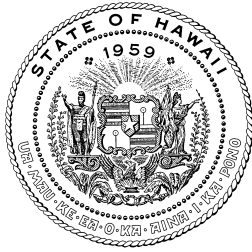


**Small Business Regulatory Review Board Meeting**

**July 24, 2025**

**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.sbrb.info@hawaii.gov](mailto:dbedt.sbrb.info@hawaii.gov)  
Website: [sbrb.hawaii.gov](http://sbrb.hawaii.gov)

Tel: 808 798-0737

### AGENDA

**Thursday, July 24, 2025 ★ 10:00 a.m.**  
**No. 1 Capitol District Building**  
**250 South Hotel Street, Conference Room 436**  
**Honolulu, HI 96813**

As authorized under Act 220, Session Laws of Hawaii 2021, and Section 92-3.7 Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

**A. By attending the in-person meeting at:**

**No. 1 Capitol District Building – 250 South Hotel Street, Conference Room 436,  
Honolulu, HI 96813; or**

**B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream  
meeting, go to:**

<https://us06web.zoom.us/j/88400776199?pwd=4wAvlu4jf7kz65ioBZWDXgpG4KIKJ8.1>

**C. To Join via Telephone: Dial 1-669-900-6833 with  
Meeting ID 883 5814 0200 Passcode 066739**

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering \* and 9 on your phone keypad. When recognized by the Chairperson, you will be unmuted. If you call in by phone, you can unmute and mute yourself by pressing \* and 6 on your keypad.

Members of the public may also submit written testimony via e-mail to:

[DBEDT.sbrb.info@hawaii.gov](mailto:DBEDT.sbrb.info@hawaii.gov) or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, July 23, 2025, so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

Copies of the Board Packet will be available on-line for review at: [Agendas & Minutes – Small Business Regulatory Review Board \(hawaii.gov\)](#) and in-person at 250 South Hotel Street, Room 506, Honolulu, HI 96813 during regular business hours. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

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.

**Josh Green, M.D.**  
*Governor*

**Sylvia Luke**  
*Lt. Governor*

**James Kunane**  
**Tokioka**  
*DBEDT Director*

**Dane K. Wicker**  
*DBEDT Deputy  
Director*

**Members**

**Jonathan Shick**  
*Chairperson  
O'ahu*

**Sanford Morioka**  
*Vice Chairperson  
O'ahu*

**Mary Albitz**  
*2nd Vice Chairperson  
Maui*

**James (Kimo) Lee**  
*Hawai'i*

**Leelen Park**  
*Hawai'i*

**Tessa Gomes**  
*O'ahu*

**Nikki Ige**  
*Kaua'i*

**Dr. Jennifer Salisbury**  
*Maui*

**Director, DBEDT**  
*Voting Ex Officio*

**I. Call to Order**

**II. Approval of June 19, 2025 Meeting Minutes**

**III. Old Business**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to the following, promulgated by Department of Commerce and Consumer Affairs – *Discussion Leader – Tessa Gomes*
  - 1. HAR Title 16 Chapter 107, **Relating to Horizontal Property Regimes**
  - 2. HAR Title 16 Chapter 119.1 through 119.8, **Relating to Condominiums**

**IV. New Business**

- A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 12 Chapter 15 **Hawaii Workers' Compensation Medical Fee Schedule (MFS) and Exhibit A (Workers' Compensation Supplemental Medical Fee Schedule)** 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 (HRS)
  - 1. Update on Business Revitalization Taskforce's most recent meeting pursuant to Act 142 (Sessions Law Hawaii 2024, Senate Bill 2974 Relating to Economic Development) – Mandates that the Department of Business, Economic Development, and Tourism establish a task force in order to identify methods to improve Hawaii's general economic Competitiveness and business climate, including the mitigations of regulatory and tax burdens
  - 2. Update and Discussion on Becker Communications Inc., regarding the Board's Small Business Outreach
  - 3. Presentations to Industry Associations
  - 4. Staff's Small Business Outreach

**VI. Legislative Matters**

- A. Update and Action on the following:
  - 1. **House Bill 1406 HD1 SD2 CD1 - Relating to Government Procedures** – Establishes the Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force to identify actions taken, challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental development permit processes; and appropriates funds

**VII. Next Meeting:** Thursday, August 21, 2025, at 10:00 a.m., held via Zoom and at 250 South Hotel Street – No. 1 Capitol District Building, Conference Rm 436, Honolulu, HI 96813

**VIII. Adjournment**

If you need an auxiliary aid/service or other accommodation due to a disability, contact Jet'aime Ariola at 808 798-0737 and [jetaime.k.ariola@hawaii.gov](mailto:jetaime.k.ariola@hawaii.gov) as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate/accessible formats.

## **II. Approval of June 19, 2025 Meeting Minutes**

## Small Business Regulatory Review Board

### MEETING MINUTES - **DRAFT**

June 19, 2025

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

**MEMBERS PRESENT:**

- Mary Albitz, Vice Chair
- Sanford Morioka, 2<sup>nd</sup> Vice Chair
- Tessa Gomes
- Robert Cundiff
- Nikki Ige
- Dr. Jennifer Salisbury
- David Sikkink

**ABSENT MEMBERS:**

- Jonathan Shick, Chair
- James (Kimo) Lee

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Keto

II. **APPROVAL of MAY 15, 2025 MINUTES**

Ms. Ige motioned to approve the May 15, 2025 meeting minutes as presented. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Hawaii Administrative Rules Title 11 Chapter 20, Rules Relating to Public Water Systems, promulgated by Department of Health (DOH)

Discussion leader and Second Vice Chair Morioka stated that the rules will affect small businesses due to the update of the federal rules, and introduced Mr. Steve Tagupa, Environmental Engineer, at DOH's Environmental Management Division to brief the members on the updates.

Mr. Tagupa explained that the main change to the rules is reflected in the very last sentence of Section 11-20-46.1 (1) (C) (2), which is intended to clarify that the required turbidity limits for drinking water treatment, specified for surface water treatments, would be as stringent as they would be for conventional treatment systems. It will also allow for the rules to be in line with the current federal regulations.

It was confirmed that small businesses would not experience a new negative impact by these rules due to the businesses already having to be required to adhere to the federal changes.

Mr. Cundiff motioned to send the proposed amended rules to public hearing. Ms. Ige seconded the motion, and the Board members unanimously agreed.

#### **IV. 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 (HRS)**

1. Update on the Business Revitalization Taskforce's most recent meeting pursuant to Act 142 (Sessions Law Hawaii 2024, Senate Bill 2974 Relating to Economic Development, and Tourism establish a task force in order to identify methods to improve Hawaii's general economic competitiveness and business climate, including the mitigations of regulatory tax burdens

Ms. Gomes, the current Board member of the Business Revitalization Taskforce, explained that the taskforce, in general, is just beginning to figure out what they're doing, and the lay of the land. There has been a lot of "back-and-forth" as to how often the taskforce should meet, with no progress on actionable items. The next meeting is at the beginning of July; Ms. Gomes is hoping there will be some progress made at this meeting.

2. Update and Discussion on Becker Communications, Inc., regarding the Board's Small Business Outreach

Ms. Ariola stated that Becker took over amending and distributing the Board's monthly e-newsletter. The June e-newsletter went out this week and it looks great. Although the board members should have received it, some of the members indicated that they had not; Ms. Ariola will look into this.

A meeting with Becker is scheduled for next Thursday to go over any concerns or items that the Board would like Becker to handle. If there are any suggestions from the members, please let staff know by next week's meeting.

3. Presentations to Industry Associations

Ms. Salisbury attended a Maui Chamber of Commerce Business After Hours event last week in Lahaina.

Ms. Ige's employer will be hosting a small business workshop focusing on cultural entrepreneurship where she will distribute the Board's brochures.

4. Staff's Small Business Outreach

Ms. Ariola requested that the board members let her know if there are any events that they are aware of where she might be able to attend to provide outreach for this Board.

## **V. LEGISLATIVE MATTERS**

### **A. Update on the following:**

1. Senate Bill 1343 SD1 HD2 CD1 – Relating to the Small Business Regulatory Review Board – Amends the quorum requirements to do business and validate acts of the Small business Regulatory Review Board

This measure was signed into law on May 2, 2025.

2. Senate Resolution 104 SD1 – Establishing the Task force for SPEED (Simplifying Permitting for Enhanced Economic Development) to Identify Actions Needed to Expedite, Facilitate, and Coordinate State and Intergovernmental Permit Processes

See below – Section V. A. 3.

3. House Bill 1406 HD1 SD1 CD1 Relating to Government Procedures – Establishes the Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force to identify actions, challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and legislative measures necessary to facilitate, expedite and coordinate state and intergovernmental development permit processes; and appropriates funds.

The Task Force encompasses several members, one of which is a member of this Board. Vice Chair Albitz indicated that Chair Shick has offered to be on this taskforce if no one else is interested.

Ms. Salisbury expressed an interest in being a member of this taskforce, however, she will need specific information on when the taskforce will meet, and the time commitment involved; Ms. Palcovich will research this and get back to her.

## **VI. ELECTION OF BOARD OFFICERS –**

### **A. Discussion and Action on the following:**

1. Chairperson, pursuant to Section 201M-5(c), HRS

Mr. Cundiff motioned to reinstate/nominate Mr. Jonathan Shick as this Board's Chair for the 2025–2026 session. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

2. Vice Chair

Mr. Cundiff motioned to nominate Mr. Sanford Morioka as the Board's Vice Chair for the 2025-2026 session. Ms. Ige seconded the motion, and the Board members unanimously agreed.

3. Second Vice Chair

Second Vice Chair motioned to nominate Ms. Albitz as the Board's Second Vice Chair for the 2025-2026 session. Ms. Ige seconded the motion, and the Board members unanimously agreed.

**VII. NEXT MEETING** – Thursday, July 24, 2025 at 10:00 a.m., via Zoom and in person in Conference room 436 at No. 1 Capitol District Building, 250 S. Hotel Street, Honolulu, HI 96813.

**VIII. ADJOURNMENT** – Ms. Salisbury motioned to adjourn the meeting and Mr. Cundiff seconded the motion; the meeting adjourned at 10:23 a.m.

### **III. New Business**

#### **A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to the following, promulgated by Department of Commerce and Consumer Affairs – Exhibit 1**

- 1. HAR Title 16 Chapter 107, Relating to  
Horizontal Property Regimes**
- 2. HAR Title 16 Chapter 119.1 through 119.8,  
Relating to Condominiums**

**SMALL BUSINESS STATEMENT  
"AFTER" PUBLIC HEARING TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

DCCA - PVLD - Real Estate Branch

**Department or Agency:** \_\_\_\_\_

Title 16 Chapter 107 / Title 16 Chapters 119.1-119.8

**Administrative Rule Title and Chapter:** \_\_\_\_\_

**Chapter Name:** Horizontal Property Regimes / Condominiums

**Contact Person/Title:** Kedin Kleinhans / Senior Condominium Specialist

**Phone Number:** 808-586-2643

**E-mail Address:** kkleinha@dcca.hawaii.gov **Date:** 7/8/2025

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.)

\* \* \*

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

Please see attached Post-Hearing Memorandum, part II, Small Business Statement - Supplemental Information (page 16).

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

Please see attached Post-Hearing Memorandum (page 16).

**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.

Please see attached Post-Hearing Memorandum (page 17).

2. A summary of the public's and small businesses' comments.

Please see attached Post-Hearing Memorandum (page 17).

3. A summary of the agency's response to those comments.

Please see attached Post-Hearing Memorandum (page 18).

4. The number of persons who:

(i) Attended the public hearing: (0)

(ii) Testified at the hearing: (0)

(iii) Submitted written comments: (3)

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.

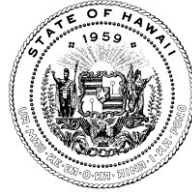
N/A

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto: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>



JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA  
  
SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
KA 'OIHANA PILI KĀLEPA  
335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
cca.hawaii.gov  
July 8, 2025

NADINE Y. ANDO  
DIRECTOR | KA LUNA HO'OKELE  
  
DEAN I HAZAMA  
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

**MEMORANDUM**

**TO:** Jonathan Shick, Chairperson  
Small Business Regulatory Review Board  
Department of Business, Economic Development & Tourism

**FROM:** Nadine Y. Ando, Director *NA*  
Department of Commerce and Consumer Affairs

**SUBJECT:** Post-Public Hearing Statement and Supplemental Information  
Proposed Simultaneous Repeal of Hawai'i Administrative Rules  
Chapter 16-107, Relating to Horizontal Property Regimes, and  
Adoption of Chapters 16-119.1 through 16-119.8, Relating to Condominiums

We kindly request your review of the proposal to repeal Hawai'i Administrative Rules ("HAR") Chapter 16-107, Relating to Horizontal Property Regimes, and simultaneously adopt HAR Chapters 16-119.1 through 16-119.8, Relating to Condominiums.

**I. General Description of Proposed Rules:**

The Hawai'i Real Estate Commission ("Commission") proposes to repeal HAR Chapter 16-107, upon the simultaneous adoption of HAR Chapters 16-119.1 through 16-119.8. The rules are prepared as a single rulemaking action in accordance with the Hawai'i Administrative Rules Drafting Manual, Third Edition, Section 00-5-4.1. The reasons for this rulemaking action are as follows:

CHAPTER 16-107 HORIZONTAL PROPERTY REGIMES

Hawai'i Revised Statutes ("HRS") Chapters 514A and 514B are two State laws that govern condominium projects in their registration and governance. HAR Chapter 16-107 was promulgated to effectuate HRS Chapter 514A; however, HRS Chapter 514A was formally repealed through Act 181, Session Laws of Hawai'i 2017.

HRS Chapter 514B, cited as the Condominium Property Act, was enacted to apply to all condominiums created in Hawai'i after July 1, 2006. As this chapter has no administrative rules, the Commission formed a "Blue Ribbon Committee" comprised of various stakeholders, including small business owners, who may be impacted by the adoption of administrative rules. The primary objective of the Blue Ribbon Committee was to discuss and recommend proposed rule language to implement HRS Chapter 514B. The Blue Ribbon Committee compiled the enclosed draft HAR Chapters 16-119.1 through 16-119.8, which were presented to and approved by the Commission to proceed through the rulemaking process. An outline and general description of the proposed rules are provided below:

## CHAPTER 16-119.1 CONDOMINIUMS – GENERAL PROVISIONS

Section 16-119.1-1 Applicability. On November 25, 2016, the Commission received a memorandum from the Legislative Reference Bureau, generally relating to form and style. Per the memorandum, all rulemaking actions, and proposals for changes for which a public hearing is held after December 21, 2016, should be at the chapter level in accordance with the Hawai'i Administrative Rules Drafting Manual, Third Edition. Accordingly, the rules are divided into eight respective topical chapters. This section specifies that HAR Chapters 16-119.1 through 16-119.8 are to be read in conjunction and apply only to HRS Chapter 514B.

Section 16-119.1-2 Severability. In the event any part of HAR Chapter 16-119.1 is rendered invalid, this section provides that the remaining provisions of the chapter continue to remain valid and effective.

Section 16-119.1-3 Objectives. Clarifies that HAR Chapters 16-119.1 through 16-119.8 are intended to supplement the provisions of HRS Chapter 514B and increase consumer protection. The rules are not intended to change the substantive law of HRS Chapter 514B.

Section 16-119.1-4 Definitions. Details terminology used in HRS Chapter 514B and HAR Chapters 16-119.1 through 16-119.8 to improve comprehension of the laws and rules in a uniform and consistent manner:

- (1) Adding "Association" to clarify the term includes a condominium association organized under prior condominium statutes, HRS Chapter 514A.
- (2) Adding "Building permit for the project" to codify the Commission's informal non-binding interpretation that a permit that is less than the final building permit is considered a building permit for the project.

- (3) Adding "Board" to indicate that the terms "board" and "board of directors" are synonymous and defined in HRS §514B-3.
- (4) Adding "Certificate of occupancy" to specify that county agencies issue either a final or temporary certificate of occupancy.
- (5) Adding "Certify", "certified", or "certification" to mean an affirmation as to the facts being true to the best of an individual's knowledge and beliefs.
- (6) Adding "Commission" to mean the "real estate commission" for purpose of clarity as HRS §514B-3 defines "commission" as the "real estate commission of the State."
- (7) Adding "Condominium" and "Condominium property regime" to clarify the terms are synonymous and defined in HRS §514B-3.
- (8) Adding "Controlling interest" to specify that a person may acquire a financial interest, voting interest, or both to succeed to the interest of a developer.
- (9) Adding "Department" to identify the Department of Commerce and Consumer Affairs, State of Hawai'i.
- (10) Adding "Developer" to indicate that the term, or any term that may be synonymous, is defined in HRS §514B-3.
- (11) Adding "Director" to identify the Director of the Department of Commerce and Consumer Affairs.
- (12) Adding "Evidence of recordation" to allow flexibility in condominium recordation documents without compromising consumer protection.
- (13) Adding "Financial institution" to make clear that association monies may be deposited in institutions authorized as a financial institution in this State.
- (14) Adding "First unit conveyance" to specify that, for a sale of a unit to have occurred, the first transfer of legal or equitable title must be made to a person unaffiliated with the developer.
- (15) Adding "House rules" to mean the rules and regulations adopted by a condominium association or board.
- (16) Adding "Maintenance fee" to include special assessments, with the exception of certain assessments relating to the collection or enforcement of fees, e.g., late charges, penalties, attorney fees. The statute provides for the regulation of "maintenance fees" without specifying what "maintenance fees" are.

- (17) Adding "Offer for sale" to mean any attempt to encourage a person to acquire an interest to a condominium project, with the exception of a preregistration solicitation as provided in HRS §514B-85.
- (18) Adding "Over the telephone" to clarify that the transfer of association funds may be authorized through an electronic medium if a condominium association or board previously authorized the transfer in writing.
- (19) Adding "Project" to indicate that the term, or any term that may be synonymous, is defined in HRS §514B-3.
- (20) Adding "Sale [of] any units" to exclude any sale, transfer, or conveyance of a unit pursuant to the registration exceptions enumerated in HRS §§514B-51(b) and 514B-81(b).
- (21) Adding "Serious illness" to codify the Commission's informal non-binding interpretation that a duly licensed physician certifies whether an individual has a serious illness.

Section 16-119.1-5 Commission forms. Housekeeping change to specify that registrants must use the most recent Commission-approved forms.

Section 16-119.1-6 Filing of other documents and information. Clarifies the Commission's discretionary authority to require the submittal of additional documentation to complete the registration application, and to require actual proof of any submitted document, certified statement, or information.

Section 16-119.1-7 Abandonment of incomplete registration application. Provides a shorter timeframe other than what is provided by HRS §436B-9 (six months as compared to two years) by which a registration application shall be deemed abandoned if the registration application remains incomplete. Pursuant to HRS §436B-3(b), the licensing laws or rules of a regulated industry shall prevail over HRS Chapter 436B.

Section 16-119.1-8 Documents and information. Requires the public documents submitted by a developer for condominium registration to be provided to prospective purchasers of the condominium. This section further specifies timeframes for the disclosure of public documents and retention of records.

## CHAPTER 16-119.2 CONDOMINIUMS – ADVERTISEMENT

Section 16-119.2-1 Advertisement. Defines the term "advertisement" and excludes from the definition certain discussions between a developer or owner and existing tenants

regarding a possible conversion of the property into a condominium property regime. This section further requires all advertising to indicate that the project is a condominium and prohibits the use of specific words and dotted or dashed lines that may indicate the project is a legally subdivided project. For dotted or dashed lines, a disclosure must be provided to explain that lines are for identification purposes only.

Section 16-119.2-2 Use of developer's public report for advertising. Specifies that only the true and entire copy of the Developer's Public Report ("DPR"), including a Commission-issued effective date, may be used for advertising.

Section 16-119.2-3 Name on advertising. Requires advertisements to use the project name indicated on the declaration and application for a DPR.

## CHAPTER 16-119.3 CONDOMINIUMS – PROJECT REGISTRATION

Section 16-119.3-1 Name of the condominium project. Details instructions on certifying the name of a condominium or project as not substantially similar to a currently registered condominium, project, or business, and clarifies that misrepresentation of the certification is a violation of HRS §514B-94.

Section 16-119.3-2 Unit sale and project registration. Clarifies and provides for the applicability or exemption of project registration requirements and specifies when a project is considered registered with the Commission.

Section 16-119.3-3 Effective dates; developer's public reports; owner builder exemption. Prohibits the Commission from issuing an effective date for a DPR for units subject to the owner-builder permit exemption of HRS Chapter 444, but provides the Commission discretionary authority in issuing an effective date for units that fall under the Contractors License Board's determination of an "unforeseen hardship" pursuant to HRS §444-2.5.

Section 16-119.3-4 Copies of developer's public reports. Clarifies HRS §514B-56, requiring a developer to provide the Commission copies of the DPR within thirty days of the issuance of an effective date. This section provides an unspecified number of copies to allow the Commission to change the number of copies, as needed.

Section 16-119.3-5 Bulk sale; portion of developer's inventory. Details the bulk sale provision enumerated in HRS §514B-51(b)(3) with current practice and policies, and further provides developers flexibility in an ever-changing economy without compromising consumer protection. This section also clarifies that any bulk sale shall involve at least two units of remaining inventory.

Section 16-119.3-6 Filing of parking plan. Requires the parking plan to comply with all federal, State, county, and Commission requirements, and further requires the developer to disclose to prospective purchasers the type of parking stalls available, including disability accessibilities.

Section 16-119.3-7 Lost or destroyed plans. Provides alternatives the Commission may accept when building plans are lost or destroyed. In condominium conversions where the buildings are older, county permitting offices have reported that older building plans are not kept anymore, lost, or destroyed.

Section 16-119.3-8 Method of computing percentage of common interest. Clarifies current Commission procedures requiring the developer to disclose the method or formula used to compute the percentage of common interest assigned to each unit.

Section 16-119.3-9 Metes and bounds description. Implements the Commission's informal non-binding interpretation specifying requirements for the description of property boundaries.

Section 16-119.3-10 Method of computing floor area. Requires the developer to disclose the method or formula used to compute the total living area of each unit. This section also clarifies that certain area types, such as lanais, must be reported separate from the living area.

Section 16-119.3-11 Filing of other documents. Clarifies the Commission's discretionary authority to require the submittal of additional documents and information to complete the registration application.

