipment has been designed and installed in accordance with the requirements of chapter 397, HRS, and its related rules, and are in compliance with this part. It shall be a violation for

any person, firm, association, partnership, or corporation to operate an elevator, kindred equipment, or amusement ride regulated by this part unless a permit for the operation has been issued by the department and the permit remains in effect.

(b) A permit to operate an elevator or related systems shall be issued only after a qualified inspector has determined that the equipment, device or apparatus meets all applicable requirements of this part. A permit to operate elevators or related systems shall be valid per the schedules in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, unless revoked sooner, and may be renewed only upon satisfactory completion of an inspection by a qualified inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or contractor prior to the expiration date.

(c) The owner, or the owner's duly appointed agent, shall be responsible for:

- (1) The safe operation and proper maintenance of elevators and related systems after the installation or alteration has been approved and an initial permit to operate has been issued;
- (2) Conducting all periodic or maintenance tests required by this part;
- (3) Arranging for inspection of closed buildings and not readily accessible elevators and related systems by qualified inspectors. Elevators and kindred equipment not inspected as a result of the owner's failure to provide convenient access shall be considered removed from service and shall comply with section 12-229-7.1(b)(4); and
- (4) Requesting and scheduling with the department all safety tests in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of

this chapter.

(d) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators and kindred equipment, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. For new or altered elevators, after the effective date of these rules, a copy of the permit to operate shall be posted conspicuously in the car of the elevator, and on or near the dumbwaiter, escalator, moving walk, or other kindred equipment.

(e) The department may immediately revoke any permit to operate for any equipment required to be inspected by this chapter that is found to be in an unsafe condition; or when an owner or contractor fails to comply with a department order to correct specific defects or hazards and continues to use or operate the equipment, device, or apparatus without abating the hazards or defects. The department shall reissue a permit to operate when a subsequent inspection by a qualified inspector finds that the hazardous condition has been corrected or when the department receives documentation that the noncompliant item has been abated.

(f) Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, establishes the required maximum intervals for the periodic reinspection and renewal of the permits to operate. The department may require that specific equipment be re-inspected more frequently if conditions found during an inspection require closer or more frequent monitoring to ensure its safe operation.

(g) The department may provide for the issuance of a temporary permit to operate while any noncomplying elevator or kindred equipment is being brought into full compliance with chapter 397, HRS.

(h) The owner or contractor may petition the department for additional time to correct any discrepancy or violation by submitting a request in

writing by no later than the correction due date or the expiration date of the temporary permit, whichever is applicable, and shall include:

- (1) Specific additional time needed;
- (2) Efforts made to date to effect correction; and
- (3) Any interim steps or actions taken to ensure the safe operation of the equipment, device or apparatus.

(i) No elevator, kindred equipment, or amusement ride that is required to be inspected pursuant to chapter 397, HRS, shall be operated except as necessary to install, repair, or test the elevator, kindred equipment, or amusement ride unless a permit to operate has been issued by the department and remains valid. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp]
(Auth: §397-4) (Imp: HRS §397-4)

§12-229-6 Repealed. [R 6/30/14]

§12-229-6.1 Fees. (a) Departmental inspection fees. The department shall collect from the owner or contractor, the fee listed in the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, for each inspection made by a qualified inspector. The following shall apply to departmental inspection fees:

- (1) The fees for scheduled inspection delayed or canceled by the requester, shall be charged to the requester in accordance with the scheduled fee for the type of inspection

- ~~[scheduled,]~~ scheduled, however, if the notice of cancellation or delay of the scheduled inspection is provided at least forty-eight hours prior to the scheduled date and time, not counting weekends and state holidays, no additional fee will be charged. A delayed inspection includes situations where the equipment is not ready for the inspection or the requester is not ready to conduct the required tests within one hour of the scheduled date and time;
- (2) Where an inspection must be re-scheduled due to untimely notification of delay or cancellation, the appropriate inspection fee must be paid prior to the re-scheduling of the inspection;
 - (3) Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of ~~[\$325]~~ \$400 per day for up to two hours and ~~[\$650]~~ \$800 per day for more than two hours. Fees for overtime hours shall be ~~[\$650]~~ \$800 per day for up two hours and ~~[\$1,300]~~ \$1,600 per day for more than two hours;
 - (4) When a special or dedicated inspection is made at the request of the owner, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee;
 - (5) Whenever the requester of an inspection fails to pay the fees required pursuant to this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection

requests, fees must be paid at the time of the request, except for additional fees for special, dedicated, return, or overtime inspections for which the amount owed could not be determined in advance. In such cases, the requester shall be invoiced by the department;