Section 16-119.3-12 Signature on an application for registration; developer's public report; other documents. Describes the signatures and related documents required to complete the condominium project registration application.

Section 16-119.3-13 Amendments to the developer's public report. Allows the Commission to permit the developer to disclose up to two material changes and/or four pertinent changes using a short form amended DPR. This section also enumerates the items required in an amended DPR, including a summary of changes, notice that the amended DPR should be read with the previous DPR, description of purchaser rescission rights, and a list of documents purchasers should review. To provide developers with flexibility in reporting changes without compromising consumer protection, developers may submit an addendum to report non-substantive changes, such as typographical

errors, for Commission review and disposition. To further ensure prospective purchasers receive accurate information about their purchase, this section requires all title reports submitted with an amended DPR to be dated not more than 45 days, compared to the prior 60 days enumerated in HAR Chapter 107.

Section 16-119.3-14 Annual report. Clarifies the information required in an annual report as described in HRS §514B-58 and provides a timeframe of thirty days for its submittal. This section also defines current procedures requiring developers to search and determine whether a condominium project contains any code violations.

Section 16-119.3-15 Spatial units. Provides descriptive and compliance requirements for the consideration of condominium spatial units, consistent with the Commission's informal non-binding interpretations.

Section 16-119.3-16 Registering new units. Details processes to register new units with registered or unregistered units. This section also clarifies that unregistered units must be created as a new project in accordance with HAR Chapter 16-119.4.

Section 16-119.3-17 Cooperatives. Clarifies the applicability of HRS Chapter 514B for a cooperative housing project converting to a condominium. This section also provides for a waiver of the broker listing requirement, provided certain requirements are met.

#### CHAPTER 16-119.4 CONDOMINIUMS – DEVELOPER'S PUBLIC REPORTS

Section 16-119.4-1 Project registration application; documents and information. Before a developer can begin sales of any units to the public, the Commission must issue an effective date for a DPR. The DPR, prepared by the developer, discloses all material facts about the project. This new section lists the required documentation and information a developer must submit for the issuance of an effective date for the DPR. The resulting information facilitates a private consultant's review of a draft DPR for material facts and disclosures and streamlines the registration process. This section specifies additional documents required for different application scenarios, e.g., project located in an agriculturally zoned district. To further ensure prospective purchasers receive accurate information about their purchase, this section requires the report provided by a Hawai'i-licensed architect or engineer to be prepared within six months prior to the submission of the DPR.

Section 16-119.4-2 Content of developer's public report. Requires DPRs to contain language easily understood by purchasers via the Flesch Reading Ease Formula and describes the necessary disclosures to register a project with the Commission. Proposed subsection (f) provides definitions for a "phased project" and "phasing plan" and clarifies that each phase shall be separately registered with the Commission. In addition,

proposed subsections (g) and (h) enumerate the required disclosures to register a conversion project and a project located in an agricultural zone, respectively.

Section 16-119.4-3 Delivery of developer's public report. Clarifies when a DPR is deemed delivered to a purchaser and provides for an alternate delivery of the DPR if the purchaser submits a written agreement to receive the DPR through a medium other than print, e.g., electronic copy.

Section 16-119.4-4 Use of purchaser deposits to pay project costs. Defines "cost of construction" and related terms to specify the types of funds that are acceptable or prohibited to pay for project costs.

Section 16-119.4-5 Completion; performance bond; irrevocable letter of credit alternatives. Describes the content, conditions, and form of other substantially equivalent or similar instrument accepted in place of the performance bond. The proposed equivalents or instruments include an irrevocable letter of credit and alternative arrangement. The conditions include the submission of a lender's letter accepting the bond or equivalent, a developer's statement agreeing to the release of purchaser's funds only after the completion of the construction and sale of the unit, and adequate disclosures to be included in the DPR regarding the developer's use of a material house bond.

Section 16-119.4-6 Reduction of a completion, performance bond, letter of credit, or other alternative security amount of completion of construction. Provides the Commission authority to receive and review requests from developers to reduce the dollar amount of security. This section also specifies the documents to be included with a request, including conditions for Commission approval.

## CHAPTER 16-119.5 CONDOMINIUMS – SALES TO OWNER-OCCUPANT

Section 16-119.5-1 Exclusions. Implements the Commission's informal non-binding interpretation providing exemptions from the 50% owner-occupant designation of units for sales to prospective owner-occupants. The exemptions include the offering of timeshare units, leasehold fee interests to the existing owners of leasehold units, and instances where a project consists of one residential unit and the remaining units are not residential.

Section 16-119.5-2 Sales exempt from owner-occupant requirements. Specifies additional exemptions from the 50% owner-occupant requirement, which include residential projects located in county-zoned hotel or resort areas, apart from the Waikiki special district.

Section 16-119.5-3 Fifty per cent of units. Clarifies the applicability and required percentage of the 50% owner-occupant requirement for condominium projects with three units.

Section 16-119.5-4 Offers of sale of residential units. Provides developers the option to use either a chronological or lottery system when offering the initial sale of residential units to prospective owner-occupants and specifies certain days to include or exclude while calculating the timeframe.

Section 16-119.5-5 Publication of announcement. Defines "general circulation" as a newspaper that is published on a daily basis and distributed to all segments of the State, or published in a county on a weekly basis, for consistency with the Commission's current practices and policies.

Section 16-119.5-6 Extenuating circumstances affecting an owner-occupant's compliance. Specifies the conditions and requirements for the Commission to receive requests for an informal non-binding interpretation that an extenuating circumstance exists and consider the issuance of a "no action" letter when the extenuating circumstance caused or causes non-compliance with the owner-occupant requirements.

Section 16-119.5-7 Sample copies of forms. Requires developers to provide a sample of their affidavit of the purchaser's intent to become an owner-occupant, and reservation agreement between the developer and purchaser.

Section 16-119.5-8 Failure to comply. Prescribes the course of action and sanctions to be taken when a developer fails to comply with the owner-occupant announcement requirements, including the immediate ceasing of any sales offering and the refund of all monetary deposits, cancellation of owner-occupant affidavits, cancellation of sales contracts, and the republication of the owner-occupant announcement. This section also imposes the same sanctions on a developer who elects to comply with the owner-occupant announcement but fails to comply with the owner-occupant requirements enumerated in HRS Chapter 514B.

Section 16-119.5-9 Owner-occupant affidavit. Provides conditions and circumstances for the joint ownership of a unit with a non-owner-occupant. The conditions include proof of writing that the lender requires the affidavit, the developer has received confirmation, and the requirement that if a non-owner-occupant conveys title within the year, the conveyance must be to the owner-occupant.

## CHAPTER 16-119.6 CONDOMINIUMS – REQUIREMENTS FOR REPLACEMENT RESERVES

Section 16-119.6-1 Objective. Clarifies the chapter's objective to ensure each unit owner contributes their fair share of shared expenses and that HAR Chapter 16-119.6 is intended to supplement the provisions of HRS §514B-148, and not to change the substantive law of HRS Chapter 514B.

Section 16-119.6-2 Applicability of chapter. Specifies that the rules of HAR Chapter 16-119.6 apply to all condominiums created in the State and requires the developer to include in the declaration, at a minimum, provisions calculating and funding replacement reserves.

### Section 16-119.6-3 Definitions.

- (1) Adding "Asset" to specify that all parts of a condominium's property are to be factored into the reserve study for maintenance and repair.
- (2) Adding "Association property" to describe the parts of the condominium property that the association is obligated to maintain, repair, and replace. This definition ensures that all significant potential liabilities of the association are considered in preparing a reserve study on collecting reserves. A separate definition for "exempt association property" is included to specify that units and certain limited common elements are not considered "association property".
- (3) Adding "Budget year" as a housekeeping change to mean the fiscal year used by the condominium association for its budgetary work.
- (4) Adding "Cash flow plan" to explain the intent of using a properly calculated cash flow plan that collects reserve funds and prevents unit owners from taking value out of a condominium by underfunding reserves, leaving subsequent purchasers to pay for the underfunding through increased maintenance fees or special assessment(s).
- (5) Adding "Component" as a housekeeping change to mean each line item enumerated in the physical analysis portion of the reserve study.
- (6) Adding "Contingency reserves" to describe several issues that may warrant the use of emergency funds, rather than "regular" reserves.
- (7) Adding "Emergency" to expand the definition of "emergency situation" in HRS §514B-148(h) by focusing on the substantial depletion of funds and the need to rebuild reserves in consideration of current events.

- (8) Adding "Estimated age" or "effective age" as a housekeeping change to mean estimated useful life, minus estimated remaining life.
- (9) Adding "Estimated remaining life" to provide a general timeframe on when an asset will require maintenance.
- (10) Adding "Estimated replacement reserves", "reserve fund contribution", or "funding goal" to specify the amount of reserve funds to be assessed and collected each budgetary year to secure funds for the reserve plan.
- (11) Adding "Estimated useful life" to clarify that the length of time an asset is expected to function starts on the completion of its initial construction, or for an existing asset, the completion of its restoration or repair.
- (12) Adding "Exempt association property" to specify certain property with an estimated remaining life of over thirty years, or property that will require maintenance at a cost of less than 0.1% of an association's annual budget, are not considered "association property". This definition also requires any exempt property that eventually becomes "association property" to comply with the transitional rules provided in proposed HAR §16-119.6-11.
- (13) Adding "Full replacement reserve" to provide the calculation of funding an asset relating to its current estimated useful life.
- (14) Adding "Funds", "fund balance" or "reserve funds" to clarify that funds borrowed by an association are not included in calculating its statutory replacement reserve, with the exception of certain loans subject to HAR §16-119.6-12.
- (15) Adding "Managing agent" to provide, in part, the scope of a managing agent's "fiduciary" role as designated in HRS §514B-132(c), including the preparation of a replacement reserve study. This definition also clarifies that an employee of a managing agent who prepares the reserve study is also considered a "managing agent". However, should a reserve study be prepared by a managing agent who is not an "independent reserve study preparer", as defined in HRS §514B-148, the reserve study shall require the review of an independent reserve study preparer not less than every three years.
- (16) Adding "Minimum replacement reserve" to specify that a minimum of 50% for a full replacement reserve or 100% for a cash flow plan is required, pursuant to HRS §514B-148(b).
- (17) Adding "Reserve study" to clarify that the study involves a physical analysis of the property and a financial analysis of the condominium association on an annualized basis.
- (18) Adding "Statutory replacement reserves" to require an association to obtain 50% of estimated replacement reserves, or for a cash flow plan 100% of estimated replacement reserves, to satisfy the reserve requirements of HRS §514B-148(b).

- (19) Adding "Substantially deplete" to specify an expense that reduces an association's reserves by more than 75% would fall under the emergency provisions enumerated in HAR §16-119.6-7.

Section 16-119.6-4 Effective date for establishing statutory replacement reserves.

Requires a condominium board of directors to adopt an annual operating budget for each following year, provided that if an association has yet to hold its first meeting, then the developer must disclose to each unit owner in writing the plans for use of reserve funds. This section also specifies certain budgetary information that must be included in a developer's notice to unit owners should an association not hold its first meeting within the timeframe specified in HRS §514B-102.

Section 16-119.6-5 Calculation of estimated replacement reserves; reserve study; good faith. Details the preparation and procedures to assist condominium associations and boards in calculating their association's estimated replacement reserves for each asset, based on a reserve study, including adjusting for inflation. This section also clarifies that estimates are deemed calculated in good faith if the individuals who conducted the calculation acted as fiduciaries as provided in HRS §414D-149.

Section 16-119.6-6 Fund accounting for each part of the association property; use of separate funds for other than stated purpose. Requires an association to establish separate funding accounts for each asset exceeding \$10,000 and disclose the purpose and project amount of each fund. This section also prescribes requirements calculating and allocating funds, based on a reserve study, using full replacement reserves or a cash flow plan.

Section 16-119.6-7 Emergencies and emergency situations. Specifies a timeframe of three budget years for an association whose reserves have substantially depleted to restore its reserves to the statutory amount, including associations that use a cash flow plan. This section also clarifies that the 20% budgetary threshold provided in HRS §514B-148(e) applies to the budget year that the expense will occur.

Section 16-119.6-8 Contingency reserves. Provides that a board may establish a separate contingency reserve based upon the property's age, history of maintenance, and any other factors that the board finds relevant.

Section 16-119.6-9 Conflict of chapter. Clarifies supremacy between federal and state tax laws, HRS Chapter 514B, HAR Chapter 16-119.6, a project's declaration, and association bylaws. This section also expands on a board's right to spend or assess for items required by an association's reserve study.

Section 16-119.6-10 Reserve funds non-transferable. Specifies that all replacement reserve and contingency reserve funds collected from unit owners become the property of the association. This section also clarifies that there is no right to a unit owner's reimbursement of reserve funds upon the sale of a unit.

Section 16-119.6-11 Exempt association property; disclosure; transition to association property. Details procedures in transitioning an asset from "exempt association property" to "association property" and calculating its replacement reserves related to its estimated remaining life.

Section 16-119.6-12 Borrowing and special assessments to fund replacement reserves. Provides a board the ability to fund expenses by borrowing additional funds, transferring designated funds, issuing special assessments, use cash on hand, or any combination to fund the expense with the intent to reduce hardship on the association.

Section 16-119.6-13 Leasing of association property. Clarifies that a board may obtain property via lease instead of purchasing a replacement, provided the leased property must be included in the association's reserve study.

Section 16-119.6-14 Distribution of budgets and reserve studies. Specifies certain information and documents that must be included with the board's distribution of the approved budget, such as the findings by a certified public accountant on the adequacy of reserves.

Section 16-119.6-15 Enforcement. Provides that a member of the association may compel the board to comply with the statutory reserve study requirements via HRS §514B-157 should the board breach its fiduciary duty. This section also clarifies that the arbitrator or judge may award any fees and costs incurred to the unit owner against the board or board members, instead of against the association.

## CHAPTER 16-119.7 CONDOMINIUMS – MANAGING AGENT

Section 16-119.7-1 No registration required. Specifies that individuals who assist with the conduct of condominium managing agent activities are excluded from the statutory definition of "managing agent." These persons include employees of an association, employees of registered managing agents, and persons independently contracted to provide certain described services that have no access to association funds. "Access" is defined to include the receipt or deposit of association funds, issuance of checks using association funds, or signature authority on any association bank account.

Section 16-119.7-2 Managing agent; bookkeeper; accountant. Implements the Commission's informal non-binding interpretation prescribing requirements and standards for associations that elect to use an accountant or bookkeeper. This section also specifies that the accountant or bookkeeper is not required to register with the Commission as a managing agent, subject to submission of an executed board resolution acknowledging that the accountant or bookkeeper neither has no fidelity bond, nor access to association funds.

Section 16-119.7-3 Conduct. Clarifies the scope of a managing agent's statutory designated "fiduciary" role with respect to a property managed. This section proposes that a managing agent shall not accept any compensation, commission, rebate, or any expenditure for or from a unit owner, without the owner's knowledge and written consent. Where there is a written agreement to do so, a managing agent shall complete the registration and reregistration of an association with the Commission. Subsection (c) provides that the managing agent shall be responsible for its employee's and agent's full compliance with the real estate licensing law, HRS Chapter 467, the Condominium Property Act, HRS Chapter 514B, and HAR Chapters 16-119.1 through 16-119.8.

#### CHAPTER 16-119.8 CONDOMINIUMS – ASSOCIATION REGISTRATION

Section 16-119.8-1 Registration of an association. Provides for the proper identification of an association with six or more units. Each condominium project or its association must register with the Commission using the same name as it appears in the declaration or amended declaration. Associations that have incorporated must also register with the Department's Business Registration Division. This section also clarifies that the board is responsible for registering and reregistering an association, pursuant to HRS §514B-103, but may delegate this responsibility to a managing agent in writing.

Section 16-119.8-2 Failure to provide evidence of fidelity bond. Clarifies HRS §514B-103(b) and the Commission's authority to terminate an association's registration for non-compliance of the fidelity bond requirements.

Section 16-119.8-3 Fidelity bond; deductible. Describes evidence of a current fidelity bond to include an insurance company's certification, submitted upon Commission's request, certifying that the association has obtained the required bond; that the bond names the association as the certificate holder; that the fidelity bond names only the association as the insured; that the bond policy excludes any criminal conviction endorsement; whether the bond provides a deductible amount; and requires an association's board to provide unit owners a notice detailing the amount of the deductible, and any other changes in the fidelity bond coverage. This proposed section would provide a more efficient regulatory alternative and cure the imbalance between the public benefit and the time and cost spent on compliance.

Section 16-119.8-4 Fidelity bond exemption for an association. Clarifies that all association fidelity bond exemptions expire at the conclusion of the biennial registration period and shall be reapplied for during each biennial registration period at least thirty days prior to the biennial registration deadline.

Section 16-119.8-5 Fidelity bond exemption. Enumerates three Commission-approved exemptions and the respective requirements to obtain an exemption from the association fidelity bond requirement: (1) Sole Owner, (2) 100% Commercial Use, and (3) twenty or fewer units. This section also expands on associations with twenty or fewer units by prescribing separate requirements for associations depending on the number of units, amount of reserve funds, and annual budget.

Section 16-119.8-6 Registration application. Clarifies that a completed association registration or reregistration application includes the signature of an authorized officer of the association, payment of the correct fee amount, payment of any applicable penalties, documentation of current evidence of a fidelity bond or exemption, and other documents and information upon the request of the Commission. This section also requires the association to make available for review, to any unit owner upon request, the registration and reregistration application filed with the Commission, subject to the unit owner paying a reasonable cost for handling the copy request.

Section 16-119.8-7 Availability of association's records, documents, and information. Requires an association to biennially provide a summary of all records available to unit owners, including information as to whom a request for such information may be made of, where the requested information and documents will be made available, and when the information and documents shall be made available for examination and copying, in accordance with HRS Chapter 514B. This section also requires an association's board or managing agent to redact information that would constitute an unwarranted invasion of privacy or violate other state or federal laws.

Section 16-119.8-8 Deposit of association funds. Codifies the Commission's informal non-binding interpretation on the term "located in the State" with regard to financial institutions deemed located in the State and whose deposits are insured by agencies of the State.

**II. Small Business Statement – Supplemental Information**

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

As part of the Commission’s rulemaking efforts, the Commission formed a “Blue Ribbon Committee” comprised of various stakeholders, including small business owners, who may be impacted by the adoption of administrative rules relating to condominiums. The Blue Ribbon Committee was tasked with discussing and recommending possible rule language to implement HRS Chapter 514B.

After several years of deliberation by the Blue Ribbon Committee, the attached draft rules were compiled and presented to the Commission through the Condominium Review Committee at its meetings on December 12, 2018 (Chapters 16-119.1 through 16-119.8), July 10, 2019 (Chapters 16-119.2 and 16-119.8), and September 11, 2019 (Chapter 16-119.1 and chapter titles).

The public hearing conducted on November 29, 2024, further afforded interested individuals and entities an opportunity to provide their opinions.

Through the forum of the public Commission meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering these open meetings, the availability of the proposed rules throughout the rulemaking process, and the public hearing to solicit additional comments from interested individuals, we hope to address any concerns.

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

Yes – to address several concerns brought up in written testimony at the public hearing, the Commission, at its December 18, 2024, meeting, established a Permitted Interaction Group (“PI Group”) tasked with: (1) conducting a review of its proposed draft condominium rules, including testimony received at the public hearing; and (2) proposing recommended revisions to the draft rules to address these concerns.

The PI Group fully considered all received testimony respecting the Commission’s proposed rulemaking actions, and at the Commission’s May 30, 2025, meeting, presented a revised draft of the Commission’s proposed condominium rules.

At the Commission’s next scheduled meeting on June 27, 2025, the Commission moved to adopt the PI Group’s revised draft rules.

**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.**

Members of the Blue Ribbon Committee established by the Commission included small business owners, organizations that represent small businesses, and individuals who may be impacted by the adoption of administrative rules. Their participation on the Blue Ribbon Committee helped craft this proposed rulemaking action.

In addition to the public Commission meetings and availability of the minutes of those meetings, the public hearing afforded all interested small business owners and individuals the opportunity to comment on the proposed rules.

A Notice of Public Hearing was published on October 24, 2024, in the Star Advertiser, The Garden Island, West Hawai'i Today, Hawai'i Tribune Herald, and The Maui News. The Notice of Public Hearing was also posted on the Department's and Commission's websites.

To ensure all received testimony respecting the Commission's proposed rulemaking actions were fully reviewed and considered, the Commission established a PI Group following the public hearing. The PI Group presented its revised draft rules at the Commission's May 30, 2025, meeting. Individuals who submitted testimony for the public hearing were notified of the PI Group's suggested revisions to the draft rules. Following this Commission meeting, a "clean" post-processed version of the revised draft rules was publicly posted on the websites of the Lieutenant Governor, Department, and the Commission.

Pursuant to HRS §92-2.5(b)(1)(C), the Commission's deliberation and decision-making on the PI Group's report and revised draft condominium rules shall occur only at a meeting held subsequent to the PI Group's report. In turn, interested members of the public were provided additional time to review and comment on the PI Group's revisions to the Commission's draft rules.

The Commission received no further comments or concerns regarding the revised draft rules at its scheduled June 27, 2025, meeting.

**2. A summary of the public's and small businesses' comments.**

In short, written testimony received at the public hearing noted that the language in the draft rules was inconsistent with current statutory language and requirements. There were additional concerns that certain provisions of the rules could potentially: (1) impact the development of condominium "spatial units"; and (2) infringe on a condominium board's authority to create its own policies.

**3. A summary of the agency's response to those comments.**

The Commission, with the assistance of its PI Group, adopted most, if not all, the requested revisions received in written testimony at the public hearing.

Testimony requesting revisions to align the rules with current statutory language and requirements were adopted. For example, recent statutory revisions to:

- (1) HRS §514B-148 extended the length of condominium association funding plans from twenty years to thirty years. As such, all instances of "twenty years" in the rules were changed to "thirty years";
- (2) HRS §§514B-83 and 514B-148 now require a developer's breakdown of annual reserve contributions in the developer's public report and a condominium association's estimated replacement reserves assessments to be respectively based on a reserve study. New rule language was added to clarify that these items are to be "based on a reserve study"; and
- (3) HRS §514B-148 also requires reserve studies to be reviewed by an "independent reserve study preparer" not less than every three years. New rule language was added to accommodate this required review.