- (6) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred;
- (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered on floor in determining installation permit fees; and The department shall charge and collect the fee listed in Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, for each category 3 or 5, or internal escalator inspection, witnessed by qualified inspectors of the department during regular working hours. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [~~\$325~~] \$400 per day for up to two hours and [~~\$650~~] \$800 per day for more than two hours. Fees for overtime hours shall be [~~\$650~~] \$800 per day for up to two hours and [~~\$1,300~~] \$1,600 per day for more than two hours.

(b) Departmental installation and alteration permit and test fees. The following shall apply to installation, alteration, and test fees:

- (1) The department, before accepting an application for installing, constructing, re-constructing, or relocating an elevator or a related system, shall charge and

collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter;

- (2) The department, before accepting an application for an alteration, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter. For online applications, fees must be paid electronically at the time of the application. Any transaction failure shall void the application;
- (3) For each instance requiring an installation or alteration permit fee, the department shall provide the final installation drawing review, inspection and witnessing of the initial acceptance test on the installation, any resulting permit to operate, and on additional follow-up inspection per permit, and the follow-up inspection shall be at the convenience of the department;
- (4) Fees in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of this chapter and located at the end of this chapter, or the fee in effect on the application submittal date shall be charged and collected for all applications for installation or alteration permits;
- (5) For each instance requiring a building plan review, the department shall charge a fee in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] October 1, 2020, which is made a part of

- this chapter and located at the end of this chapter;
- (6) For additional follow-up inspections for final acceptance, the fee shall be [~~\$325~~] \$400 per day for up to two hours and [~~\$650~~] \$800 per day for more than two hours if during the normal workday. Fees for overtime hours shall be [~~\$650~~] \$800 per day for up to two hours and [~~\$1,300~~] \$1,600 per day for more than two hours; and
 - (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (c) Amusement rides, fees. The following shall apply to amusement ride fees:
- (1) The fee for an inspection of an amusement ride shall be \$200;
 - (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
 - (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
 - (B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within the control of the requester;
 - (C) A permit to operate; and
 - (D) Scheduled inspections delayed or canceled by the requester where notification was provided to the department less than forty-eight hours prior to the scheduled inspection date and time (not including weekends and state holidays);
 - (3) When an unscheduled inspection is made at the request of the owner or contractor, the sum of expenses incurred shall be charged in addition to the inspection fee;

- (4) For additional follow-up inspections for final acceptance, the fee shall be [~~\$300~~] \$400 per day for up to two hours and [~~\$600~~] \$800 per day for more than two hours if during the normal workday. Fees for overtime hours shall be [~~\$600~~] \$800 per day for up to two hours and [~~\$1,200~~] \$1,600 per day for more than two hours; and
- (5) Whenever the requester fails to pay the fees required under this section within sixty days after notification, the requester shall pay in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of the invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections, which will be invoiced to the requester. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp] (Auth: §397-4) (Imp: HRS §397-5)

§12-229-7 Repealed. [R 6/30/14]

§12-229-7.1 Inspections and tests. (a) The department shall inspect to ensure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of buildings, structure, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators or kindred equipment.

(b) Elevators and kindred equipment. The following shall apply to inspections and tests:

- (1) All permit renewal inspections and witnessing of tests of elevators or kindred equipment as required under this chapter shall be performed by qualified inspectors employed by the department;
- (2) Where notifications of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable code, rule, or standard;
- (3) Elevator or kindred equipment regulated under this part shall be inspected and tested in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter;
 - (A) Internal inspection of escalators and moving walks shall be performed at intervals of thirty-six months;
 - (B) Personnel hoists shall be load tested at intervals of three months;
 - (C) The category 3 test shall be performed on all holed and holeless hydraulic elevator systems. The interval may be extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection; and
 - (D) The period between inspections may be extended by the department for cause. A written application by the owner must be received by the department prior to the expiration date for review;
- (4) Any elevator or kindred equipment that is out of service and not continuously maintained for a period exceeding one year or has not been inspected in accordance with paragraph (3) shall be taken out of service by the owner by complying with the

following:

- (A) Car and counterweight (if any) shall be landed at the bottom of the hoistway and hoisting ropes shall be disconnected at both ends. For hydraulic driven elevators and hydraulic driven kindred equipment, the car shall be lowered to the bottom of the hoistway, oil line disconnected with partial or total oil supply line removal, and oil removed from the tank reservoir;
 - (B) All electric power shall be removed by disconnected and removing the power feeders; and
 - (C) All hoistway entrances or escalator entrances and exits shall be permanently blocked or barricaded to prevent inadvertent entry. The owner or the owner's agent shall submit a certification that the unit has been properly taken out of service as indicated in this paragraph, on a form provided by the department. Prior to placing the elevator or kindred equipment back in service, the department shall be notified and an inspection ~~made, and~~ made.
- (5) While conducting tests and inspections required by section 12-229-5.1 for acceptance of new elevators for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.
- (c) Amusement rides. The following shall apply to amusement rides:
- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and chapter 12-250 at least semi-annually, for

- all amusement rides at a carnival, circus, fair, amusement park, or other public venue, for protecting the safety of the public;
- (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months;
 - (3) If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a permit to operate bearing upon its face the date of the inspection and the permit expiration date; and
 - (4) No ride shall be operated unless it has affixed to it a current permit to operate.
[Eff and comp 6/30/14; am and comp 11/10/16;
am and comp 2/15/19;
am and comp] (Auth: §397-4)
(Imp: HRS §397-4)

§12-229-8 Repealed. [R 6/30/14]

§12-229-8.1 Rights and enforcement. (a)

Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, or elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS;
- (2) The department may question any employer, owner, operator, agent, or employee in

- investigation, enforcement, and inspection activities covered by this chapter; and
- (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.
 - (b) Enforcement.
 - (1) Whenever the right of entry to a place to inspect an amusement ride, elevator, or kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the equipment is located for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court;
 - (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected under this part is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or its standards and codes and deliver the same to the contractor or owner. Each order shall be in writing and may be delivered by mail, electronically, or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance

with the purposes and provisions of chapter 397, HRS. An order to bring the operation of elevator or kindred equipment into compliance may require the owner to submit a plan of compliance that addresses interim corrective plans to ensure public and worker safety as well as the schedule for the correction of the non-conforming element. A plan of compliance shall not exceed five years for residential buildings or three years for all other buildings. The owner or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties;

- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employer or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided;
- (4) Pursuant to section 397-4(d)(4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe;
- (5) Pursuant to section 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of

- oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts;
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
- (A) Immediately take steps to obtain abatement by informing the owner, contractor, and all person in harm's way of the hazard by meeting, posted notice, or otherwise;
 - (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the owner, contractor, or their representative is not available;
 - (C) Take steps to obtain immediate abatement when the nature and imminence of the danger or hazard does not permit a search for the owner or contractor; and
 - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner or [~~contractor; and~~] contractor.
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; am and comp 2/15/19;

am and comp] (Auth: HRS
§397-4) (Imp: HRS §§397-4, 397-6, 397-8)

§12-229-9 Repealed. [R 6/30/14]

§12-229-9.1 Complaints. (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainants or witnesses to release his or her names, or unless it has been determined by the state attorney general that disclosure is necessary for the enforcement and review under this chapter. [Eff and comp 6/30/14; comp 11/10/16; com 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-7)

§12-229-10 Repealed. [R 6/30/14]

§12-229-10.1 Reporting of accidents. (a) Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner shall promptly notify the division within eight hours by telephone at (808)586-9141. For reporting purposes, "accident" is defined as an occurrence resulting in significant damage to an elevator and kindred equipment and amusement device, including when it is rendered inoperative or any occurrence resulting in physical injury to a person or persons.