In consideration of current events involving condominium property insurance and increasing premiums, new rule language was requested and adopted to specify that "unforeseeable increases in insurance premiums" is considered an "emergency situation" as defined by HRS 514B-148(h)(2).

Concerns were brought up that certain rule language could potentially impact the development of condominium "spatial units". This language was deleted to address these concerns. Additional concerns involved provisions of the rules that dictated certain information to be included in contracts between condominium associations and managing agents. Testimony received at the public hearing noted that this proposed requirement could arguably infringe on a condominium


board's authority to create its own policies. As such, all subsections and paragraphs that contained this requirement were also deleted.

As the Commission received no further comments or concerns regarding the revised draft rules during its June 27, 2025, scheduled meeting, the Commission moved to adopt the PI Group's revised draft of the proposed administrative rules, relating to horizontal property regimes and condominiums.

The Department submits these revised proposed rules, and the Small Business Post-Public Hearing Statement contained herein, for consideration by the Small Business Regulatory Review Board.

NA:KCK:tn

Attachments

cc: Cindy A. Matsushita, Licensing Administrator *CM*  
Neil Fujitani, Supervising Executive Officer   
Kedin C. Kleinhans, Senior Condominium Specialist *KCK*

## Small Business Regulatory Review Board

### MEETING MINUTES

June 20, 2024

#### ZOOM Meeting Recording

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

**MEMBERS PRESENT:**

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- James (Kimo) Lee
- Sanford Morioka
- Mark Ritchie

**ABSENT MEMBERS:**

- Garth Yamanaka
- Dr. Nancy Atmospera-Walch
- Tessa Gomes

**STAFF:** DBEDT

Jet'aime Ariola

Office of the Attorney General

John Cole

II. **APPROVAL OF May 16, 2024 MINUTES**

Vice Chair Cundiff motioned to approve the May 16, 2024 meeting minutes, as presented. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 109 Rules for Establishing Forest Stewardship, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader and Second Vice Chair Shick requested that Ms. Tanya Rubenstein, Cooperative Management Forester from DLNR's Division of Forestry and Wildlife, explain how the public hearing went and if there were any changes that came out of the hearing.

Ms. Rubenstein stated that on May 10<sup>th</sup>, she went in front of the Board of Land and Natural Resources and received approval to move forward with the rules without any changes to the original proposal. The public hearing was held on March 24<sup>th</sup>; two oral and three written testimonies were received, all in support of the changes. The business testifiers included the president of Forest Solutions, Inc., based out of Hawaii Island, and Siglo Tonewoods.

Mr. Ritchie made a motion to pass the proposed rule amendments onto the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS**

##### **A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by Department of Commerce and Consumer Affairs (DCCA)**

###### **1. HAR Title 16 Chapter 107, Relating to Horizontal Property Regimes**

###### **2. HAR Title 16 Chapter 119.1 through 119.8 Relating to Condominiums**

Mr. Kedin Kleinhans, Senior Condominium Specialist at DCCA's Professional & Vocational Licensing Division (PVLD) introduced his team. They were in front of this Board to repeal Chapter 16-107 upon the simultaneous adoption of Chapter 16-119.1 through 16-119.8, which will supplement Chapter 107.

Mr. Kleinhans explained that most of the proposed rules already exist in Chapter 107; there are also a few new rules and requirements. Examples of some of the new provisions include various budgetary and record-keeping requirements, which may involve additional fees to pay for services performed by CPAs or property management companies. Language of the provisions were drafted with the intent to provide an open-ended approach to satisfying the proposed requirements.

DCCA's Blue Ribbon Committee was formed years ago, with members representing small business owners, organizations that represent small businesses, and individuals who may be impacted by the adoption of new administrative rules relating to condominiums. The primary objective of the Blue Ribbon Committee is to discuss and recommend proposed rule language to implement Chapter 514B, HRS; as such, the Committee compiled the proposed rule package. Members of this Committee include, among others, property management companies, small real estate associations, and an architectural company.

Vice Chair Cundiff suggested that while there appears to be a good cross-section of representatives on the Committee, because of the long-term tenure of the committee, that its members be notified of the process of the rules to reach out for any additional stakeholder comments.

Mr. Ritchie made a motion to pass the rules on to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

##### **B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 16 Chapter 4, Massage Therapy, promulgated by DCCA**

Ms. Rise Doi, Executive Officer at DCCA's PVLD, explained that the proposed rules have been worked on for quite some time.

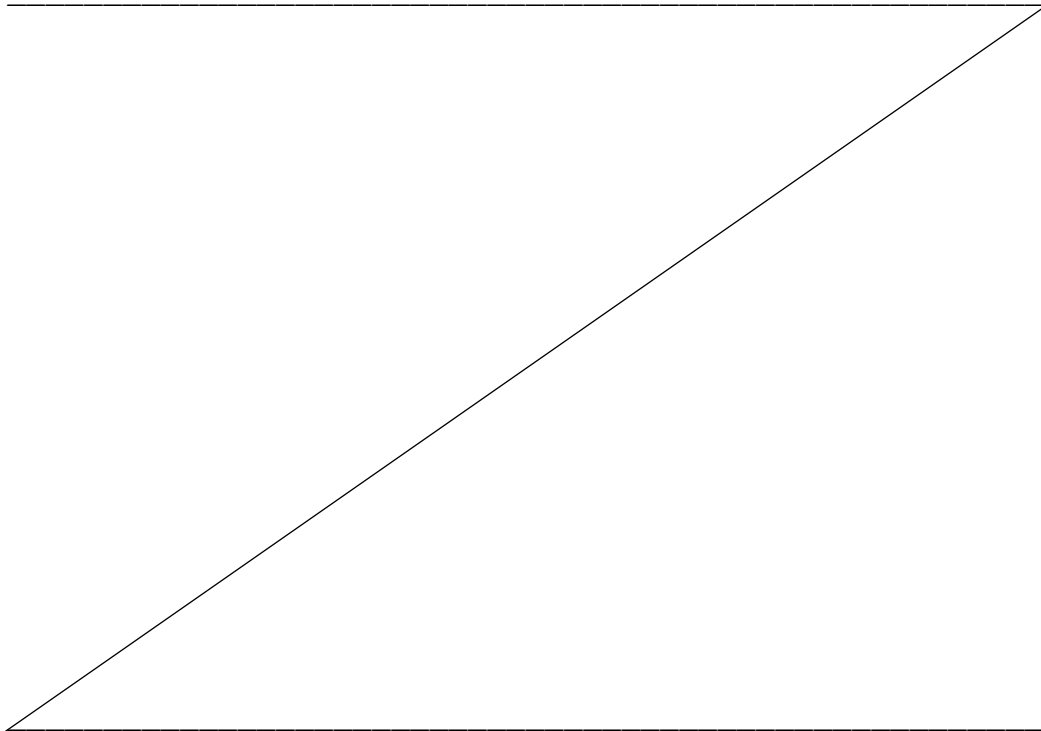
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Repeal of Chapter 16-107 and  
Adoption of Chapters 16-119.1, 16-119.2, 16-119.3,  
16-119.4, 16-119.5, 16-119.6, 16-119.7, and 16-119.8  
Hawaii Administrative Rules

M DD, YYYY

1. Chapter 16-107, Hawaii Administrative Rules, entitled "Rules Relating to Horizontal Property Regimes", is repealed.

2. Chapter 16-119.1, Hawaii Administrative Rules, entitled "Condominiums - General Provisions", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.1

CONDOMINIUMS - GENERAL PROVISIONS

§16-119.1-1	Applicability
§16-119.1-2	Severability
§16-119.1-3	Objectives
§16-119.1-4	Definitions
§16-119.1-5	Commission forms
§16-119.1-6	Filing of other documents and information
§16-119.1-7	Abandonment of incomplete registration application
§16-119.1-8	Documents and information

**§16-119.1-1 Applicability.** Chapters 16-119.1 through 16-119.8 shall apply only to chapter 514B, HRS, and this chapter shall apply to chapters 16-119.1 through 16-119.8, which chapters must be read in conjunction. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

**§16-119.1-2 Severability.** If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that

§16-119.1-2

decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this chapter shall continue to be separately and fully effective.

[Eff ] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

**§16-119.1-3 Objectives.** The objectives of chapters 16-119.1 through 16-119.8 are to:

- (1) Clarify and implement chapter 514B, HRS;
- (2) Protect the public; and
- (3) Serve the public interest. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §514B-61)

**§16-119.1-4 Definitions.** As used in this chapter:

"Association" has the same meaning as in section 514B-3, HRS.

"Building permit for the project" as required by section 514B-92(b)(3)(C)(ii), HRS, includes a building permit that could be less than a final building permit as permitted by the county.

"Board" has the same meaning as in section 514B-3, HRS.

"Certificate of occupancy" means the final or temporary certificate of occupancy issued by the appropriate county agency for the structure or structures constructed on the project site.

"Certify", "certified", or "certification" means affirming or an affirmation as to the facts being true to the best of the person's knowledge and belief.

"Commission" means the real estate commission.

"Condominium" has the same meaning as in section 514B-3, HRS.

"Condominium property regime" has the same meaning as "condominium" in section 514B-3, HRS.

"Controlling interest" as used in section 514B-3, HRS, in defining "developer" includes a financial or voting interest or both.

"Department" means the department of commerce and consumer affairs.

"Developer" has the same meaning as in section 514B-3, HRS.

"Director" means the director of the department.

"Evidence of recordation" means a file-marked dated copy of the recorded document from the bureau of conveyances or office of the registrar of the land court or a certification of the recordation from a title insurer authorized to conduct business in this State pursuant to article 20, chapter 431, HRS.

"Financial institution" has the same meaning as in chapter 412, HRS.

"First unit conveyance" as used in sections 514B-102 and 514B-134(a), HRS, means the initial transfer of legal or equitable title from the developer to a person other than the developer or an affiliate of the developer.

"House rules" means rules adopted by an association or a board.

"Maintenance fee", unless otherwise provided in the declaration or bylaws, means an association's regular monthly assessment, including any special assessment for "common expenses" as defined in section 514B-3, HRS. "Maintenance fee" does not include any other special assessment, late charges, fines, penalties, interest assessed by the association, liens arising out of the regular monthly maintenance assessment, or fees and costs related to the collection or enforcement of the assessment, including attorney fees and court costs.

"Offer for sale" is any attempt to encourage a person to acquire any legal or equitable interest in a project or proposed project unit, including by any advertisement, inducement, solicitation of letters of intent to purchase, the giving of the selling agent's name, address, or telephone number regarding a project or proposed project unit, or any attempt to encourage a person to acquire any legal or equitable interest in

a project or proposed project unit. Preregistration solicitation pursuant to section 514B-85, HRS, is excluded from this definition. An offer for sale includes sales contracts, agreements of sale, reservation agreements, and options to purchase.

"Over the telephone" as used in section 514B-149(d), HRS, does not include a transfer made pursuant to prior written board authorization allowing the use of an electronic device or medium to transfer association funds between accounts that results in a written record of instructions made in the regular course of business.

"Project" has the same meaning as in section 514B-3, HRS.

"Sale [of] any units" as used in section 514B-51, HRS, means the initial sale to a member of the public, excluding a sale, transfer, or conveyance of a unit to a co-developer or affiliate of the developer. "Sale [of] any units" does not include the sale, transfer, or conveyance of a unit made pursuant to the registration exceptions of sections 514B-51(b) and 514B-81(b), HRS.

"Serious illness" as used in section 514B-98.5(b)(1), HRS, means an illness of any owner-occupant who executed the affidavit or any other person who was to or has occupied the residential unit which illness is certified by the treating United States-licensed physician of the affiant or the person who is or was to occupy the unit in a detailed writing as arising after the date of the affidavit and meets three criteria: not previously known; serious; and likely to exist for at least the remainder of the required owner-occupant period. The certification shall also state the reason the person is not able to occupy the unit. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-3, 514B-51, 514B-81(b), 514B-85, 514B-92(b)(3)(c)(ii), 514B-98.5(b)(1), 514B-102, 514B-134(a), 514B-149(d))

**§16-119.1-5 Commission forms.** An application for registration submitted pursuant to chapter 514B, HRS, shall be made on the most recent commission approved form as provided by the commission. The commission's form shall be used in its entirety and shall not be altered. If more space is needed, additional blank pages may be used. Additional pages shall be designated by the page number and any subsequent letter; for example, page 1a, page 1b, page 1c, etc. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-103)

**§16-119.1-6 Filing of other documents and information.** The commission may require an applicant to submit additional documents and information in support of or to complete any registration application. The commission may also require proof of any certified statement or information provided or submitted to the commission. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-61(a), 514B-84, 514B-103)

**§16-119.1-7 Abandonment of incomplete registration application.** (a) An "incomplete application" as used in section 514B-52(c), HRS, or submitted pursuant to section 514B-56, HRS, includes an application that does not provide the commission with the required information, supporting documents, and adequate and accurate inclusion and disclosures of material facts, material changes, and pertinent facts as required by chapter 514B, HRS.

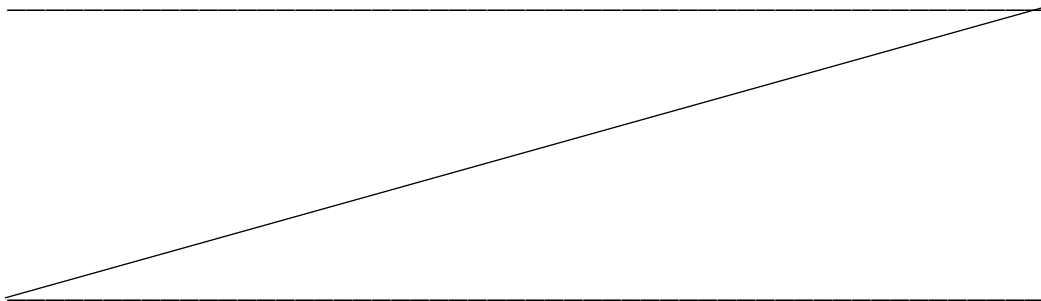
(b) Time spent by a developer curing an incomplete application prior to assignment to a private independent consultant may or may not be included as part of the six months referenced in section 514B-52(c), HRS, at the discretion of the commission. The developer shall submit to the commission written evidence of the developer's good

§16-119.1-7

faith efforts to timely cure an incomplete application prior to assignment to an independent private consultant. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-52(c), 514B-56)

**§16-119.1-8 Documents and information.** Upon the commission's issuance of an effective date for a developer's public report and any amendments thereto, the developer shall make available at the developer's office or online the public documents submitted by the developer to the commission pursuant to the condominium project registration requirements of chapter 514B, HRS, for review by prospective unit owners and purchasers. One year after the developer completes the initial sale of all units in the project, the developer may elect not to make the public report and any amendments thereto available online, provided the developer shall keep and maintain the public report and any amendments thereto for at least ten years or such other period specified in the sales contract or section 514B-70, HRS, after the one year." [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§92F-12(15), 514B-70)

3. Chapter 16-119.2, Hawaii Administrative Rules, entitled "Condominiums - Advertisement", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.2

CONDOMINIUMS - ADVERTISEMENT

- §16-119.2-1      Advertisement
- §16-119.2-2      Use of developer's public report for  
                         advertising
- §16-119.2-3      Name on advertising

**§16-119.2-1 Advertisement.** (a) "Advertisement" is a written or verbal statement or communication by or on behalf of a developer or developer's affiliate which is intended or designed to generate inquiries or offers to purchase or induces or attempts to induce a prospective unit owner or purchaser to purchase. The term includes but is not limited to: direct contact; publications; radio or television broadcasts; mass media; videos; electronic media including electronic mail, text messages, social media, social networking websites, and the internet; business stationery, cards, and signs; billboards; notices; brochures; flyers; information sheets; newspapers; magazines; mailings; announcements; displays; and verbal or physical presentations, including drawings, renderings, or models.

(b) Discussions or other communications with existing tenants initiated by a building owner or developer regarding possible conversion of the

building to condominium status is not an advertisement.

(c) An advertisement shall indicate that the project is a condominium. An advertisement shall not give any appearance that the project is subdivided or a subdivision unless the project is legally subdivided or a subdivision. Terms commonly used to describe separately subdivided lots or parcels, including but not limited to, "lot", "parcel", and "single family" shall not be used alone to identify, describe, or designate individual units and limited common elements. The descriptive terms "single family", "home", or "residence" may be used to describe individual units only if used in conjunction with the word "condominium", e.g., "condominium homes" or "single family condominium residences".

(d) Unless approved as a subdivision by the county government, all documents including declarations, bylaws, maps, advertising, developer's public reports, amendments, exhibits, and any other document provided to a prospective purchaser or purchaser, or made part of a public record, shall not have references or provide illustrations that indicate or imply that the condominium project is a subdivision or that the lots are subdivided lots.

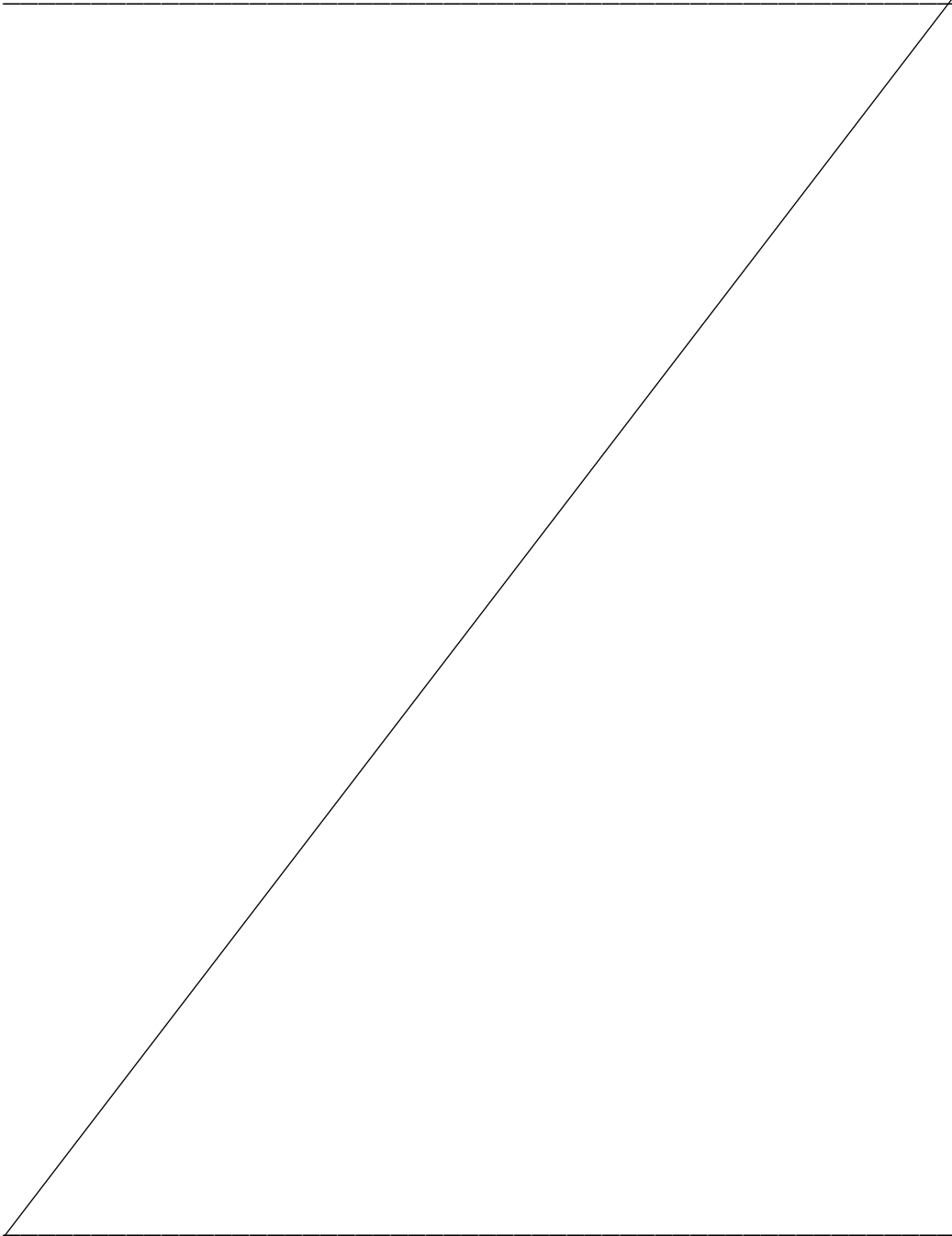
(e) Dotted or dashed lines may be used to delineate limited common element or common element boundaries. A written disclosure shall appear beside dotted or dashed lines stating that the lines are for identification purposes only and should not be construed to be the property lines of legally subdivided lots. Solid lines shall not be utilized to delineate limited common elements or common elements. Any metes and bounds descriptions or square footage figures of land areas shall be clearly and specifically identified as the condominium project's total land area, its common element land area, or as the limited common element land area. [Eff

] (Auth: HRS §514B-61) (Imp: HRS §§514B-60, 514B-94, 514B-95 to 514B-99.5)

**§16-119.2-2 Use of developer's public report for advertising.** The developer's public report shall not be used for advertising purposes unless the developer's public report is used in its entirety. No portion of the developer's public report shall be underscored, italicized, or printed in larger or heavier type than the remainder of the developer's public report, unless the true copy of the developer's public report issued an effective date by the commission shows likewise. [Eff ]  
(Auth: HRS §514B-61) (Imp: HRS §§514B-54, 514B-56, 514B-57, 514B-60, 514B-94)

**§16-119.2-3 Name on advertising.** An advertisement must use the same project name as indicated on the first page of the application for the developer's public report, if any, and the declaration." [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-60, 514B-94, 514B-95 to 514B-99.5)

4. Chapter 16-119.3, Hawaii Administrative Rules, entitled "Condominiums - Project Registration", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.3

CONDOMINIUMS - PROJECT REGISTRATION

§16-119.3-1	Name of the condominium or project
§16-119.3-2	Unit sale and project registration
§16-119.3-3	Effective dates; developer's public reports; owner builder exemption
§16-119.3-4	Copies of developer's public reports
§16-119.3-5	Bulk sale; portion of developer's inventory
§16-119.3-6	Filing of parking plan
§16-119.3-7	Lost or destroyed plans
§16-119.3-8	Method of computing percentage of common interest
§16-119.3-9	Metes and bounds description
§16-119.3-10	Method of computing floor area
§16-119.3-11	Filing of other documents
§16-119.3-12	Signature on an application for registration; developer's public report; other documents
§16-119.3-13	Amendments to the developer's public report
§16-119.3-14	Annual report
§16-119.3-15	Spatial units
§16-119.3-16	Registering new units
§16-119.3-17	Cooperatives

**§16-119.3-1 Name of the condominium or project.**

Unless otherwise permitted by law, the name or proposed name of any condominium or project submitted for registration in accordance with chapter 514B, HRS, and chapters 16-119.1 through 16-119.8 shall not be substantially like any name registered with the business registration division of the department and any name used by a condominium or project registered with the commission. The developer shall certify to the commission that the developer has conducted a search of the name or proposed name and that the public records of the commission and the business registration division of the department do not indicate that the name or proposed name is:

- (1) Registered with the business registration division;
- (2) Currently used by a condominium or project registered with the commission; and
- (3) Substantially like a name registered with the business registration division of the department and any name used by a condominium or project that is registered with the commission.

Use of a commission registered name for purposes other than the condominium or project constitutes a false or misleading statement in violation of section 514B-94, HRS. [Eff: 1/1/2018] (Auth: HRS §514B-61) (Imp: HRS §514B-94)

§16-119.3-2 Unit sale and project registration.

(a) The project registration requirements of parts IV and V, as well as other related registration parts of chapter 514B, HRS, apply to the sale of units in a project for the first time to the public. These requirements do not apply to resale of units in a project after sale of units for the first time to the public. Parts IV and V, as well as other related registration parts of chapter 514B, HRS, apply to sales of units subsequent to a bulk sale, transfer, or conveyance to a co-developer (including a co-tenant)

and to sale of units to the public following the dispositions of the units made pursuant to sections 514B-51(b)(1), 514B-51(b)(3), and 514B-81(b), HRS.

(b) A project is deemed registered with the commission when the commission:

- (1) Determines that the developer has submitted all the documents and information concerning the project and the condominium property regime as required by sections 514B-54, 514B-83, and 514B-84, HRS, as applicable, and as otherwise required by the commission; and
- (2) Issues an effective date for the developer's public report.

The commission may consult with private consultants pursuant to section 514B-64, HRS, in making the required determinations. [Eff ] (Auth: HRS §514B-61) (Imp: part IV and part V of chapter 514B)

**§16-119.3-3 Effective dates; developer's public reports; owner builder exemption.** The commission shall not issue an effective date for those units included in the project registration application that are subject to the provisions of the owner builder exemption of chapter 444, HRS, except the commission may issue an effective date for any units included in the developer's public report because of an eligible unforeseen hardship as determined by the contractor's license board pursuant to section 444-2.5, HRS. Upon the expiration of the owner builder one-year moratorium and prior to offering any units for sale that were the subject of an owner builder exemption, the developer shall amend the developer's public report and obtain an effective date for an amendment or an amended developer's public report. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-51, 514B-54, 514B-56, 514B-57, 514B-58, 514B-59)

**§16-119.3-4 Copies of developer's public reports.** Within thirty days of the issuance of an effective date for a developer's public report, amendment, or amended developer's public report, the developer shall provide the commission with copies of the public report, amendment, or amended public report at no charge. The commission shall determine the number of copies. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-54, 514B-56, 514B-57)

**§16-119.3-5 Bulk sale; portion of developer's bond inventory.** (a) A bulk sale includes the sale or transfer in bulk of all or a portion of the developer's entire inventory to a purchaser who is a developer with a transfer, assignment, or conveyance of any or all the developer's reserved rights to change, alter, or modify the condominium property regime or project.

(b) A bulk sale shall not have a single unit as remaining inventory. Any remaining inventory must include two or more units. [Eff ] (Auth: HRS §§237-43, 514B-51) (Imp: HRS §514B-81)

**§16-119.3-6 Filing of parking plan.** The parking plan shall comply with county codes and ordinances, federal, state, and commission requirements, and specify whether each stall is for a compact, parallel parking compact, tandem, or regular size vehicle, including disability accessible, and covered or uncovered. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-33, 514B-57)

**§16-119.3-7 Lost or destroyed plans.** For an existing structure, where the plan of the building or buildings filed pursuant to section 514B-34, HRS, is

lost or destroyed, the commission may accept a site plan, floor plan of each floor, and elevation plan along with an as-built certificate of a Hawaii-licensed architect or engineer. [Eff ]  
(Auth: HRS §514B-61) (Imp: HRS §514B-34)

**§16-119.3-8 Method of computing percentage of common interest.** At the time of submitting an application for registration of a project, the developer shall submit a written explanation of the method or formula used in computing the percentage of common interest appurtenant to the condominium units. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33, 514B-37)

**§16-119.3-9 Metes and bounds description.** Limited common element areas with no visible demarcations, physical boundaries, or permanent or structural monuments, including roads, walls, fences, and parking stall striping shall be described in the condominium map by metes and bounds or clear, measured, dimensioned boundaries. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33)

**§16-119.3-10 Method of computing floor area.** The floor area of the unit shall be computed and reported in the declaration and developer's public report as net living area. The reported net living area of the enclosed portion of the unit shall be a reasonable representation. Net living area of a unit shall be measured from the interior surface of the unit perimeter walls and shall exclude any area occupied by a load bearing structure. In a double construction wall, the perimeter wall means the inside double wall. Lanais, patios, storage areas, or

§16-119.3-10

garages that are considered part of the unit shall be computed and reported separate from the enclosed net living area. Boundaries of units shall minimally be described in accordance with section 514B-35, HRS.

[Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-32, 514B-33, 514B-34, 514B-35, 514B-54)

**§16-119.3-11 Filing of other documents.** The commission may require filing of other documents, papers, data, and information to complete the condominium registration file. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-103)

**§16-119.3-12 Signature on an application for registration; developer's public report; other documents.** (a) Subject to the penalties of section 514B-69, HRS, the developer shall sign the project registration application, including the questionnaire, the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS. Where there is more than one fee owner or lessor submitting the land to the condominium property regime, all the fee owners or lessors shall sign the project registration application, including the questionnaire, the developer's public report, any amendments to the developer's public report, and other documents as required by chapter 514B, HRS, and the commission. Fee owners or lessors may execute a power of attorney permitting one or more co-owners or co-lessors to sign on their behalf.

(b) A person with any other right, title, or interest in the land electing to subordinate that person's interest to the condominium property regime, other than a lender, shall also sign the developer's public report, any amendments to the developer's public report, and other documents as required by

chapter 514B, HRS, and the commission indicating that person's subordination and consent to the creation of the condominium property regime and registration of the condominium project. Any recorded document joining in or subordinating a person's interest to the declaration shall also be submitted to the commission as part of the project registration application.

(c) Where the developer is a person or entity other than the fee owner or lessor, the person or entity shall submit evidence indicating the fee owner's or lessor's consent and agreement to the creation of the condominium property regime and the project registration and sale. Evidence includes an executed declaration, power of attorney, or agreement between the developer and fee owner or lessor authorizing the developer to create and register the project with the commission and the sale of units in the condominium property regime or project.

(d) The developer's name and signature on the developer's public report shall be the same name as the signatory to the executed declaration or in the name as otherwise specifically allowed by a duly executed notarized power of attorney, entity resolution, or other document.

(e) The required signatures may be obtained on separate additional signature pages of the developer's public report provided that each signatory makes the same required declarations as required by the commission approved form. [Eff ]  
(Auth: HRS §514B-61) (Imp: HRS §§514B-31, 514B-52, 514B-54)

**§16-119.3-13 Amendments to the developer's public report.** (a) Within thirty days of any changes, material or pertinent or both, to the information and documents included in or omitted from the developer's public report, the developer shall submit to the commission an amendment to the developer's public report or an amended developer's public report clearly reflecting and disclosing the

changes contained in or omitted from the developer's public report together with such supporting information as may be required by the commission.

(b) Unless the commission determines otherwise, a developer shall:

- (1) Include in an amendment no more than two material changes or no more than five pertinent changes to a developer's public report. If there are more than two material changes or five pertinent changes, a full amended developer's public report is required;
- (2) Submit a full amended developer's public report following the submittal of two consecutive amendments unless the amendment or amendments pertain solely to updating the name and address of the project or the address, electronic mail, and telephone number of the developer's agent if that agent relocates or changes its name where the agent remains the same legal entity or both. A full amended developer's public report is a restated developer's public report including all amendments. A developer may elect to submit a full amended developer's public report in lieu of an amendment; and
- (3) Submit with any amendment a title report dated not more than forty-five days prior to the date of filing of any proposed amendment with the commission. A developer may request that an administrative review be conducted by commission staff to determine that a proposed amendment does not warrant the submission of a current updated title report. Examples warranting the non-submission of a current updated title report include but are not limited to the correction of typographical errors, non-substantive errors, or both.

(c) If the current updated title report reflects no further encumbrances against title, the developer

shall include language in the amendment or amended developer's public report that there are no further encumbrances against title.

(d) In determining whether a prospective purchaser or purchaser cannot easily ascertain, determine, or understand the changes included or added by any proposed amendment or included in any amended developer's public report, the commission may consider the totality of the factors as set forth in this subsection.

(e) Amendments made to a developer's public report for a project containing any existing structures being converted to condominium status which may be occupied for residential use and that have been in existence for five years or more shall include at minimum the following disclosures:

- (1) Any outstanding notices of uncured violations of any building, plumbing, and electrical codes and of any other federal, state, and county regulations received or known to the developer within the last six months prior to the submission of the amendment. The update shall include but not be limited to information discovered by a developer's review of relevant federal, state, and county records; and
- (2) The estimated cost of curing any building, plumbing, and electrical codes and other federal, state, and county regulations or violations.

(f) Any amendment shall be read together with a previous developer's public report or read by itself as an amended developer's public report. The developer shall provide notice to the prospective purchaser or purchaser and the principal broker of any amendments made to the developer's public report.

[Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-52, 514B-54, 514B-56, 514B-57, 514B-61, 514B-83)

- (1) Has conducted a current search of all relevant county, state, and federal public records, including administrative agency records, and that the respective records currently do not indicate any uncured violations of any building, plumbing, and electrical codes or other violations;
- (2) Has not received any notice of violations or notice of any county investigation of any uncured building, plumbing, and electrical code violation or other violations; and
- (3) Does not have any actual knowledge of any unreported building, plumbing, and electrical code violation or other violations.

(c) The initial fee for filing an annual report with the commission shall be pursuant to chapter 16-53 and thereafter shall be in an amount as adopted in rules by the director. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §514B-58)

119.3-10

514B, HRS, and chapters 16-119.1 through 16-119.8 and include that the unit:

- (1) Is designated for separate ownership or occupancy, has access to a public road or to a common element leading to a public road, and will have future boundaries in accordance with section 514B-35, HRS;
- (2) Has a location and dimensions with horizontal and vertical boundaries designated by spatial coordinates with beginning and ending points;
- (3) Complies with all zoning and building ordinance and codes and all other permitting requirements, including having dimensions not more than county, heights, setbacks, and other requirements; and
- (4) Complies with any other commission requirements.

(b) Any description of any permitted alterations to or replacement of a spatial unit shall include a description as to what could be built or replaced in the spatial unit pursuant to the declaration, county zoning and building permitting, and any applicable federal and state laws. [Eff ] (Auth: HRS §§514B-57, 514B-61) (Imp: HRS §§514B-3, 514B-5, 514B-32)

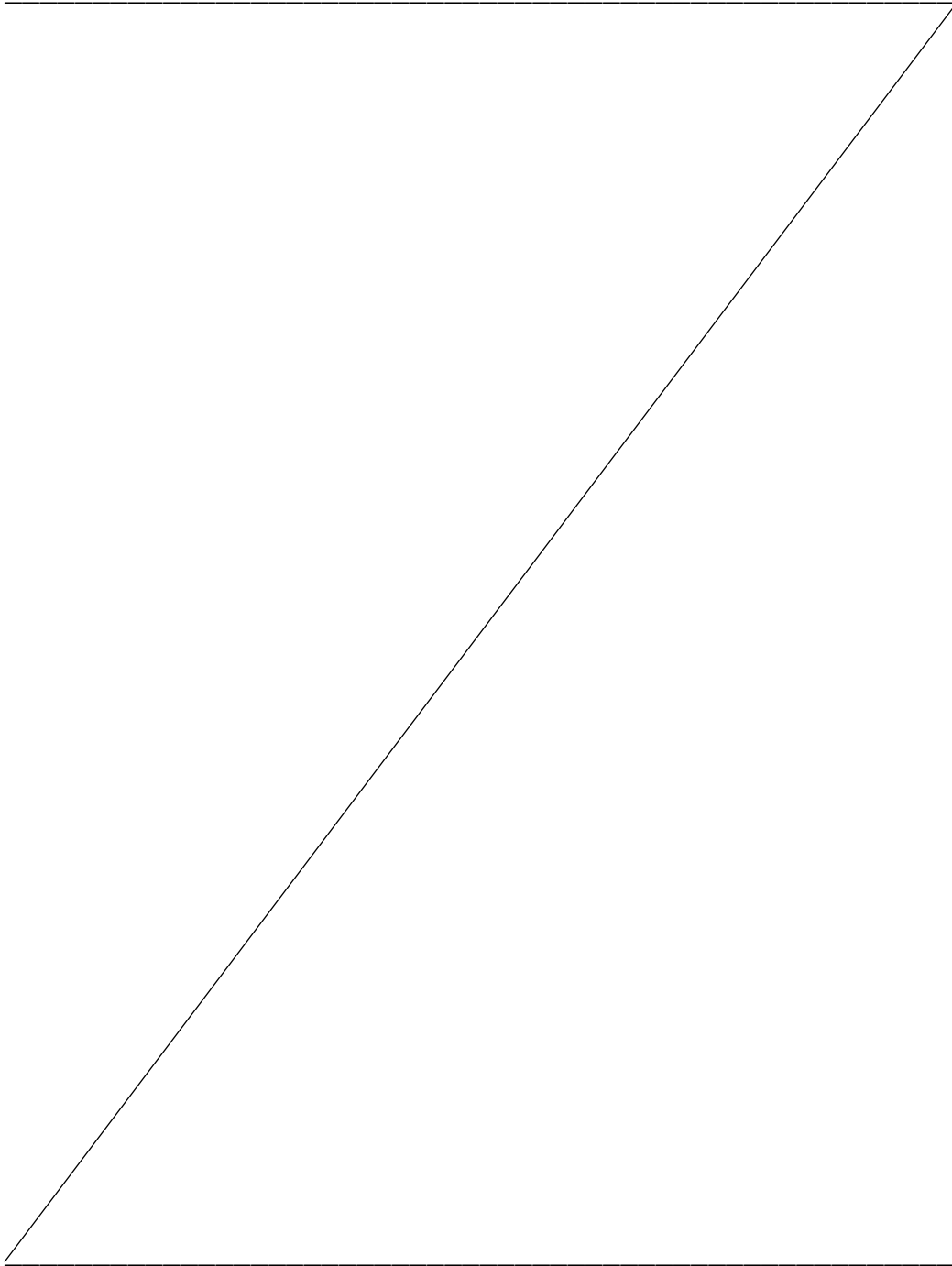
**§16-119.3-16 Registering new units.** Developers may register new units created by dividing previously existing registered units by amendment or amended developer's public report. These newly created units are subject to the fees set forth in chapter 16-53. Developers shall register new units that are created from previously unregistered property or unregistered units as a new project pursuant to the phasing rules in chapter 16-119.4 herein. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-51, 514B-52, 514B-56)

**§16-119.3-17 Cooperatives.** Cooperative housing projects converting to condominium status must comply with the registration requirements of parts IV and V, as well as other related registration parts of chapter 514B, HRS, this subsection, and as required by the commission. Such projects are not subject to part V(B) of chapter 514B (sales to owner occupants), HRS, and need not provide a broker listing agreement where:

- (1) One hundred per cent of the shareholders of record prior to the conversion have agreed to the conversion and will be parties to the submission of the property to the condominium property regime;
- (2) Upon conversion, the developer will not sell or offer to sell the apartments or units to the public and the developer is not able to sell or offer to sell the apartments or units to the public;
- (3) Existing shareholders and tenants will continue to reside in the apartments or units; and
- (4) And upon conversion, the existing tenants are permitted to continue their occupancy of the apartments or units. Furthermore, the developer's obligations to update the developer's public report cease upon conveyance of the condominium units to the former cooperative members who have traded their cooperative share for condominium units." [Eff \_\_\_\_\_] [Auth: HRS §514B-61] (Imp: HRS §§514B-51, 514B-54, 514B-83, 514B-84)

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5. Chapter 16-119.4, Hawaii Administrative Rules, entitled "Condominiums - Developer's Public Reports", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.4

CONDOMINIUMS - DEVELOPER'S PUBLIC REPORTS

- §16-119.4-1 Project registration application;  
documents and information
- §16-119.4-2 Content of developer's public report
- §16-119.4-3 Delivery of developer's public report
- §16-119.4-4 Use of purchaser deposits to pay  
project costs
- §16-119.4-5 Completion; performance bond;  
irrevocable letter of credit  
alternatives
- §16-119.4-6 Reduction of a completion, performance  
bond, letter of credit, or other  
alternative security amount for  
completion of construction

**§16-119.4-1 Project registration application;  
documents and information.** (a) To register a  
condominium property regime or project, a developer  
shall complete and submit a registration application  
on a commission prescribed form, which form the  
commission may amend, including the documents and  
information concerning the condominium property regime  
or project as required by sections 514B-54, 514B-83,  
and 514B-84, HRS, and as otherwise required by chapter

514B, HRS, chapters 16-119.1 through 16-119.8, and the commission.

(b) The commission shall establish a checklist of the documents and information concerning the condominium property regime or project that the developer must complete and submit to the commission.

(c) The checklist required by subsection (b) shall require the developer to submit with the developer's condominium project registration application the following:

- (1) A completed application form and project questionnaire executed in accordance with section 16-119.3-12;
- (2) Documents and information concerning the condominium property regime or project as required by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission;
- (3) Appropriate filing fees as prescribed by rules adopted by the director;
- (4) A title report dated not more than forty-five days immediately prior to the date of submission of the registration application. Where the circumstances necessitate, the commission may require a title report to be updated immediately prior to the issuance of an effective date for a developer's public report;
- (5) Draft of the developer's final public report which shall include the information, disclosures, and documents required by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission, and shall be executed in accordance with section 16-119.3-12;
- (6) Declaration which may be unexecuted and unrecorded;
- (7) Bylaws which may be unexecuted and unrecorded;
- (8) Condominium map which may be unrecorded with preliminary drawings, including a site plan

- prepared at least as required by section 514B-33(a)(1), HRS;
- (9) Proposed house rules, if any;
  - (10) Statement by the developer explaining the method or formula used in computing the common interest appurtenant to the respective units;
  - (11) Copy of the recorded master deed or master lease, agreement of sale, sales contract, or other document evidencing either that the developer holds the fee or leasehold interest or has a right to acquire same;
  - (12) Real estate broker listing agreement;
  - (13) Escrow agreement executed by the developer and escrow company and a summary of the agreement. The agreement shall minimally include provisions for the retention and disposition of purchasers' funds in accordance with the requirements of sections 514B-45, 514B-54(a)(6), 514B-86, 514B-87, 514B-89, 514B-90, 514B-91, 514B-92, and 514B-93, HRS;
  - (14) Copy of the letter to the planning department of the county in which the project is located transmitting, when requested by the county, true copies of the following documents:
    - (A) Questionnaire;
    - (B) Declaration which may be unexecuted and unrecorded;
    - (C) Bylaws which may be unexecuted and unrecorded;
    - (D) Condominium map which may be unrecorded; and
    - (E) Proposed developer's public report stamped "draft" and dated.The developer shall provide other documents relating to the project as requested by county officials;
  - (15) For a developer that is an entity:
    - (A) A certificate of good standing issued by the business registration division

- of the department and state of incorporation or formation (if applicable);
  - (B) A certificate of authority issued by the business registration division of the department for an entity incorporated or formed not within this state; and
  - (C) A file-stamped copy of a developer's organizational document issued by the business registration division of the department or the state of incorporation or formation (if applicable); for example, corporation, partnership, limited liability partnership, limited liability company, or joint venture. The document shall be dated no more than ninety days immediately prior to the date of submission of the registration application;
- (16) Sample copies of the following forms:
- (A) Sales contract satisfying, among other requirements, the requirements of section 514B-89, HRS, including provisions disclosing any rights reserved by the developer, and where applicable, a completion deadline specifying a date certain following the expiration of time after the sales contract becomes binding, and other requirements of chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission. A summary of the sales contract shall also be submitted;
  - (B) Unit deed or lease, condominium conveyance document, or other document conveying title to the purchaser; and
  - (C) Executed management contract, if any, for managing the operation of the property. The contract shall minimally include the requirements of section

514B-134, HRS, chapters 16-119.1 through 16-119.8, other requirements of chapter 514B, HRS, and the commission;

- (17) Copy of any development, co-tenancy or subdivision agreements, master association documents, covenants and restrictions, any other similar documents, and summary of such documents;
- (18) Copy of any state, county, or federal permits issued with special conditions, uses, and terms and summary of such documents, including but not limited to water use agreements, conditional use permits, existing use permits, development agreements, coastal management permits, and any other private agreements;
- (19) An initial identification or designation of at least fifty per cent of the units for sale to prospective owner-occupants pursuant to section 514B-96, HRS, for any applicable project containing residential units;
- (20) Other documents and information concerning the condominium property regime or project as required by the commission; and
- (21) Other documents and information as required by the commission's prescribed checklist.