An accident report shall be submitted to the

department within two calendar days after the owner has completed the accident investigation, and shall include the following information:

- (1) The date and time of the accident;
- (2) Hawaii registration number (HAW number) of the amusement ride, elevator, or kindred equipment involved;
- (3) Name and address of the victim or victims;
- (4) A brief description of the accident, including the nature and scope of the injuries;
- (5) Whether the amusement ride, elevator, or kindred equipment sustained any damage rendering it inoperative for any period of time;
- (6) Names and contact information of any witnesses interviewed;
- (7) A brief description of any inspections or tests conducted of the equipment to determine probable causation and who conducted them;
- (8) The investigators' conclusions as to the cause of the accident; and
- (9) The name and contact information of the investigator. For purposes of this section, the owner may contract another to perform the actual accident investigation, however, the owner is responsible for the report and its timely submittal to the department. If the accident investigation cannot be completed within three months of the date of the incident, the owner shall submit the incomplete report to the department with information as to when the investigation is expected to be completed. The final report shall be submitted as soon as the investigation is completed.

(b) Whenever an accident occurs which results in loss of life, the owner shall promptly notify the division by telephone at (808)586-9141, or messenger, within eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts,

shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life or limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-11 Repealed. [R 6/30/14]

§12-229-11.1 Investigations. The department may investigate accidents reported under section 12-229-10.1 involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the causal factors. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-229-12 Repealed. [R 6/30/14]

§12-229-12.1 Violations and penalties. (a) The director may assess all civil penalties provided in this section, giving due consideration to the gravity of the violation, the good faith of the owner or contractor, and the history of previous violations.

(b) Violations. The following shall apply to violations:

- (1) Any owner or contractor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order

made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, its standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation;

- (2) Any owner who allows the installation, construction, reconstruction, relocation, or alteration of any elevator or kindred equipment prior to obtaining an installation or alteration permit as required by section 12-229-5.1 shall be assessed a civil penalty of not more than \$10,000. The penalty may be reduced by a maximum of ten percent for history of past violations;
- (3) Owners who fail to report an accident as required by section 12-229-10.1 shall be assessed a civil penalty of not more than \$5,000 per instance. Consideration may be given for good faith and history of violations;
- (4) Owners who fail to maintain or provide records or reports to the department as required by this part shall be assessed a civil penalty of not more than \$5,000 per record not maintained or provided;
- (5) Repeated violations shall be assessed a civil penalty of not more than \$10,000. Consideration may be given for gravity only;
- (6) Owners who fail to take an elevator or kindred equipment out of service as specified in section 12-229-7.1(b)(4) shall be assessed a civil penalty of not more than \$10,000; and
- (7) Each day a violation continues shall constitute a separate violation except during an abatement period.

(c) Discrepancies and penalties. The following shall apply to discrepancies and penalties:

- (1) Any conditions found not in conformance with

applicable standard or codes adopted pursuant to chapter 397, HRS, shall be regarded as discrepancies and shall be made known to the owner or contractor by letter or written order to correct or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious hazard, the department may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section;

(2) Assessing penalties.

- (A) Consideration shall be given to the gravity of the violation. For a violative condition that could not or probably would not result in serious harm to life the penalty may be reduced by forty percent;
- (B) Consideration shall be given to the good faith of the owner or contractor. For immediate correction or for attempts to make correction or abate hazards that have been thwarted by conditions beyond the control of the owner or contractor, the penalty may be reduced by forty percent; and
- (C) Consideration shall be given for the history of previous violations. For no previous violations by the owner or contractor, the penalty may be reduced by ten percent.

(d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, upon conviction, shall be punished by a fine of not more than \$10,000 or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the

director, who shall consult with the state attorney general for purposes of initiating appropriate action. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-8)

§12-229-13 Repealed. [R 6/30/14]

§12-229-13.1 Review and appeal. (a) Any order or citation of the director shall be final and conclusive against an owner or contractor, unless an appeal is made in writing, clearly stating what items are being contested. The notice of contest must be addressed to the director and received or, if mailed, postmarked by no later than the twentieth calendar day following receipt of the order or citation.