(d) For a project registration application for a project containing existing structures being converted to condominium status, a developer shall submit to the commission all the information and documents required by chapter 514B, HRS, the commission's prescribed checklist, chapters 16-119.1 through 16-119.8, and the commission and the following:

- (1) A verified statement by an appropriate county official satisfying the requirements of section 514B-84, HRS, that is signed no more than nine months immediately prior to the developer's submission of the project registration application and proposed developer's public report. The commission may accept alternatives to a verified county

- official statement approved by an appropriate county agency including, for example, a building permit report obtained from a county's internet site;
- (2) A sample copy of the notice to any existing tenants as to the conversion and termination of any rental agreement pursuant to section 521-38, HRS;
  - (3) A sample copy of an offering of each residential unit contained in the project for sale first to any individual occupying the unit immediately prior to the conversion as required by section 514B-98(b), HRS;
  - (4) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the cost of curing these violations and the dates for completion of any repairs in compliance with section 514B-84, HRS;
  - (5) The statement by a developer required by section 514B-84(a)(1)(A), HRS, which shall include the following:
    - (A) A description of the present condition of all structural components and mechanical and electrical installations based upon a report prepared by a Hawaii-licensed architect or engineer. The commission will not accept a developer's general non-specific statements describing the present condition of all structural components and mechanical and electrical installations as "satisfactory condition consistent with its age" or similar without further explanation of the phrase or characterization; and
    - (B) A material facts disclosure of the present condition of all structural components and mechanical and electrical installations based upon a report prepared by a Hawaii-licensed architect or engineer;

- (6) A sample sales contract containing an agreement by the developer to make any repairs required by the county to address compliance with sections 514B-5, 514B-84, and 514B-89, HRS, including repairs that are required to be made to remedy any noted county building, electrical, and plumbing violations reported in any county records or that are the subject of any pending county investigation;
- (7) Such other documents and information as required by the commission's prescribed checklist and as otherwise required by the commission; and
- (8) A Hawaii-licensed architect's or engineer's required report shall be prepared within six months immediately prior to the submission of the project registration application and minimally include:
  - (A) Any county planning and permitting information relating to any uncured county code building, electrical, and plumbing violations or other violations or investigation;
  - (B) A description of any of the structural components and mechanical and electrical installations of the project, which compliant when originally installed, may no longer be compliant with current code requirements and whether the association and the unit owners may be required to bring certain elements up to code as a condition of obtaining permits for future renovation work in the project or unit;
  - (C) A description of the present condition, including a description of all material facts, of all structural components and mechanical and electrical installations material to the use and enjoyment of the units known to the Hawaii-licensed

architect or engineer preparing the report. Where prescribed by the commission, the Hawaii-licensed architect or engineer may prepare the required report by completing a checklist established by the commission. The completed checklist and any attachments shall be made part of the developer's public report as an exhibit. Any commission prescribed checklist shall at least include and provide the information required by chapter 514B, HRS, and this subsection;

- (D) No general statements describing or characterizing the present condition of all structural components and mechanical and electrical installations that are or like "satisfactory condition consistent with its age" without an explanation substantiating the characterization; and
- (E) Such other documents and information as may be required by the commission.

The time requirement of more than twelve months after completion of construction as set forth in the definition of "converted" or "conversion" in section 514B-3, HRS, shall be calculated back from the date on which the developer submits to the commission the project registration application.

(e) For a project registration application for a project located in an agriculturally zoned district, in addition to submitting all the information and documents required by subsections (a), (b), (c), and (d), where applicable, the developer shall also submit and include the following information in the developer's public report:

- (1) The developer's promotional plan for the project as required by section 514B-84(b), HRS, and a listing of permitted structures and uses in compliance with all applicable state and county land use laws and with

chapter 205, HRS, including section 205-4.6, HRS, where applicable. Any submitted promotional plan may include a general statement to the effect that the structures and uses are those as allowed by the county when accompanied by a listing of such structures and uses in compliance with all applicable state and county land use laws and chapter 205, HRS, including section 205-4.6, HRS, where applicable;

- (2) A statement that the project complies with chapter 205, HRS, including section 205-4.6, HRS, where applicable;
- (3) A verified statement as required by section 514B-52(b), HRS, signed by a county official no more than nine months immediately prior to the developer's submission of the project registration application and developer's public report;
- (4) A sample copy of any applicable farm dwelling agreement, except for spatial units, unless exempted by other law; and
- (5) Such other documents and information as required by the commission.

(f) The documents and information required by this section shall be submitted to the commission organized, bound, tabbed, and typed in not less than ten-point type, one-point lead, and with a table of contents and listing of all exhibits. [Eff

] (Auth: HRS §§514B-6, 514B-61)

(Imp: HRS §§467-7, 514B-3, 514B-5, 514B-32, 514B 33, 514B-34, 514B-45, 514B-51, 514B-52, 514B-54, 514B-57(A), 514B-81, 514B-83, 514B-84, 514B-86, 514B-87, 514B-89, 514B-90, 514B-91, 514B-92, 514B-93, 514B-96, 514B-98, 514B-108, 514B-134)

**§16-119.4-2 Content of developer's public report.** (a) The contents of a developer's public report and exhibits and any amendments thereto prepared by a developer, developer's agent, or pro se

developer shall be written in plain language at a level to be easily understood by a prospective purchaser or purchaser no higher than a twelfth-grade reading level. A developer shall use the Flesch Reading Ease Formula or any generally accepted reading ease readability formula to determine the readability level of the contents of its developer's public report and exhibits and any amendments.

(b) A developer shall include in its developer's public report and any amendments thereto, the information, disclosures, documents, and exhibits as required by this section, chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and any commission prescribed form and checklist. The commission prescribed form or checklist and any amendments thereto shall be made available online at the commission's webpage. At minimum, a developer's public report and any amendments thereto shall include the following:

- (1) The documents, disclosures, and information concerning the condominium property regime or project as submitted to the commission pursuant to section 16-119.4-1 herein;
- (2) The documents and information concerning the condominium property regime or project as required by sections 514B-54, 514B-83, and 514B-84, HRS, as applicable, this section, as otherwise may be specified by chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission;
- (3) Any material facts, pertinent facts, material changes, omitted information, documents, and disclosures relating to the condominium property regime or project, including any updates;
- (4) All information, documents, and disclosures required to be included under the heading "Special Attention - Significant Matters" on the commission prescribed form of the developer's public report as may be amended in accordance with subsection (e). "Special Attention - Significant Matters" includes

any information that may impact the condominium property regime or project, unit, or both, or is required to be included in the developer's public report that should be conspicuously brought to the attention of the prospective purchaser or purchaser.

"Special Attention - Significant Matters" shall be conspicuously disclosed on the first few pages of the developer's public report, and may be fully explained or discussed elsewhere in the commission approved developer's public report form; and

- (5) All other information, documents, and disclosures which the developer deems necessary to include in the developer's public report.

(c) The commission may establish a list of all information, documents, and disclosures required to be included in the developer's public report under the heading "Special Attention - Significant Matters". The developer shall provide the required information, documents, and disclosures by subject headings together with a summary of the disclosure, and shall provide, if any, an expanded written explanation of the disclosures elsewhere in the developer's public report referenced by page and paragraph number next to the subject headings. Any subject heading used by the developer shall provide a prospective purchaser or purchaser adequate notice of the nature of the information, documents, and disclosures.

(d) The commission's list of all information, documents, and disclosures required to be included in the developer's public report that are deemed "Special Attention - Significant Matters" shall not be construed to be an exhaustive list, constitute the commission's approval or disapproval of the condominium property regime or project, or constitute the commission's representation that all material facts or all material or pertinent changes or both concerning the condominium property regime or the project have been fully or adequately and accurately disclosed. The list does not relieve a developer from

the developer's responsibility to disclose material facts, material and pertinent changes, and other relevant information in the developer's application for registering the condominium project and in preparing the developer's public report and any amendments thereto.

(e) At a regularly scheduled monthly meeting of the commission or its standing subcommittee meeting, the commission may approve or amend the inclusion of any additional information, documents, and disclosures that a developer shall include or disclose in the "Special Attention - Significant Matters" page of the developer's public report.

(f) A "phased project" means any project that contemplates an incremental plan of development or where two or more projects are intended to be completed at different times. Each phase shall be separately registered with the commission. A "phasing plan" means a description of and schedule for developing the project in increments or phases. The contents of a developer's public report for a phased project shall include, but are not limited to, the following disclosures:

- (1) Whether the phases will be developed on:
  - (A) One subdivided lot; or
  - (B) Separately subdivided lots;
- (2) Whether the phasing plan contemplates:
  - (A) One declaration covering all phases within a project or a separate declaration for each phase and subsequent merger of the phases; and
  - (B) Any reduction of units for any phase and the addition of units to another phase.
- (3) Whether the merger of the phases will be:
  - (A) An ownership merger where the common interests of all units are adjusted as each phase is added and the common facilities of the merged phases are administered by one association of unit owners; or

- (B) An administrative merger where the common interests of units are not adjusted as phases are merged, and a formula is provided for sharing of certain common expenses in each of the merged phases and one association of unit owners is created to administer the common elements of the merged phases;
- (4) Whether an adjustment will be made to each unit owner's common interest, common profits and expenses, and replacement reserves;
- (5) Whether there will be an association of unit owners for each phase or one master association of unit owners for the whole project or both, and if there will be more than one association of unit owners, how each will function in relation to each other;
- (6) Whether there will be a master planned community association for the subdivision of which the project is part and the unit owners' rights and obligations;
- (7) Whether site work and improvements for the project will be undertaken in their entirety at the onset of construction of the project or in phases, and whether improvements to be built in future phases will be an integral part of improvements built in earlier phases;
- (8) Whether any utilities, facilities, or amenities that will be built in future phases will also be for the benefit of unit owners in earlier phases, and what assurances, if any, the developer will provide for the completion of such utilities, facilities, and amenities;
- (9) For a phased project on a single subdivided lot, the way future expenses for developing the land and improvements will be allocated and paid; and

- (10) Whether the developer reserves the right to add, delete, reconfigure, or redesign future phases, the time limitations that apply to the developer's exercise of such reservation, and the anticipated impact on unit owners when the developer exercises such reservation.

(g) The contents of a developer's public report for a conversion project shall include, but are not limited to, the following disclosures:

- (1) Building limitations, restrictions, conditions on rebuilding, and non-conforming structures or uses;
- (2) County, state, and federal permitting requirements, if any, including but not limited to, water use agreements, conditional use permits, existing use permits, development agreements, coastal zone management permits, and private agreements;
- (3) All information submitted with the application as required by section 16-119.4-1(d) and all disclosures relating thereto; and
- (4) And any other applicable disclosures and information.

(h) The contents of a developer's public report for a project in an agricultural district shall include, but are not limited to, the following disclosures:

- (1) A specific statement describing how the structures and uses anticipated by the developer's promotional plan comply with all applicable state and county land use laws including section 205-4.6, HRS;
- (2) All information submitted with the application as required by section 16-119.4-1(f) and all disclosures relating thereto; and
- (3) Any other applicable disclosures and information.

(i) A developer's public report shall also include information about whether a reserve study was done in accordance with section 514B-148, HRS, and chapters 16-119.1 through 16-119.8 in arriving at the estimate of reserve funds necessary to maintain the condominium project. This information shall be specifically included on a developer prepared exhibit of estimates of initial maintenance fees and estimates of maintenance fee disbursements on a commission approved form.

(j) Persons who prepare the developer's public report for a project, including the attorney for the developer and any agent of the developer who is a non-attorney for the developer, shall include in the developer's public report the person's name and identity as an "agent". A developer and a developer's agent shall also provide a business address, business electronic mail address or a designated public electronic mail address, and business phone number. A pro se developer who prepares without the help of a Hawaii-licensed attorney or designated agent the registration application, information, and documents for registering a condominium project pursuant to chapter 514B, HRS, and chapters 16-119.1 through 16-119.8, shall also provide the information required by chapters 16-119.1 through 16-119.8 and the commission and identify the developer as a pro se developer.

(k) An exhibit of a summary of a sample sales contract and an escrow agreement shall at minimum include provisions and conditions consistent with the requirements of sections 514B-45, 514B-86, 514B-88, 514B-90, 514B-91, 514B-92, 514B-93, and 514B-98, HRS, and other applicable requirements of chapter 514B, HRS.

(l) If the developer elects to use a completion deadline connected to the expiration of any time after the sales contract becomes binding pursuant to section 514B-89, HRS, the developer shall notify purchasers in writing of a date certain for the completion date within 30 days of the expiration of any time when the sales contract becomes binding.

(m) Where applicable, all the following documents shall be listed in the developer's public report as documents a prospective purchaser or purchaser should review before signing the sales contract:

- (1) Farm dwelling agreement;
- (2) Subdivision covenants, conditions, and restrictions;
- (3) State and county water use agreements;
- (4) Copies of any comments and documents from any state, county, or federal government agency about the project;
- (5) Master association declaration and bylaws;
- (6) Co-tenancy agreements;
- (7) Agricultural dedication;
- (8) Shoreline management agreement;
- (9) Special management area permit;
- (10) Conditional use permit;
- (11) License agreements, such as trademark or branding agreements; and
- (12) Other related agreements the developer or commission deem necessary.

The commission may request that the developer include in the developer's public report a summary of any of the related documents and any other requirements of chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and the commission. [Eff ] (Auth: HRS §514B-61) (Imp: §§514B-45, 514B-57(A), 514B-81, 514B-83, 514B-84, 514B-86, 514B-88, 514B-89, 514B-90, 514B-91, 514B-92, 514B-93, 514B-98, 514B-148)

**§16-119.4-3 Delivery of developer's public report.** Items specified in section 514B-86(a)(1)(A)(ii), HRS, shall be deemed delivered concurrently and separately provided to a prospective purchaser or purchaser with the developer's public report on the day printed copies are delivered to the prospective purchaser or purchaser or the day the developer makes a download of the required documents available to a prospective purchaser or purchaser who

has elected in a separate writing to receive the required documents other than as printed copies as provided in section 514B-86(a)(1)(A)(ii), HRS. [Eff  
] (Auth: HRS §514B-61) (Imp: HRS  
§514B-86)

**§16-119.4-4 Use of purchaser deposits to pay project costs.** (a) "Cost of construction", "construction costs", "costs that are required to be paid in order to complete the project", and "other incidental expenses of the project" include those costs enumerated in sections 514B-92 and 514B-93, HRS, and include permitting fees, personnel costs, professional services costs, and any increases in such costs that are required to be paid or anticipated to be paid to complete the construction of the project. Any "cost of construction", "construction costs", and "costs that are required to be paid to complete the project" that have been paid are excluded from "costs". The project's architect or engineer and general contractor shall respectively certify payment of the amount of work completed and paid for.

(b) "Availability of sufficient funds" to pay all costs required to be paid to complete the project as used in sections 514B-92(b)(3)(A) and 514B-93(b)(3)(A), HRS, includes:

- (1) Interim or permanent loan commitments for financing construction costs and costs that are required to be paid to complete the project showing all parties have agreed to the loan and the loan amount. If there is a single agent, all parties shall agree in writing to the named single agent;
- (2) Equity funds identified and earmarked specifically for the project;
- (3) Purchaser's escrowed deposits as evidenced by a signed escrow agreement indicating the amount deposited in escrow; and
- (4) Other funds as required by the commission as evidenced by a signed escrow agreement

indicating the amount deposited in escrow.  
The commission shall only accept promissory notes where the funds have been escrowed.

(c) "Availability of sufficient funds" to pay all costs required to be paid to complete the project as used in sections 514B-92(b)(3)(B) and 514B-93(b)(3)(B), HRS, does not include:

- (1) Any projected purchaser's deposits not escrowed;
- (2) Interim or permanent loan commitments and other sources of funding from a developer's subsidiary or affiliate, except where a developer's subsidiary or affiliate has irrevocably earmarked funds to pay for all costs to complete the project as evidenced by a notarized declaration filed with any state, other than with the commission, or federal agency;
- (3) All funds encumbered for purposes other than those specified in sections 514B-92(b)(3)(A) and 514B-93(b)(3)(A) and (B), HRS; and
- (4) Other funds as excluded by the commission.

(d) Funds from any interim or permanent loan commitment and any other commission approved source of funds shall be:

- (1) Provided as follows:
  - (A) By a federally-insured financial institution located in this State or by a nationally chartered bank;
  - (B) By a federally-insured financial institution located in this State or by a nationally chartered bank or any other lending entity in good standing where the entity is qualified to do business; or
  - (C) Deposited in trust for purposes of sections 514B-92 and 514B-93, HRS, under a written escrow agreement with an escrow depository licensed pursuant to chapter 449, HRS. The escrow agreement and evidence of the deposited

funds shall be submitted to the  
commission;

- (2) Immediately available for use as provided by a written agreement to pay all costs to complete the project as required by sections 514B-92(b)(3) and 514B-93(b)(3), HRS;
- (3) Excluded as collateral for other projects or purposes;
- (4) Evidenced by a written agreement that is signed by the developer and all other parties to the agreement dated within nine months of the submission. The written agreement shall be submitted to the commission;
- (5) Excluded from the funds any portion which has been encumbered for purposes other than to those purposes specified in sections 514B-92 and 514B-93, HRS;
- (6) Exclusive of any projected deposits;
- (7) Exclusive of interim or permanent loan commitments and other sources of funding from a developer's parent entity, subsidiary, or affiliate, except where a developer's parent entity, subsidiary, or affiliate has irrevocably earmarked funds to pay for all costs to complete the registered project. A developer's declaration of the irrevocable earmarked funds shall be notarized and filed with a state, other than with the commission, or federal agency; and
- (8) In compliance with other excluded conditions as may be required by the commission. [Eff  
] (Auth: HRS §514B-61)  
(Imp: HRS §§514B-92, 514B-93)

**§16-119.4-5 Completion; performance bond; irrevocable letter of credit alternatives.** (a) A completion or performance bond issued by a non-surety material house shall at minimum contain the following:

- (1) The non-surety material house shall be:
  - (A) Located in this State;
  - (B) Duly qualified and registered to do business in this State; and
  - (C) An issuer in the normal course of its business of non-surety completion or performance bonds;
- (2) A letter from the project's construction lender, if any, stating that the completion bond or performance bond issued by a non-surety material house is satisfactory to the lender;
- (3) A written agreement between the developer and escrow agent that use of purchaser's deposits to pay project costs shall be made in accordance with section 514B-45, 514B-91, 514B-92, or 514B-93, HRS;
- (4) Names the commission and the developer as bond obligees;
- (5) Bond's obligation to complete the construction contract conditioned on the default of the contractor to faithfully perform the construction contract in accordance with the stipulations, agreements, covenants, and conditions of the construction contract, and any modifications of such, free from all liens and claims and without further cost, expense, or charge to the commission and the developer;
- (6) Provision that the bond's obligation also inures to the benefit of all persons entitled to file claims for labor performed or materials furnished;
- (7) Provision that upon default of the contractor, all bond funds shall be paid to and disbursed from an escrow account for the completion of construction;
- (8) Bond is maintained and continued in full force and effect continuously through the entire period from the beginning to the completion of construction;

- (9) Provision that the bond's expiration date is the date when construction is completed;
- (10) Provision that the contractor shall immediately amend the amount of the completion or performance bond to cover any significant cost increase to complete construction;
- (11) Disclosures in the developer's public report of the developer's use of a non-surety material house completion or performance bond and the restrictions on such use; and
- (12) Such other conditions and restrictions as required by the commission.

(b) As used in sections 514B-92(c) and 514B-93(c), HRS, "otherwise qualified, financially disinterested person" includes any third person unrelated to or not affiliated with the developer with financial expertise in accounting or with reviewing budgets, income, and expense documentation.

(c) An irrevocable letter of credit shall at minimum contain the following:

- (1) An amount in addition to the amount of the security for the administration of the letter of credit to cover at minimum the cost of escrow and the commission's hiring of a private consultant to oversee the completion of construction. The initial fee shall be set by the commission and any additional fees that may be adopted by the director;
- (2) The commission and commission's authorized representative as beneficiaries of the irrevocable letter of credit and the only entity which can withdraw funds from the irrevocable letter of credit or which can reduce the amount of the irrevocable letter of credit;
- (3) Issued by:
  - (A) A federally-insured financial institution located in this State;

- (B) A nationally chartered bank and confirmed by a state federally insured financial institution; or
- (C) An out-of-state federally insured financial institution and confirmed by a state federally insured financial institution;
- (4) Where the contractor and developer have failed to complete the project construction, a provision permitting the beneficiaries to draw funds from the letter of credit to complete the project construction;
- (5) A provision that the developer or the contractor shall immediately amend the amount of the irrevocable letter of credit to cover any significant cost increase to complete construction;
- (6) Provision for the same security and protections as a completion or performance bond issued by a Hawaii-licensed surety company; and
- (7) Such other conditions and restrictions as required by the commission.

The developer or contractor shall renew an irrevocable letter of credit or cause to be issued a new letter of credit in the amount required to complete construction thirty days prior to the expiration of an irrevocable letter of credit.

(d) Any other alternative security shall at minimum contain the following:

- (1) An amount in addition to the amount of the security for the administration of any other alternative security to cover at minimum the cost of escrow and the commission's hiring of a private consultant to oversee the completion of construction. The initial fee shall be set by the commission and any additional fees shall be adopted by the director;
- (2) The commission and commission's authorized representative as the beneficiaries of the security and the only entity which can

- withdraw funds from any other alternative security or which can reduce the amount of the alternative security;
- (3) A provision that the developer or the contractor shall immediately amend the amount of the other alternative security to cover any significant cost increase to complete construction;
  - (4) Provision for the same level of security and protections as a completion or performance bond issued by a Hawaii-licensed surety company; and
  - (5) Such other conditions and restrictions as required by the commission.

The developer or contractor shall renew any other alternative security or cause to be issued any other alternative security in the amount required to complete construction thirty days prior to the expiration of any other alternative security.

[Eff                      ] (Auth: HRS §514B-61) (Imp:  
HRS §§514B-92, 514B-93)

**§16-119.4-6 Reduction of a completion, performance bond, letter of credit, or other alternative security amount for completion of construction.**

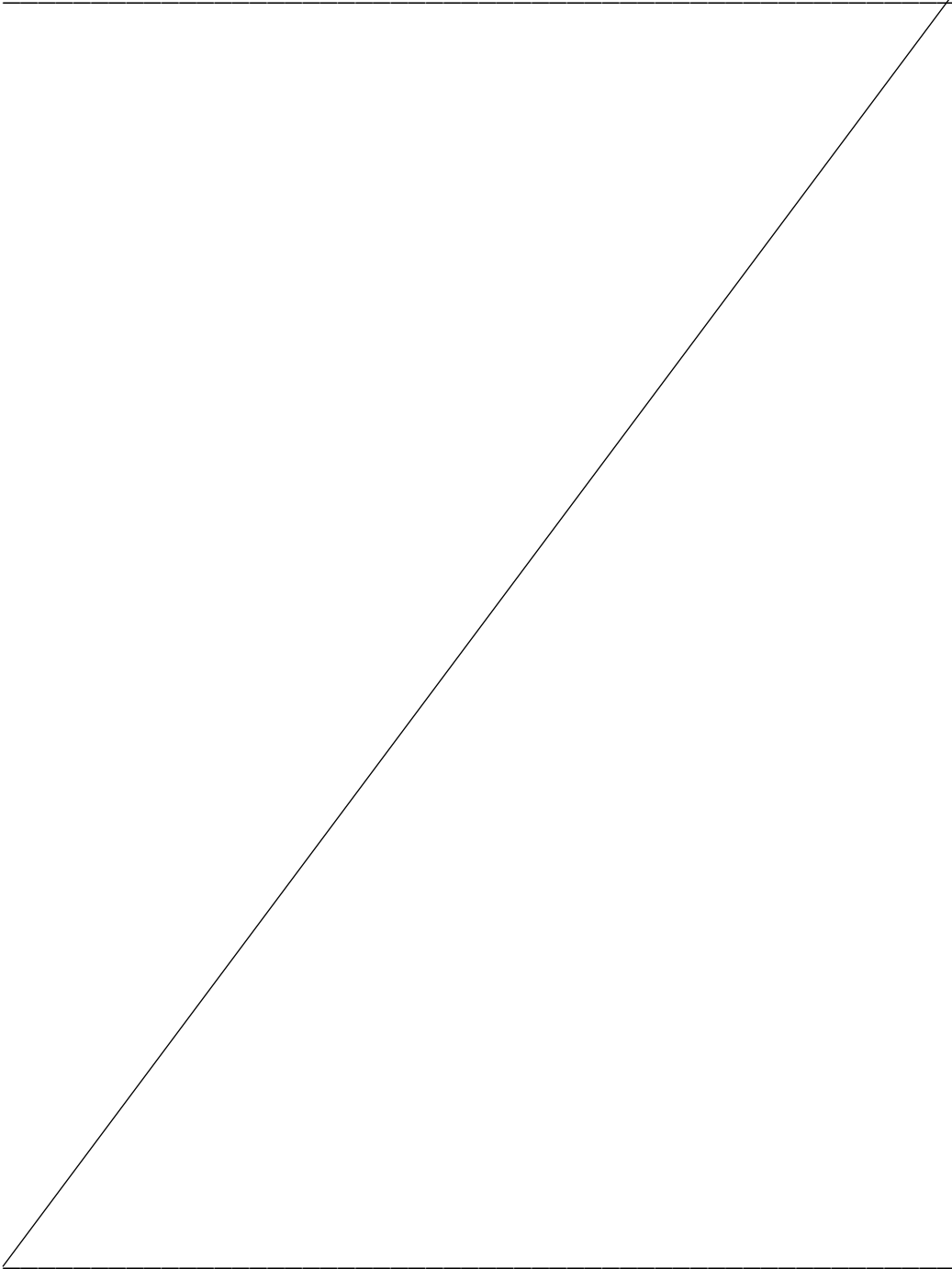
(a) The commission may approve a developer's written request to reduce the security amount of a completion, performance bond, letter of credit, or other alternative security for the completion of construction. The request must contain the following:

- (1) For each project or phase, an architect's certification as to the percentage of the project or phase that has been constructed;
- (2) Written evidence for each completed project or phase of construction that all construction work has been billed and paid for together with lien releases obtained from the general contractor and all subcontractors;

- (3) An agreement that the developer shall not convey any unit to a purchaser prior to the expiration of the forty-five-day mechanic's and materialman's lien period, unless the purchaser receives a title insurance policy with a mechanic's lien endorsement; and
  - (4) An architect's and general contractor's certification as to the percentage of the project or phase remaining to be completed and the dollar amount needed to achieve full completion of the project's construction.
- (b) The commission may approve a developer's written request that a submitted completion, performance bond, letter of credit, or other alternative security for the completion of construction be released. The request must contain the following:
- (1) An architect's certification that the project has been constructed and completed;
  - (2) Written evidence that all construction work has been billed and paid for together with lien releases obtained from the general contractor and all subcontractors;
  - (3) A filed marked court copy of the "Affidavit of Publication of Notice of Completion" and a copy of the notice covering the completion of construction for the entire registered project and the units therein made pursuant to section 507-43, HRS;
  - (4) The developer's declaration that the mechanic's and materialman's lien period has expired and no application for a lien has been filed; and
  - (5) An agreement that the developer shall not convey any unit to a purchaser prior to the expiration of the forty-five-day mechanic's lien period unless the purchaser receives a title insurance policy with a mechanic's lien endorsement." [Eff ]
- (Auth: HRS §514B-61) (Imp: HRS §§514B-45, 514B-92, 514B-93)

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6. Chapter 16-119.5, Hawaii Administrative Rules, entitled "Condominiums - Sales to Owner-Occupant", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.5

CONDOMINIUMS - SALES TO OWNER-OCCUPANT

§16-119.5-1	Exclusions
§16-119.5-2	Sales exempt from owner-occupant requirements
§16-119.5-3	Fifty per cent of units
§16-119.5-4	Offers of sale of residential units
§16-119.5-5	Publication of announcement
§16-119.5-6	Extenuating circumstances affecting an owner-occupant's compliance
§16-119.5-7	Sample copies of forms
§16-119.5-8	Failure to comply
§16-119.5-9	Owner-occupant affidavit

**§16-119.5-1 Exclusions.** The following are not included in the definition of "residential unit" in section 514B-95, HRS:

- (1) Time share units built in a county zoned or designated hotel or resort use;
- (2) Leasehold fee interests offered for sale or sold to the unit owners who occupied the unit immediately prior to the leasehold conversion or leasehold fee interests being offered to the association of unit owners; and

§16-119.5-1

- (3) The sale of units in a project consisting of nonresidential units where one of the units is a residential unit. [Eff ]  
(Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §514B-95)

**§16-119.5-2 Sales exempt from owner-occupant requirements.** Residential projects built in a county zoned or designated hotel or resort area shall be exempt from the provisions of part V(B), Sales to Owner-Occupants, of chapter 514B, HRS, except residential projects situated in Waikiki shall not be exempt from the provisions of part V(B), Sales to Owner-Occupants, of chapter 514B, HRS.  
[Eff ] (Auth: HRS §§514B-6, 514B-61, 514B-98.5) (Imp: HRS §514B-95)

**§16-119.5-3 Fifty per cent of units.** Two units in a three-unit residential condominium project shall be designated as the units for sale to prospective owner-occupants. [Eff ] (Auth: HRS §§514B-61, 514B-98.5) (Imp: HRS §514B-96)

**§16-119.5-4 Offers of sale of residential units.**  
(a) At any time after issuance of an effective date for a developer's public report and after designating at least fifty per cent of the units for sale to prospective owner-occupants, the developer may offer for sale the non-designated owner-occupant units prior to or concurrently with offering to sell to prospective owner-occupants.

(b) A developer that uses either a chronological system or a lottery system may use, where applicable, the methods permitted by chapter 489E, HRS, Uniform Electronic Transactions Act, that are consistent with chapter 514B, HRS, and chapters 16-119.1 through

[Eff  
514B-98.5) (Imp: HRS §§514B-95, 514B-95.5, 514B-96.5, 514B-98)

"General circulation" as used in section 514B-95.5, HRS, includes a newspaper that is published daily and distributed to all segments of the population and that reports national and statewide news and information of a general nature and interest. A newspaper published in the county includes a newspaper that is published at least weekly and distributed to all segments of the population and that reports national and statewide news and information of a general nature and interest. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §514B-95.5)

- (1) Issue an informal non-binding interpretation that an extenuating circumstance exists as specified in section 514B-98.5, HRS; and
- (2) Issue a "no action" letter for any violation of this subpart based on the existence of an extenuating circumstance described in the request with the commission reserving its right to initiate future action should new information substantiate possible violation.

(b) The request shall be made on a form approved by the commission. A copy of an executed owner-occupant affidavit shall be attached to the request.

(c) The commission may consider the following in determining the existence of an extenuating circumstance as provided in section 514B-98.5, HRS:

- (1) For a serious illness, a certified statement by the treating United States-licensed physician of the affiant or the person who was to have occupied the unit that the illness:
  - (A) Arose after the date of the execution of the owner affidavit;
  - (B) Was not previously known;
  - (C) Is serious;
  - (D) Is likely to exist for at least the remainder of the required owner-occupant period; and
  - (E) Is of such a nature and scope the specifics of which prevent such person from occupying the unit.
- (2) For an unforeseeable job or military transfer, a certification by the owner-occupant affiant of the following:
  - (A) Date of first knowledge of transfer;
  - (B) Date of transfer;
  - (C) Address of new job location; and
  - (D) Duration of transfer.An employer executed document supporting the certification shall be attached to the commission approved request form.
- (3) For an unforeseeable change in marital status or change in parental status, a certification by the owner-occupant affiant of the following:
  - (A) Date of marriage or date of separation or divorce (if applicable);
  - (B) Date of birth of the newborn child (if applicable);
  - (C) Date of change in legal custody of child or children and address on the date of taking custody or date custody

- of child or children taken (if applicable);
- (D) Date that the owner-occupant affiant and family moved into the owner-occupant unit (if applicable); and
- (E) An explanation detailing specific reasons why the change in marital or parental status prevents the affiant from complying with the terms of the owner-occupant affidavit.

Third party, government, or court documents supporting the certification shall be attached to the commission approved request form.

- (4) For any other unforeseeable change, a certification by the owner-occupant affiant of the following:
  - (A) Chronological statement of the unforeseeable occurrence;
  - (B) Specific reasons supporting how the unforeseeable occurrence affects compliance with the executed owner-occupant affidavit; and
  - (C) Date of first knowledge of the unforeseeable occurrence.

Supporting documents substantiating the date of first knowledge of the unforeseeable change by the owner-occupant shall be attached to the commission approved request form. The commission may require the owner-occupant to submit to the commission other additional information and documents in support of the extenuating circumstance request.

(d) Commission staff shall issue a "no action" letter on behalf of the commission where the existence of any of the extenuating circumstances of section 514B-98.5(b), HRS, is supported and is prima facie evidenced by the individual's request. All other requests for a "no action" letter shall be determined by the commission. [Eff ] (Auth: HRS

§16-119.5-6

§§436B-8(b), 514B-61, 514B-98.5) (Imp: HRS  
§514B-98.5)

**§16-119.5-7 Sample copies of forms.** Upon request by the commission, the developer shall provide a sample copy of the following forms:

- (1) Affidavit of intent to become an owner-occupant of a residential unit; and
- (2) Reservation agreement between the developer and an owner-occupant of a residential unit.  
[Eff \_\_\_\_\_] (Auth: HRS §514B-61)  
(Imp: HRS §514B-98)

**§16-119.5-8 Failure to comply.** (a) Should a developer fail to comply with the requirements of section 514B-95.5, HRS, or this section, the developer shall immediately cease any sales offering, unless otherwise approved by the commission, and:

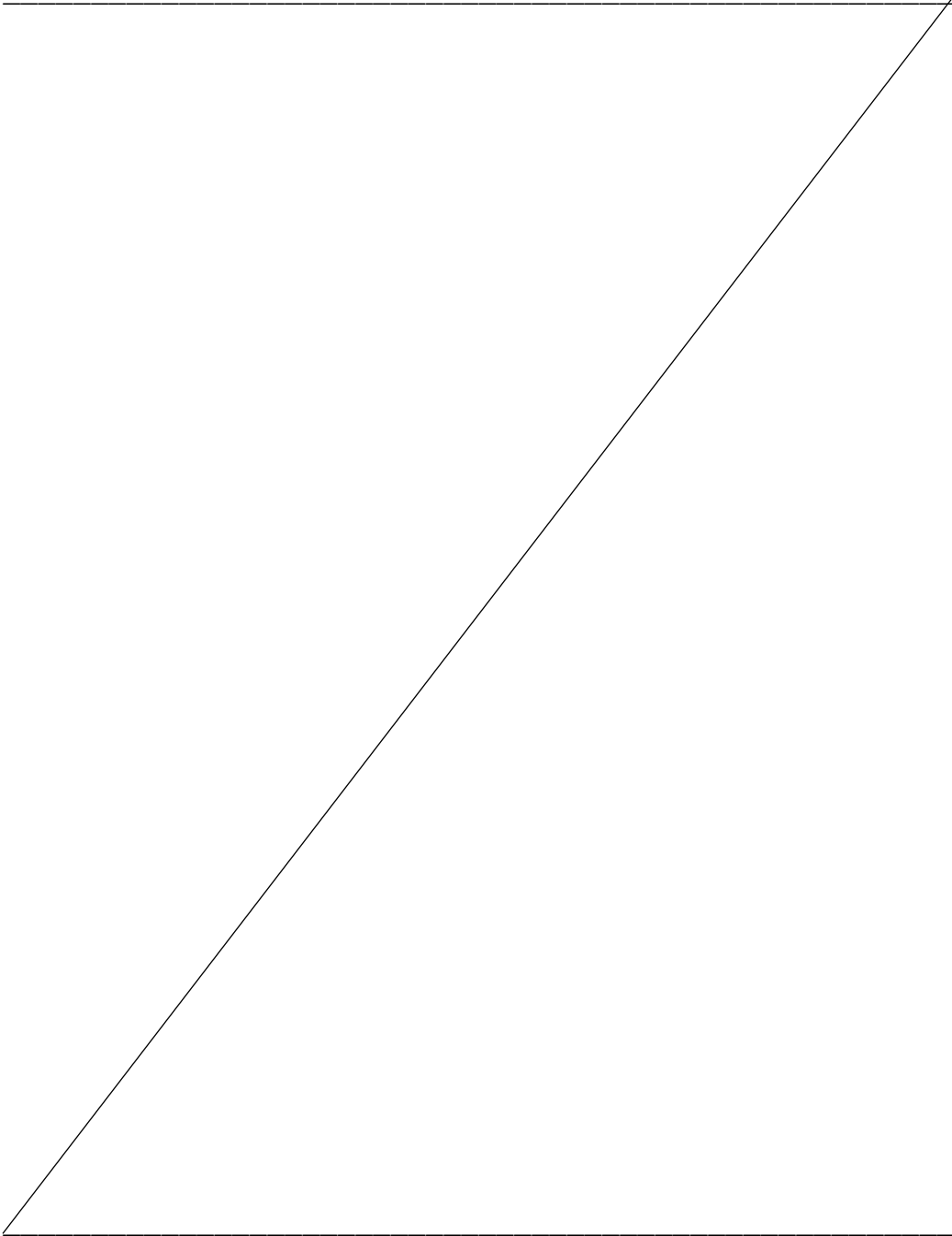
- (1) Refund all monetary deposits to persons on the reservation list;
- (2) Cancel all executed affidavits;
- (3) Cancel all executed sales contracts; and
- (4) Republish the owner-occupant announcement in accordance with section 514B-95.5, HRS.

(b) Subsection (a) applies to a developer exempt from but who elects to comply with and fails to comply with the provisions of part V(B) of chapter 514B, HRS.  
[Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp:  
HRS §514B-95.5)

**§16-119.5-9 Owner-occupant affidavit.** For purposes of part V(B) of chapter 514B, HRS, a non-owner-occupant may share title with an owner-occupant subject to the following conditions:

- (1) The developer has received written confirmation that the owner-occupant's mortgage lender requires it; and
- (2) During the first three hundred sixty-five days of ownership, should the non-owner-occupant decide to convey or transfer their interest, the transfer or conveyance shall only be made to the owner-occupant on title." [Eff                      ] (Auth: HRS §514B-61) (Imp: HRS §514B-97)

7. Chapter 16-119.6, Hawaii Administrative Rules, entitled "Condominiums - Requirements for Replacement Reserves", is adopted.



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.6

CONDOMINIUMS - REQUIREMENTS FOR REPLACEMENT RESERVES

§16-119.6-1	Objective
§16-119.6-2	Applicability of chapter
§16-119.6-3	Definitions
§16-119.6-4	Effective date for establishing statutory replacement reserves
§16-119.6-5	Calculation of estimated replacement reserves; reserve study; good faith
§16-119.6-6	Fund accounting for each part of the association property; use of separate funds for other than stated purpose
§16-119.6-7	Emergencies and emergency situations
§16-119.6-8	Contingency reserves
§16-119.6-9	Conflict of chapter
§16-119.6-10	Reserve funds nontransferable
§16-119.6-11	Exempt association property; disclosure; transition to association property
§16-119.6-12	Borrowing and special assessments to fund replacement reserves
§16-119.6-13	Leasing of association property
§16-119.6-14	Distribution of budgets and reserve studies
§16-119.6-15	Enforcement

**§16-119.6-1 Objective.** This chapter implements the requirements of section 514B-148, HRS, that all condominium associations must follow budgets and establish statutory replacement reserves. These rules try to ensure that each unit owner in a project pays a fair share of the short-term and long-term costs of operating the project based upon the owner's period of ownership. The conduct of any reserve study and the selection of any reserve funding plan shall be consistent with the objectives of this section. The provisions of this chapter shall be read and interpreted consistent with these objectives.

[Eff \_\_\_\_\_] Auth: HRS §514B-61) (Imp: HRS §514B-148)

**§16-119.6-2 Applicability of chapter.** (a) This chapter applies to all condominiums created within this State.

(b) Notwithstanding section 514B-101(b), HRS, which states that a project's declaration or bylaws may specifically provide that part VI of chapter 514B, HRS, not apply to nonresidential unit usage and projects not subject to any continuing development rights containing no more than five units, the developer at minimum shall include some provisions in the declaration providing for replacement reserves, funding, and the calculation of replacement reserves and funding. The included provisions may be different than what is required by this chapter and chapter 514B, HRS, or the provisions may be the same.

[Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-23, 514B-101(b), 514B-148)

**§16-119.6-3 Definitions.** Unless the context indicates otherwise, the definitions in chapter 514B, HRS, apply to this chapter and the following definitions apply to chapter 514B, HRS, and this chapter:

"Asset" means any part of the association property.

"Association property" means those parts of a project which an association is obligated to maintain, repair, or replace, including but not limited to:

- (1) All the common elements of the project, as determined from the project's declaration and the bylaws and any master deeds, restrictive covenants, apartment or unit deeds, apartment or unit leases, or other documents affecting the project;
- (2) Any real property which is not part of the common elements but which the association either owns or leases for a term of more than one year, such as a manager's apartment acquired by the association after the project was developed;
- (3) Any personal or movable property owned or leased by the association;
- (4) Any fixtures owned or leased by the association;
- (5) Any limited common element expense determined by the board pursuant to section 514B-41(c), HRS;
- (6) Any components of association property; and
- (7) Solar and wind energy devices as provided by and defined in section 514B-140, HRS, and other renewable energy devices.

"Association property" does not include any part of the project that is "exempt association property" or which fewer than all unit owners are obligated to maintain, such as units or certain limited common elements.

Example:

A project's documents state that a deck is a limited common element assigned to less than all the owners. The project's documents also state that the owners of the units to which the deck is appurtenant must pay for the cost of maintaining and repairing the deck. Therefore, the

association need not set aside funds for replacement reserves for the deck.

"Budget year" means the association's fiscal year for accounting and budgetary purposes.

"Cash flow plan" means the same as defined in section 514B-148, HRS, provided that where an association assesses unit owners to fund one hundred per cent of the estimated replacement reserves using a cash flow plan, the different reserve funding plans that are tested against the anticipated schedule of reserve expenses until a desired funding goal is achieved shall not result in:

- (1) Disproportionate and unreasonable deferral of funding of the estimated replacement reserves to the last five years of the minimum thirty-year projection period;
- (2) Each owner in a project not paying a fair share of the short-term and long-term costs of operating the project based on the unit owner's period of ownership; or
- (3) Circumventing the requirements of section 514B-148(b), HRS, to collect the estimated replacement reserves amount for each part of the property for each year during the minimum thirty-year period to fund fully its replacement reserves requirements for each year during the minimum thirty-year period as determined by a reserve study.

"Component" means an individual line item in the reserve study developed or updated in the physical analysis part of the reserve study.

"Contingency reserves" means all reserve funds, other than replacement reserves, in an association's reserves accounts, including but not limited to reserves for:

- (1) Unexpected contingencies or emergencies that in the reasonable judgment of the board may occur;
- (2) The payment of insurance deductibles or other expenses relating to insurance;

- (3) Legal expenses and lease renegotiation or fee purchase expenses;
- (4) Legal or licensed professional services fees relating to the maintenance, repair, or replacement of association property;
- (5) Additions and improvements to the association property, such as new construction;
- (6) Late payment or nonpayment of an assessment by any unit owner; and
- (7) Large infrastructure major repairs that have an estimated remaining life of more than thirty years. Examples include replacement of aging plumbing components and elevators. Notwithstanding the minimum thirty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that thirty-year period, except in an emergency, a board may elect to include in the reserve study the funding of large infrastructure major repairs that have an estimated remaining life of more than thirty years.

"Emergency" means the same as "emergency situation" as defined in section 514B-148(h), HRS. A situation requiring an association payment of an unforeseeable extraordinary amount for a utility expense due in part to a utility company's miscalculation of amounts due, unforeseeable increases in insurance premiums, or any other similar unforeseeable situation shall be included in the definition of "emergency situation" as provided by section 514B-148(h) (2), HRS.

"Estimated age" or "effective age" means the estimated useful life of an asset minus its estimated remaining life.

"Estimated remaining life" means any period (1) which is shorter than the estimated useful life of an asset, and (2) for which the asset will continue to serve its intended function without requiring capital expenditures or major maintenance.

"Estimated replacement reserves", "reserve fund contribution", or "funding goal" means funds which an association's reserve study indicates must be assessed and collected during a budget year to establish a full replacement reserve for the association by the end of that budget year.

"Estimated useful life" means the period a new asset or an existing asset which has been newly restored or refurbished will serve its intended function without requiring capital expenditures or major maintenance.

"Exempt association property" means any asset which:

- (1) At the end of its estimated useful life will require capital expenditures or major maintenance of less than \$1,000 or less than 0.1 per cent of the association's annual operating budget, whichever is greater; or
- (2) Has an estimated remaining life of more than thirty years.

Any asset which because of the passage of time ceases to be exempt shall become association property and be subject to the transitional rules stated in section 16-119.6-11.