(b) The director or the director's designee may hold a formal hearing, which shall result in a decision and order by the director. Any party who disagrees with the director's decision may appeal in writing to the director within twenty calendar days of receipt of the decision and order. The director shall promptly notify the labor and industrial relations appeals board of the notice of the contest. Where a prior formal hearing is held at the department level, the labor and industrial relations appeals board shall conduct a case review using only the record.

(c) An owner or contractor may petition the director for modification of the abatement requirements in an order, as provided in section 397-9, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-9)

§12-229-14 Repealed. [R 6/30/14]

12-229-14.1 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director for purposes of carrying out chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-11)

§12-229-15 Repealed. [R 6/30/14]

§12-229-15.1 Notifications of transfer and location. (a) The seller of any elevator or kindred equipment regulated by this part shall notify the department in writing using a form provided by the department within thirty calendar days of the sale giving the HAW number, location name, location address of the equipment, and the name and address of the purchaser.

(b) The owner of any elevator or kindred equipment who gives, scraps, demolishes, or removes the device shall report the transaction and the name and address of the new owner, if any, within thirty calendar days of the transaction to the department using the form provided by the department. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-16 Repealed. [R 6/30/14]

§12-229-16.1 Variances. (a) In cases of

practical difficulties, undue hardships, or new developments, an owner may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

(b) All variances granted pursuant to this chapter shall have only a future effect. The director may decline to entertain an application for variance on a subject or issue for which a discrepancy letter or citation has been issued to the owner or contractor involved and the discrepancy or violation has not yet been satisfactorily corrected or resolved.

(c) Before granting the variance, the director shall publish a notice in a paper of general circulation or post notice on the department's website notifying all potentially affected parties of the director's intent to grant the variance. The notice shall provide a period of thirty calendar days to object to the granting of the variance, after which time the variance shall become final if no objections are filed or a hearing is requested. The cost of the publication shall be borne by the petitioning party. Every notice shall specify the alternative to the safety standard being considered.

(d) Any party objecting to the granting of the variance must notify the director in writing within the thirty-day period, stating the reasons why the variance should not be granted and the resultant specific impact on public safety. The objecting party's reasons for objection may also be based on grounds other than impact on public safety such as feasibility of compliance or lack of undue hardship to the petitioner. The objecting party may also elect to provide the reasons for the objection at a hearing.

(e) The hearing requested by the objecting party shall be held no later than forty-five days

after the thirty-day period stated in the public notice as follows:

- (1) The objecting party or parties and the variance applicant shall be provided notice of the date, time, and place of the hearing at least fourteen calendar days before the scheduled hearing;
- (2) Each party shall be prepared to provide evidence supporting the party's case, including a brief oral statement summarizing such evidence;
- (3) The director shall provide a written determination to all parties;
- (4) If the director determines that the evidence does not support denial of the variance request, no further notice is required; and
- (5) If the director determines that the evidence supports a denial of the variance request, a notice shall be published in a newspaper of general circulation stating the reasons why the variance is not granted.

(f) If the variance application does not include all relevant information as indicated in subsection (a), the director may deny the application. The denial shall be submitted in writing to the applicant within thirty calendar days. A notice of denial shall include a brief statement of the grounds for the denial. A denial of an application shall be without prejudice to the filing of another application.

(g) Requests for reconsideration on denied variance requests. The variance applicant whose variance request was denied may file a petition for reconsideration of the denial with the director. The petition must be filed in writing within twenty calendar days of the denial notice and should include all pertinent facts regarding why the variance should be granted.