"Full replacement reserve" means reserve funds for an asset equal to the projected capital expenditure or major maintenance required for the asset at the end of its estimated useful life multiplied by a fraction which has as its numerator and denominator the asset's estimated age and estimated useful life, respectively.

The total of the full replacement reserves for each asset shall be a full replacement reserve for the association.

Example:

A roof with an estimated useful life of ten years will cost \$100,000 to replace. At the end of its seventh year of life, a full replacement reserve would be  $\$100,000 \times 7/10 = \$70,000$ . In the tenth

year of its life, a full replacement reserve would be  $\$100,000 \times 10/10 = \$100,000$ .

Under a cash flow calculation, one hundred per cent means total funding of all projected annual expenses for a minimum thirty-year period.

"Funds", "fund balance", or "reserve funds" mean cash or cash equivalents but excludes any funds that the association has borrowed. No borrowed funds shall be included when calculating whether an association has collected its statutory replacement reserves, including the funding of one hundred per cent of the estimated replacement reserves when using a cash flow plan, provided loans made in accordance with section 16-119.6-12 may be included in "funds", "fund balance", or "reserve funds" only for the first year of the life of the loan. Subsequent year loans shall not be included in "funds" or "reserve funds".

"Managing agent" means, for purposes of the good faith exemption provided by section 514B-148(d), HRS, any person carrying out the fiduciary duties as prescribed by section 514B-132(c), HRS, who:

- (1) Is a managing agent as defined by chapter 514B, HRS, and commission rules and policies relating to managing agents;
- (2) Meets all legal requirements for managing agents; and
- (3) Prepares a replacement reserve study and is the managing agent for the association for which the reserve study is prepared, provided if a managing agent is not an "independent reserve study preparer" as defined in section 514B-148, HRS, the replacement reserve study shall be reviewed by an independent reserve study preparer not less than every three years.

Any employee of a managing agent who prepares the replacement reserve study shall be deemed a managing agent for purposes of this definition.

"Minimum replacement reserve" means fifty per cent of a full replacement reserve or one hundred per

cent of the full replacement reserve when using a cash flow plan.

"Reserve study" means a budget planning tool that consists of two parts, a physical analysis and a financial analysis, with both parts updated annually and that identifies the current status of the reserve fund and a stable and equitable funding plan to fund the required "statutory replacement reserves".

"Statutory replacement reserves" means fifty per cent of an association's estimated replacement reserves or one hundred per cent of an association's estimated replacement reserves when using a cash flow plan.

"Substantially deplete" means any expense for an emergency which reduces the association's replacement reserves and contingency reserves by more than seventy-five per cent. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-41, 514B-101(b), 514B-148)

**§16-119.6-4 Effective date for establishing statutory replacement reserves.** (a) Each budget year, beginning with the fiscal year after a new association's first annual meeting, the board shall prepare and adopt an annual operating budget that complies with the requirements of section 514B-148(a), HRS, for the following budget year. Each annual operating budget shall include assessments sufficient to fund the association's statutory replacement reserves for the year to which the budget relates. Each budget year, beginning with the first budget year after a new association's first annual meeting, the association shall collect at least its statutory replacement reserves for that budget year.

(b) For those projects where the declaration has been recorded but the association has not held its first meeting as provided in section 514B-102, HRS, at least once each calendar year, commencing with the calendar year immediately following the date the first unit's conveyance was recorded, the developer shall,

unless the developer owns one hundred per cent of the units in the project, notify in writing each unit owner of the way replacement reserves for future project maintenance and repairs will be addressed.

Such notice shall inform the unit owners in reasonable detail of at least the following:

- (1) The purpose for establishing replacement reserves;
  - (2) A general summary of the replacement reserve requirements that would apply to associations under chapter 514B, HRS, and this chapter, on such form as the commission may provide; and
  - (3) The amount of replacement reserves being collected as part of the unit owner's maintenance fees, based on a reserve study, or otherwise being funded by the developer and the way those reserves were established.
- [Eff \_\_\_\_\_] (Auth: HRS §514B-61)  
(Imp: HRS §§514B-101(b), 514B-148)

**§16-119.6-5 Calculation of estimated replacement reserves; reserve study; good faith.** (a) The board shall calculate the association's estimated replacement reserves based on a reserve study developed in compliance with this chapter and chapter 514B, HRS, and as required by the commission.

(b) The board shall compile a list of the association's assets. If the project's declaration and association's bylaws fail to clearly state whether a part of a project is association property, the board may adopt a resolution allocating responsibility for that part to the association, an individual unit owner, or individual unit owners. The board's resolution shall be based on chapter 514B, HRS, the project's declaration and the association's bylaws, as required by the commission, and any other applicable legal requirements or documents. The resolution shall clearly indicate whether the part in question:

- (1) Is an asset of the association

- (2) Is the responsibility of an individual owner or individual owners, but fewer than all owners; or
- (3) Is partly an asset of the association and partly the responsibility of fewer than all owners, such as plumbing or electrical systems.

The resolution shall state the basis of the board's decision and shall be effective to determine responsibility for replacement reserves for the part in question upon adoption and until changed by the board or by an amendment to the declaration or bylaws.

(c) The board shall determine the estimated useful life of each asset based on at least one of the following:

- (1) The association's experience with the asset;
- (2) Any professional or trade publication and any amendments or updates thereto that provide statistics on the estimated useful lives of items similar or comparable to the asset;
- (3) The estimate of any Hawaii-licensed contractor, architect, engineer, or other design professional or an authorized supplier for the asset for any item similar or comparable to the asset or any materials or services for the asset's upkeep, repair, or replacement; or
- (4) Any warranty provided by the supplier, installer, manufacturer, or builder of the asset or any services relating to its installation, upkeep, repair, or replacement.

(d) The board shall calculate the estimated capital expenditure or major maintenance required for each asset based on at least one of the following adjusted for inflation:

- (1) The association's experience with expenses relating to the asset;
- (2) Any professional or trade publication and any amendments or updates thereto that provide statistics on the estimated capital

expenditure or major maintenance, required for the asset or items similar or comparable to the asset; or

- (3) The estimate of any Hawaii-licensed contractor, architect, engineer, or other design professional or an authorized supplier of the asset of any item similar or comparable to the asset or any materials or services for the asset's installation, upkeep, repair, or replacement.

(e) Each budget year, the board shall adjust the amount of the estimated replacement reserves for an asset based on its reserve study and reasonable projections for inflation and interest which may be earned during the estimated useful life of the asset. Adjustments for inflation shall not assume an annual inflation rate less than that of the Honolulu Consumer Price Index for All Urban Consumers for the prior year or its five-year historical average. Adjustments for interest earned shall not exceed the prior year's average interest rate for seven-year United States treasury bills or its five-year historical average.

(f) If a board plans to assess less than one hundred per cent of the association's estimated replacement reserves for a budget year, the association's operating budget for that year, the reserve study, and the association's other records shall clearly and prominently indicate:

- (1) The total amount the association's replacement reserve study indicates will be a full replacement reserve for the association at the end of the current budget year; and
- (2) The total amount the association will have collected at the end of the current budget year.

(g) Any association, unit owner, director, officer, managing agent, or employee of an association who calculates the association's estimated replacement reserves as provided in subsections (b), (c), (d), and (e) shall be deemed to have acted in good faith if the calculations subsequently prove incorrect, provided

that an association, board, director, officer, or managing agent act as fiduciaries as provided in section 414D-149, HRS, and also make the disclosures required by subsection (f) to be deemed to have acted in good faith. For purposes of this section, "in good faith" also includes honesty in fact in the investigation, research, and preparation of the reserve study and calculations of the full and estimated replacement reserves. [Eff ]  
(Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

**§16-119.6-6 Fund accounting for each part of the association property; use of separate funds for other than stated purpose.** (a) Unless the association is funding its reserves through a cash flow plan, an association shall establish at least one reserve account for its projected full replacement reserves. Within the full replacement reserve account, the association shall establish a separate designated fund or funds for each asset for which estimated capital expenditures or major maintenance will exceed \$10,000. Projected full replacement reserves for all assets for which estimated capital expenditures or major maintenance will not exceed \$10,000 may be aggregated into a single designated fund in the projected full replacement reserve account.

(b) For each of the separate designated funds, the association's records for the projected full replacement reserve account shall state:

- (1) The purpose of each fund or the asset for which it is established; and
- (2) An amount for the projected full replacement reserves allocated to each fund provided:
  - (A) An association need not comply with paragraph (1) for the single, aggregated fund. Instead, the projected full replacement reserve account records may state the purpose of the fund as "miscellaneous" or

similar term and indicate the amount in the aggregated fund. The association shall list the assets for which the aggregated fund is established elsewhere in its records; and

- (B) An association using a cash flow plan shall collect for each budget year the estimated replacement reserves as defined by the reserve study to ensure compliance as provided in the definition of "cash flow" in chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and as required by the commission.
- (C) An association using a cash flow plan shall comply with paragraphs (1) and (2) except:
  - (i) The amount of the estimated replacement reserves allocated to each fund may vary for each fiscal year from paragraph (1) and (2) to offset the variable annual expenditures from the reserve fund provided that the offset amount ensures that each unit owner in a project pays a fair share of the short-term and long term costs of operating the project based on the owner's period of ownership and provided that the board includes in the fiscal budget a line item indicating the allocated amount and percentage funded for each component identified by the physical analysis of the reserve study to fund the association's projected full replacement reserves; and
  - (ii) That an association record indicates how the funds are



**§16-119.6-7 Emergencies and emergency**

**situations.** (a) An association whose replacement reserves and contingency reserves have been substantially depleted by an emergency shall have three budget years to re-establish a minimum of fifty per cent of a full replacement reserve or fund one hundred per cent of a full replacement reserve when using a cash flow plan. The three years shall be calculated from the end of the budget year in which the association makes the payment which substantially depletes the association's replacement reserve.

(b) The board shall have the discretion to assess the unit owners in monthly, quarterly, or yearly installments to re-establish a minimum of fifty per cent of a full replacement reserve or fund one hundred per cent of a full replacement reserve when using a cash flow plan.

(c) In an emergency situation subject to section 514B-148(e), HRS, the board shall calculate the twenty per cent limit of that section based on the association's total annual operating budget for the budget year when the expense will occur. The board must notify the unit owners if an expense required because of an emergency will exceed the twenty per cent limit, but the board need not obtain unit owner approval for the expense.

(d) Section 514B-148(e), HRS, shall only limit a board's right to exceed its annual operating budget during the budget year to which the operating budget relates. That section shall not limit the board's right to increase an annual operating budget by more than twenty per cent over the annual operating budget of the previous year. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

**§16-119.6-8 Contingency reserves.** Nothing in this chapter shall prohibit the establishment of a contingency reserve in compliance with this section. Unless the declaration or bylaws provide otherwise, the board may establish a contingency reserve in an

amount the board considers appropriate, based upon the age of the project, its maintenance history, plans for additions or improvements to the project, or any other factors the board deems relevant. The contingency reserve shall be subject to all the requirements relating to reserves except the requirements of sections 16-119.6-4, 16-119.6-5, 16-119.6-6(c) and (d), 16-119.6-7, and 16-119.6-9. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

**§16-119.6-9 Conflict of chapter.** (a) Chapter 514B, HRS, and this chapter supersede any contrary provisions in a project's declaration, an association's bylaws, or any other applicable documents regarding preparation of budgets, calculation of reserve requirements, and assessment and funding of reserves. Except as stated in subsection (b), limits on spending or assessments shall not restrict the board's right to spend or assess for items required by the association's reserve study.

(b) Chapter 514B, HRS, and this chapter shall not supersede any contrary provisions in a project's declaration, an association's bylaws, or other applicable documents:

- (1) Requiring the board to collect more than the association's statutory replacement reserves;
- (2) Restricting a board's right to assess or spend to upgrade the common elements for such things as additions, alterations, or improvements; or
- (3) Requiring a board to repair or maintain assets more frequently than the law, this chapter, or the association's replacement reserve study requires.

This chapter shall not supersede any related state or federal tax laws. [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

**§16-119.6-10 Reserve funds nontransferable.**

Replacement reserve and contingency reserve funds that an association collects from unit owners become the property of the association. A unit owner who sells a unit shall have no right to reimbursement of the replacement reserve and contingency reserve funds from either the purchaser of a unit or the association. The replacement reserve and contingency reserve funds shall not be conveyed or transferred separately from the unit to which they relate. They shall be deemed conveyed or transferred with the unit, even though they are not specifically mentioned in any conveyance, assignment, or transfer of the unit.

[Eff ] (Auth: HRS §514B-61) (Imp: HRS §514B-101(b), 514B-148)

**§16-119.6-11 Exempt association property; disclosure; transition to association property. (a)**

The association's reserve study shall disclose all assets for which funds are not included in the replacement reserve study because they are exempt association property. The reserve study shall also contain a brief explanation of why those assets are exempt association property.

(b) An asset which is deemed to be exempt association property because its estimated remaining life is more than thirty years shall become association property on the date its estimated remaining life becomes less than thirty years, referred to in this subsection as the transition date. The asset shall be included in the association's reserve study for the first budget year after the transition date. In calculating a full replacement reserve for the asset after the transition date, the association may disregard the asset's actual age. The association may instead assume that at the beginning of the first budget year after the transition date, the asset's estimated age is zero and its estimated useful life is the same as its estimated remaining life.

Example:

An existing asset has an estimated useful life of fifty years, becomes twenty years old on January 1, 2018, has an estimated remaining life of thirty years, and an estimated replacement cost of \$100,000. Under the standard method of calculation, a full replacement reserve on December 31, 2018, for that asset would be \$42,000 ( $\$100,000 \times 21/50$ ). If an association had not already established a replacement reserve for that asset, the full replacement reserve contribution by December 31, 2018, would be \$42,000 (or fifty per cent of that amount \$21,000 for the minimum replacement reserve). If the association adopts the method of calculation permitted by subsection (b), the full replacement reserve contribution required by December 31, 2018, for the same asset would be only \$3,333 ( $\$100,000 \times 1/30$ ), or fifty per cent of that amount - \$1,667 (rounded to nearest whole number) - for the minimum replacement reserve, although subsequent annual contributions will be higher than in the first example. In effect, the asset is deemed to be only one-year old, not twenty-one years old on December 31, 2018. [Eff ] (Auth: HRS §§514B-61, 514B-148) (Imp: HRS §514B-148)

**§16-119.6-12 Borrowing and special assessments to fund replacement reserves.** Provided an association assesses and collects sufficient funds to fund its statutory replacement reserves, complies with the law, chapters 16-119.1 through 16-119.8, and commission requirements, the board may in order to pay the cost to maintain, repair, or replace assets of the association:

- (1) Transfer funds between the separate, designated funds required by section 16-119.6-6, subject to the requirements of that section;
- (2) Borrow funds, subject to the requirements of section 514B-105(e), HRS; and

- (3) Specially assess the unit owners. This section shall apply if the board underestimates the reserve requirements for an asset or if the cost to maintain, repair, or replace an asset will reduce the association's replacement reserve funds to less than fifty per cent of a full replacement reserve or to less than one hundred per cent of the full replacement reserves when using a cash flow plan during any budget year.

Example:

An association's full replacement reserve requirement is \$500,000, but the association has only \$250,000 of that amount in cash, as the law permits. The association's replacement reserve account designates \$200,000 of the \$250,000 to replace its roof in 2020 or to less than one hundred per cent of the replacement reserves when using a cash flow plan. In 2020, the association replaces its roof on schedule. If the association spends all the \$200,000 designated in its replacement reserve account for the roof, large assessments will be necessary to re-establish fifty per cent of a full replacement reserve in cash by the end of 2020.

Replacing the roof will reduce the association's replacement reserve requirements during 2020 by \$200,000, from \$500,000 to \$300,000 (to which must be added the funds required during 2020 for the other association assets). Nevertheless, spending the \$200,000 will also reduce the association's replacement reserve funds by \$200,000, from \$250,000 to \$50,000 (plus whatever the association collects during 2020).

Thus, by the end of 2020, the association will have only \$50,000 in reserves, but needs at least \$150,000 (i.e., fifty per cent of its full

replacement reserve requirements of \$300,000). Therefore, the association must collect at least \$100,000 by the end of 2020 to reach the minimum replacement reserve of \$150,000 (plus whatever funds the reserve study indicates is necessary for other assets).

To reduce the hardship, the board can fund the expenses for the roof by borrowing or by special assessments. Even if the association has designated a specific fund in its replacement reserve account for the asset, the board may also transfer the money in that fund to other designated funds. Essentially, this section permits the board to use cash on hand, special assessments, borrowing, or any combination of the three to replace the roof and reduce the hardship on the unit owners. [Eff \_\_\_\_\_] (Auth: HRS §§514B-61, 514B-148) (Imp: HRS §514B-148)

**§16-119.6-13 Leasing of association property.** A board may lease rather than buy property to repair or replace any association property. Property which meets the definition of association property shall be deemed to be an asset of the association, and must be included in the association's reserve study, regardless of whether the association owns or leases the property. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

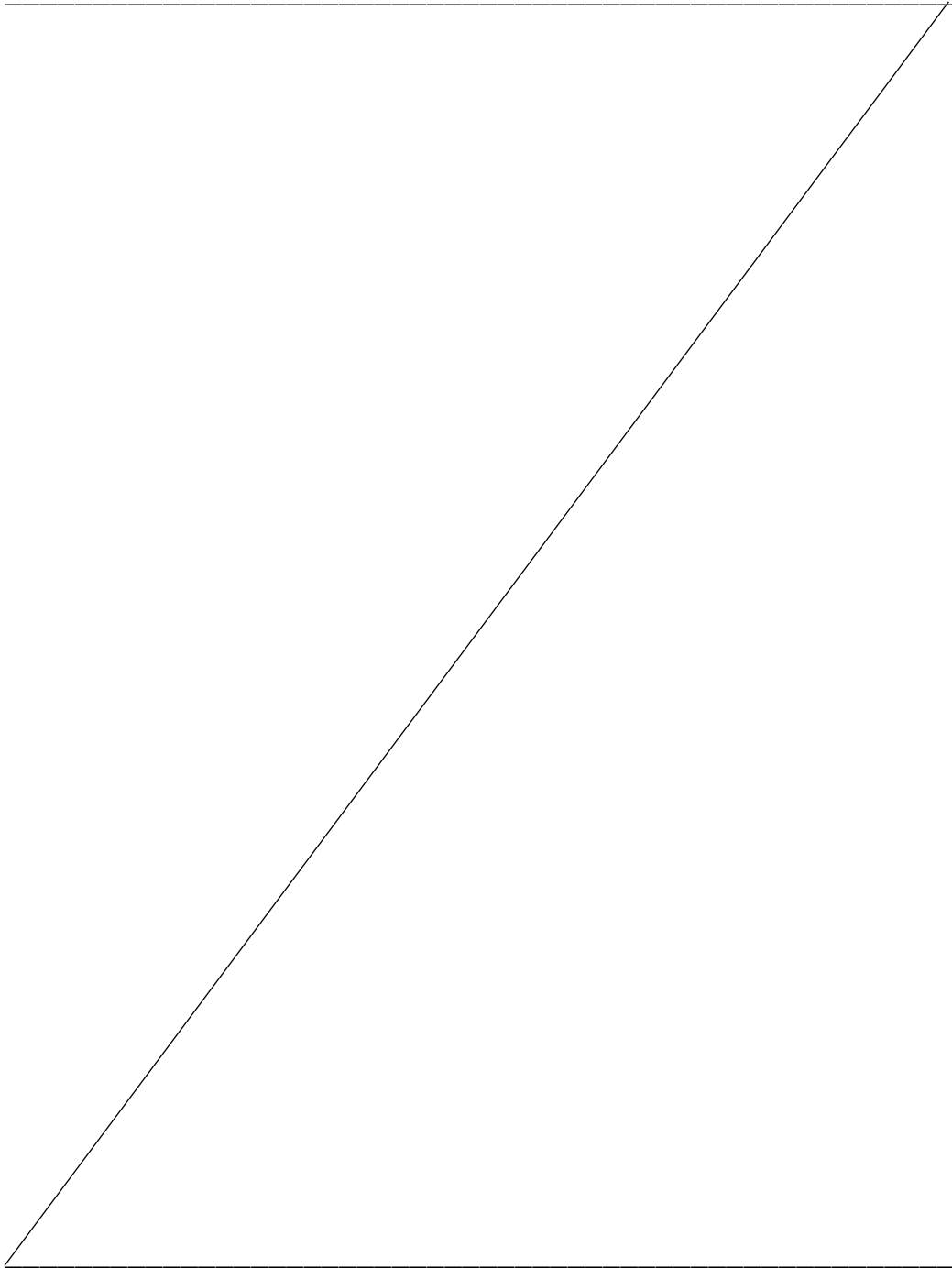
**§16-119.6-14 Distribution of budgets and reserve studies.** The board shall attach to any approved budget that it makes available to any unit owner pursuant to section 514B-106(c), HRS, information about:

- (1) Any updates made to its reserve study and descriptions of and explanation for the

- updates or a statement that no updates were made;
- (2) A public accountant's findings about the adequacy of reserves or a statement that no findings were made; and
- (3) Where a unit owner may examine the supporting completed reserve study or request a copy of same. [Eff ]  
(Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

**§16-119.6-15 Enforcement.** If a board fails to prepare an annual operating budget or replacement reserve study in compliance with the requirements of section 514B-148, HRS, or this chapter, an association member may enforce those requirements. The association member may collect the costs of enforcement in compliance with the procedures provided in section 514B-157, HRS, including fees and costs incurred by the unit owner. If an arbitrator or judge determines that a board or board member has breached a fiduciary duty by intentionally ignoring the requirements of section 514B-148, HRS, or this chapter, the arbitrator or judge may award the unit owner fees and costs of enforcement against the board or board members, rather than against the association." [Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-148)

8. Chapter 16-119.7, Hawaii Administrative Rules, entitled "Condominiums - Managing Agent", is adopted to read as follows:





**16-119.7-2 Managing agent; bookkeeper; accountant.** (a) Unless otherwise specifically prohibited by law, the declaration, or bylaws, an association may contract with an independent bookkeeper or accountant to assist with maintaining the association's fiscal records provided the independent bookkeeper or accountant:

- (1) Is not an employee of the association;
- (2) Does not have access to association funds;
- (3) Does not manage the operation of the project's property; and
- (4) Is not within the definition of managing agent pursuant to sections 514B-3 and 514B-132(1)(B), HRS.