- (1) The director may review the record on the case along with any additional information provided by the applicant or conduct further inquiries on the matter; and

- (2) Any party objecting to the director's decision shall use the review and appeal process as provided for in section 12-229-13.1. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-17 Records. Records shall be maintained by the elevator inspection branch of the department of labor and industrial relations for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to this chapter. These records shall be maintained for a period of not less than five years for amusement rides, elevators, and kindred equipment." [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

EXHIBIT A
ELEVATOR AND KINDRED EQUIPMENT INSTALLATION AND
ALTERATION FEES

October 1, 2020

Alterations¹:

Involving only the replacement of a single (1) major component (such as a car door operator, valve, a jack or a cylinder)	\$234
Involving only cosmetic changes (such as car interior modernizations)	\$410
Involving two or more major components and/or subsystems:	
1-3 Floors	\$738
4-9 Floors	\$796
10-19 Floors	\$866
20-29 Floors	\$925
30-39 Floors	\$995
40 or more Floors	\$1,112

New Installations²:

Dumbwaiter or material lift	\$615
Escalator, moving walk, or moving ramp	\$615
Platform lifts or stairway chairlifts	\$615
Elevator:	
1-3 Floors	\$738
4-9 Floors	\$796
10-19 Floors	\$866
20-29 Floors	\$925
30-39 Floors	\$995
40 or More Floors	\$1,112
Personnel hoists	\$527
Temporary use permits (construction car)	\$527

Additional Inspections:

Normal workday, up to two hours	\$400/day
Normal workday, more than two hours	\$800/day
Overtime hours, up to two hours	\$800/day
Overtime hours, more than two hours	\$1,600/day

Building Plan Reviews

\$234

¹ Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit (beyond the initial four) shall be reduced by fifty percent. The applications shall be submitted at the same time to qualify for the fee reduction.

² For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.

EXHIBIT B
ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES

October 1, 2020

Permit and Renewal Inspection Fees¹:

Dumbwaiter or material lift	\$176
Escalator, moving walk, or moving ramp	\$264
Platform Lift or Stairway Chairlift	\$264
Hydraulic Elevator - Holed	\$322
Hydraulic Elevator - Holeless	\$322
Hydraulic Elevator - Roped Holeless	\$381
Traction Elevators:	
1-3 Floors	\$293
4-9 Floors	\$322
10-19 Floors	\$351
20-29 Floors	\$410
30-39 Floors	\$498
40 or more Floors	\$585
Personnel Hoist	\$351
Temporary Use Permit (Construction Car)	\$351

Safety, Load, or Internal Test (Witness Fees):

Category 3 Test	\$381
Category 3 Test with Safety Overspeed Valve	\$439
Category 3/5 Test for Roped Hydraulic	\$498
Category 5 Test	\$498
Category 5 with Counterweight Test	\$615
Escalator, Internal	\$498

¹ For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining permit renewal inspection fees.

Permit renewal and witness [fess] fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [\$325] \$400 per day for up to two hours and [\$650] \$800 per day for more than two hours. Fees for overtime hours shall be [\$650] \$800 per day for up to two hours and [\$1,300] \$1,600 per day for more than two hours.

EXHIBIT C
INSPECTION AND TEST INTERVALS (IN MONTHS)

January 1, 2017

Equipment Type	Permit Renewal	Category 3	Category 5
Electrical Elevators	12	N/A	60
Hydraulic Elevators	12	36	N/A
Escalators and Moving Walks ^[1]	12	36	N/A
Dumbwaiters	12	36	60
Material Lifts	12	36	60
Platform Lifts and Stairway Chairlifts	12	N/A	N/A
Inclined Elevators	12	36	60
Screw-Column Elevators	12	36	60
Roof-top Elevators	12	36	60
Limited-use/Limited-Application Elevators	3	36	60
Construction Cars	3	36	60
Personnel Hoists ^[2]	3	N/A	N/A
Amusement Rides	6	N/A	N/A

¹ Internal inspections of escalators and moving walks shall be performed at intervals of 36 months.

² Personnel hoists shall be load tested at intervals of 3 months.

Where an equipment is listed under both Category 3 of 36 months and Category 5 of 60 months, the appropriate testing interval is dependent on whether the lifting mechanism is rope or hydraulic or a combination of rope and hydraulic.

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

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

4. These amendments to and compilation of chapter 12-229, 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.

ANNE E. PERREIRA-EUSTAQUIO
Acting Director of Labor
and Industrial Relations

APPROVED AS TO FORM:

Deputy Attorney General

V. Administrative Matters

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