(b) An association contracting with a bookkeeper or accountant in the manner provided by this section shall initially and annually adopt a resolution stating that the board is aware, acknowledges, and accepts that the independent bookkeeper or accountant:

- (1) Is not a currently registered managing agent pursuant to section 514B-132, HRS;
- (2) Has or has no fidelity bond;
- (3) Does not have access to association funds, including receipt or deposit of funds (including checks) or signature authority on association fund accounts; and
- (4) Does not manage the operation of the project's property.

The resolution shall be executed by the association's board and attached to the association's biennial registration application. The association's registration will be considered incomplete if the resolution is not attached. [Eff ]  
(Auth: HRS §514B-61) (Imp: HRS §§514B-3, 514B-132)

**§16-119.7-3 Conduct.** (a) A managing agent shall not accept any compensation, commission, rebate, or profit on any expenditure for an association that

it manages or from a unit owner without the association's knowledge and written consent.

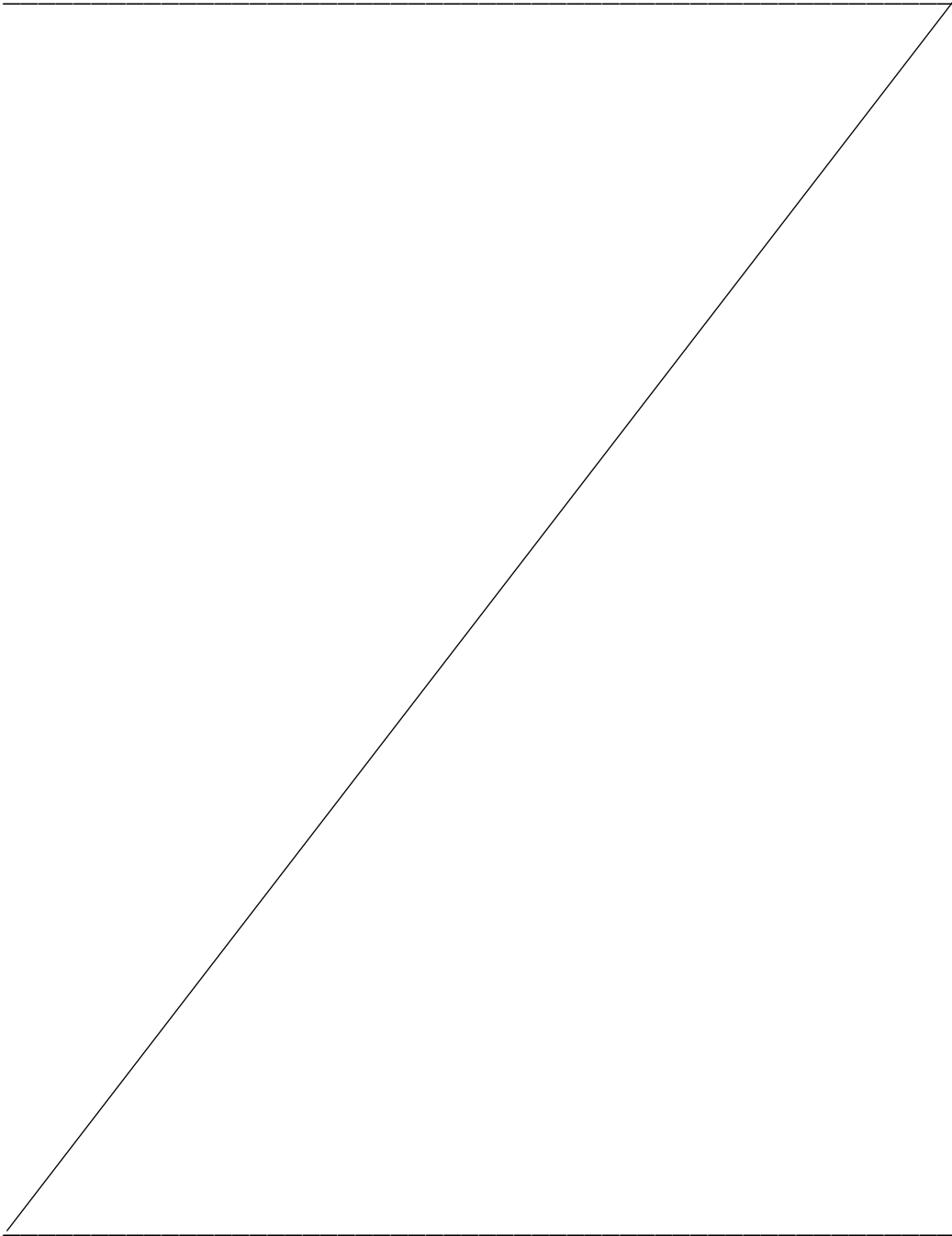
(b) Where agreed upon in writing with an organized association, a managing agent shall complete the registration and reregistration of the association pursuant to section 514B-103, HRS.

(c) In managing the operation of the property, the managing agent shall be responsible for full compliance by its employees and agents with the applicable provisions of chapters 467 and 514B, HRS, the rules adopted pursuant thereto, and commission requirements.

(d) Where a provision in chapter 467, HRS, conflicts with a provision of chapter 514B, HRS, regarding the conduct required of a managing agent, chapter 514B, HRS, controls. For example, section 467-1.6(b)(1), HRS, provides that the principal broker shall be responsible for the client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices. Section 514B-149(c)(2), HRS, provides that all funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board. In this example, section 514B-149(c)(2), HRS, controls, and the managing agent's employees may disburse funds from the client trust account established for the association under the supervision of the principal broker and supervision of the association's board."

[Eff ] (Auth: HRS §514B-61) (Imp: HRS §§467-1.6(b)(1), 514B-149)

9. Chapter 16-119.8, Hawaii Administrative Rules, entitled "Condominiums - Association Registration", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 119.8

CONDOMINIUMS - ASSOCIATION REGISTRATION

§16-119.8-1	Registration of an association
§16-119.8-2	Failure to provide evidence of fidelity bond
§16-119.8-3	Fidelity bond; deductible
§16-119.8-4	Fidelity bond exemption for an association
§16-119.8-5	Fidelity bond exemption
§16-119.8-6	Registration application
§16-119.8-7	Availability of association's records, documents, and information
§16-119.8-8	Deposit of association funds

**§16-119.8-1 Registration of an association.** (a) Notwithstanding that an association has minimal or no expenses for maintenance of the common elements, and except as provided in subsection (c), each project or association having more than five units shall register with the commission and obtain a fidelity bond as required by section 514B-103, HRS, and chapters 16-119.1 through 16-119.8.

(b) An association shall register with the commission in the name as it appears on the recorded declaration of the condominium property regime. Any name change shall be evidenced by an amendment to the

declaration made pursuant to section 514B-32(a)(11), HRS, and where the association has incorporated, a document evidencing that the entity is properly registered with the business registration division of the department.

(c) If so provided in a project's declaration and bylaws, this section shall not apply to:

- (1) Condominiums in which all units are restricted to nonresidential uses; or
- (2) Condominiums that contain no more than five units and are not subject to any continuing development right.

(d) The board, developer or developer's affiliate, or managing agent on behalf of the association shall be responsible for registering and reregistering the association pursuant to section 514B-103, HRS, including maintaining the required fidelity bond, provided that the board or developer or developer's affiliate may delegate in writing the completion of the registration and reregistration to a managing agent. [Eff \_\_\_\_\_] (Auth: HRS §§514B-61, 514B-101) (Imp: HRS §§514B-103, 514B-143)

**§16-119.8-2 Failure to provide evidence of fidelity bond.** Failure to provide evidence to the commission of continuous fidelity bond coverage throughout an entire biennial registration period prior to the expiration of the fidelity bond shall result in the automatic termination of the association registration. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-103, 514B-143)

**§16-119.8-3 Fidelity bond; deductible.** (a) The fidelity bond shall:

- (1) Be issued by a company currently authorized by the State insurance division to issue insurance in this State;

- (2) Name the department as the certificate holder;
- (3) Provide coverage for association activity only;
- (4) Name only the association as the insured and exclude any other person, trade name, or business entity as the named insured, except as permitted in subsection (e);
- (5) Specify that it is a fidelity, employee dishonesty, or commercial crime bond and whether it is a blanket or name schedule type. If a name schedule type, list all persons handling or having control of funds received by the association, and provide notice to the commission of any changes to the name schedule on an amended name schedule within ten calendar days of the change;
- (6) Not contain a criminal conviction endorsement or rider which requires as a condition precedent to recover the prosecution or conviction of the employee;
- (7) State that it covers all officers, directors, employees, and managing agents of the association who handle, control, or have custody of association funds, and protect the association against fraudulent or dishonest acts by persons, including any managing agent, handling association funds;
- (8) Specify an expiration date or that it is continuous;
- (9) Specify whether the bond contains a deductible provision or a nondeductible provision; and
- (10) Provide other information as requested by the commission.

(b) Unless otherwise approved by the commission, the insurance company's proof of insurance shall certify that the required fidelity bond:

- (1) Is in effect and meets the requirements of sections 514B-103 and 514B-143(a)(3), HRS,

chapters 16-119.1 through 16-119.8, and  
commission requirements; and

(2) Includes other information as requested by the commission.

(c) The insurance certification shall be made on a form approved by the commission and submitted to the commission upon request.

(d) The board shall provide to each unit owner notice of the amount of the deductible, if any, and any changes in the fidelity bond coverage.

(e) An association may provide the required fidelity bond loss coverage by being named as an insured on another entity's insurance policy, provided that the policy includes a loss coverage provision for each covered registered association on a per occurrence basis that is not limited by an aggregate amount. [Eff: 10/1/14] (Auth: HRS §514B-61) (Imp: HRS §§514B-103(a)(1), 514B-143)

**§16-119.8-4 Fidelity bond exemption for an association.** An association's fidelity bond exemption expires at the end of a registration period. Any reapplication for a fidelity bond exemption shall be made at least thirty days prior to the commission's deadline date for submission of a completed reregistration application. An application for an association's fidelity bond exemption shall be made on a commission approved form. [Eff \_\_\_\_\_]

(Auth: HRS §514B-61) (Imp: HRS §§514B-101(b), 514B-143)

**§16-119.8-5 Fidelity bond exemption.** (a) An association that is unable to obtain a fidelity bond pursuant to section 514B-103(a)(1), HRS, may apply to the commission for approval of a fidelity bond exemption in accordance with that section and this section.

(b) All the units in the association or project shall be:

- (1) Owned by a single individual or a single entity that is registered to do business in this State and in good standing with the State;
- (2) Restricted by the declaration or bylaws to non-residential use; or
- (3) Twenty or fewer units.

An association or project described in this subsection shall further satisfy all the following:

- (A) Certify to the commission that it has letters from three separate insurance carriers that issue such bonds, each dated no more than a hundred and eighty days before the exemption application date, confirming that the association is unable to obtain a fidelity bond;
- (B) Pass a resolution by its board certifying its inability to obtain a fidelity bond, intention to request an exemption from such requirement, and requiring that two persons sign all checks that exceed \$2,500 drawn on association accounts;
- (C) Is managed by a managing agent or a real estate broker who, except for a project described in paragraph (1), holds an active real estate license and is in good standing under the laws of the State;
- (D) Prohibit any one individual or entity from having sole control over association funds and records without the supervision of at least one other association owner, director, or officer, except for a project described in paragraph (1);
- (E) Keep separate operating and reserve accounts and books with two signatures required for any withdrawals from the reserve account; and

(F) Certify to the commission that the board promptly, diligently, and regularly reviews all association fund account statements.

(c) An association or project containing six or more, but fewer than fourteen units which has either reserves of \$10,000 or less and an annual budget of \$15,000 or less or an annual budget of \$25,000 or less shall meet at least two of the following conditions:

- (1) The requirements of subparagraph (b) (2) (C);
- (2) The requirements of subparagraph (b) (2) (E);
- (3) Has an operating account that requires two signatures for checks more than \$500;
- (4) Conducts an annual audit of association funds and accounts;
- (5) Uses automatic bill payment with a financial institution for utility charges and regularly recurring expenses of the association;
- (6) Conducts board review of the account statement from the project's managing agent or financial institution; or
- (7) Is restricted by its declaration or bylaws to non-residential use for all units in the project.

(d) An association or project containing more than thirteen, but twenty or fewer units which has reserves of \$20,000 or less and an annual budget of \$30,000 or less or has an annual budget of \$50,000 or less shall meet at least three of the following conditions:

- (1) The requirements of subparagraph (b) (2) (C);
- (2) The requirements of subparagraph (b) (2) (E);
- (3) Has an operating account that requires two signatures for checks more than \$1,000;
- (4) Conducts an annual audit of association funds and accounts;
- (5) Uses automatic bill payment with a financial institution for utility charges and regularly recurring expenses of the association;

- (6) Conducts board review of the account statement from the project's managing agent or financial institution; or
- (7) Is restricted by its declaration or bylaws to non-residential use for all units in the project.

(e) Any application for an exemption from the requirement to obtain a fidelity bond shall be submitted to the commission on a form prescribed by the commission, together with a nonrefundable application fee in an amount set forth in section 16-53-16.8. Any association that is granted an exemption shall immediately report to the commission in writing any changes that affect the project's eligibility for such exemption under this section.

(f) At registration or reregistration, the commission may approve a request for a fidelity bond exemption upon payment of a nonrefundable fee and the association's certification that it has complied with the commission's requirements for the specific exemption requested. [Eff \_\_\_\_\_] (Auth: HRS §514B-61) (Imp: HRS §§514B-101, 514B-103, 514B-143)

**§16-119.8-6 Registration application.** (a) A completed association registration and reregistration application includes, in addition to the requirements set forth in chapter 514B, HRS, chapters 16-119.1 through 16-119.8, and of the commission, an application signed by an authorized officer of the association, accompanied by payment of the correct fee amount and any applicable penalties, documentation of current evidence of a fidelity bond, and any other documents and information required by the commission.

(b) Upon a unit owner's request, the association board shall make available the file copy of the registration and reregistration application, if any, filed with the commission. The unit owner shall pay all reasonable fees for duplication, postage, and other administrative costs incurred by the board

relating to handling the request in accordance with section 514B-154(j), HRS.

(c) The commission may terminate a project or association registration when any changes to the association's registration information remain unreported to the commission for thirty days or more. Any termination shall subject the association to section 514B-103(b), HRS, including the loss of standing to maintain any action or proceeding in the courts of this State for the collection of any past due assessments for common expenses.

[Eff ] (Auth: HRS §514B-61) (Imp: HRS §§514B-101, 514B-103, 514B-154(j))

**§16-119.8-7 Availability of association's records, documents, and information.** (a) Biennially, each project or association with more than five units shall attach a copy of the following to its association registration and reregistration application:

- (1) A one to two-page written summary of where, when, and how the records, information, and documents required by sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, shall be made available to unit owners and of any costs subject to sections 514B-105(d) and 514B-154(j), HRS, of making the records, information, and documents available; and
- (2) The date the written summary required by paragraph (1) was last distributed to unit owners.

(b) The summary required by subsection (a) shall include the information required by subsection (a) and the following:

- (1) The name and address of a person or entity to whom a unit owner may direct a request for the records, information, and documents. A unit owner may use any type of writing to

make the request, including an association approved form;

- (2) The number of days no later than thirty days as specified by section 514B-154.4(c), HRS, after receipt of a request within which the board, managing agent, if any, or the association's representative shall make the requested records, information, and documents available for examination or copying;
- (3) The specific location and time where the requested records, information, and documents shall be made available for examination or copying. Where not specifically provided by chapter 514B, HRS, the designated location shall be convenient for both the unit owner and the association. The requested records, information, and documents may also be made available electronically as provided by chapter 489E, HRS;
- (4) The cost, subject to section 514B-105(d), HRS, if any, including the costs prescribed by sections 514B-153, 514B-154, and 514B-154.5, HRS, or costs allowed by law; and
- (5) Any other records, information, and documents as the commission may request to be provided on the association's registration application.

(c) Unless making the records, information, and documents of subsections (a) and (b) available to unit owners is prohibited or limited by a state or federal law, a board or managing agent shall:

- (1) Make every good faith effort to provide the requested records, information, and documents;
- (2) Redact any information the disclosure of which would clearly be an unwarranted invasion of privacy or violates any other state or federal law or regulation;
- (3) Where not an unwarranted invasion of privacy or prohibited by any state or federal law or

rule, make the remaining records, information, and documents available to the unit owner in accordance with sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8; and

- (4) Cite the specific authority for any non-disclosure; for example, the specific state or federal law or regulation or provision of the declaration or bylaws for any refusal to disclose.

(d) The commission may prescribe a form for submitting the information required by subsections (a) and (b).

(e) A management contract made pursuant to section 514B-134(b), HRS, shall include provisions describing:

- (1) A managing agent's duties and responsibilities relating to making available records, information, and documents as provided in sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8. Where there is no managing agent contracted and authorized to make available the records, information, and documents in accordance with sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153, 514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8, the board shall designate a person or entity to undertake such duties and responsibilities; and
- (2) Any other provision required by section 514B-134, HRS, or the commission.

(f) A managing agent, board, board member, or association representative that fails to make records, information, and documents available for examination or copying as provided by sections 514B-106(c), 514B-122, 514B-144(a), 514B-150(b), 514B-152, 514B-153,

514B-154, and 514B-154.5, HRS, and chapters 16-119.1 through 16-119.8, is subject to the criminal and civil penalties of section 514B-69, HRS, and the commission's investigatory, cease and desist, and injunctive powers as provided in sections 514B-65, 514B-66, and 514B-68, HRS. [Eff ]  
(Auth: HRS §514B-61) (Imp: HRS §§514B-103, 514B-106(c), 514B-122, 514B-134, 514B-144(a), 514B-148, 514B-150, 514B-152, 514B-153, 514B-154, 514B-154.5)

**§16-119.8-8 Deposit of association funds.** As used in section 514B-149, HRS, the term "located in the State" shall mean that the financial institution:

- (1) Is currently registered with the department's business registration and financial institution divisions, in good standing, and authorized to do business in this State; and
- (2) Has an office in this State that is managed and operated by employees who are physically located at the office site." [Eff ] (Auth: HRS §§514B-61, 514B-101) (Imp: HRS §514B-149)

10. The repeal of chapter 16-107 and the adoption of chapters 16-119.1, 16-119.2, 16-119.3, 16-119.4, 16-119.5, 16-119.6, 16-119.7, and 16-119.8, 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 M DD, YYYY, and filed with the Office of the Lieutenant Governor.

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NADINE Y. ANDO  
Director of Commerce and  
Consumer Affairs

APPROVED AS TO FORM:

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Deputy Attorney General

## **IV. New Business**

### **A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 12 Chapter 15 Hawaii Workers' Compensation Medical Fee Schedule (MFS) and Exhibit A (Workers' Compensation Supplemental Medical Fee Schedule) promulgated by Department of Labor and Industrial Relations – Exhibit 2**

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

Date: 7/2/2025

Department or Agency: Department of Labor and Industrial Relations (DLIR)

Administrative Rule Title and Chapter: Title 12, Chapter 15

Chapter Name: Hawaii Workers' Compensation Medical Fee Schedule (MFS) and Exhibit A (Workers' Compensation Supplemental Medical Fee Schedule)

Contact Person/Title: JoAnn A. Vidinhar, Administrator, Disability Compensation Division

E-mail: Joann.A.Vidinhar@hawaii.gov Phone: (808) 586-9152

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: see attached

**I. Rule Description:**

☐ New ☐ Repeal ☒ Amendment ☐ Compilation

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

☒ Yes ☐ No

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

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

\* \* \*

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

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

SEE ATTACHED

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.

There are no fees or fines proposed.

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

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

SEE ATTACHED

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

N/A

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

SEE ATTACHED

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

SEE ATTACHED

- 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.

N/A

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

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

N/A

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

N/A

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

N/A

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

N/A

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

NA/

\* \* \*

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

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

State of Hawaii  
Department of Labor and Industrial Relations  
Disability Compensation Division

Pre-Public Hearing  
Small Business Impact Statement  
to the  
Small Business Regulatory Review Board (SBRRB)  
(7/24/25 Meeting @ 10:00 a.m.)

Department or Agency: Department of Labor and Industrial Relations (DLIR)

Administrative Rule Title and Chapter: Title 12, Chapter 15

Chapter Name: Hawaii Workers' Compensation Medical Fee Schedule (MFS) and  
Exhibit A (Workers' Compensation Supplemental Medical Fee Schedule)

Contact Person/Title: JoAnn A. Vidinhar, Administrator, Disability Compensation  
Division

Phone Number: (808)586-9152

E-Mail Address: Joann.A.Vidinhar@hawaii.gov

Date: July 24, 2025

- A. Statement of the topic of the proposed rules or a general description of the subjects involved: Proposed amendments to Hawaii Administrative Rules (HAR), relating to Title 12, Chapter 15 (Hawaii Workers' Compensation Medical Fee Schedule and Exhibit A)

Amendments to §12-15-90, and Exhibit A.

1. We are also proposing to amend Section 12-15-90, HAR, and billing codes in Exhibit A, pursuant to section 386-21(c), HRS, which requires the director to update the fee schedule required by this section every three years or annually. Comprehensive MFS surveys were conducted.

Fees in Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, were revised.

- B. The draft rules will be available for viewing in person at the Disability Compensation Division (DCD), 830 Punchbowl Street, Room 209; on the DCD website at <http://labor.hawaii.gov/dcd>; and on the Lieutenant Governor's Website pursuant to HRS §92-7 one month before the public hearing (pending approval from the Governor), tentatively scheduled for October 2025.

- I. Rule Description: Amendment.
- II. Will the proposed rule(s) affect small business? Yes.
- 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? No.
- IV. Is the proposed rule being adopted pursuant to emergency rulemaking? No.

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 proposed Medical Fee Schedule changes in the administrative rules and in Exhibit A may affect small businesses, namely physicians and other providers of service who treat injured workers. The proposed 2026 Exhibit A will update the fee schedule and will reflect the current reimbursable amount for medical services.

The proposed 2026 Exhibit A may also affect all businesses (large and small) which are required to have workers' compensation insurance, because of a potential effect on premium costs.

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.

There are no fees or fines proposed.

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.

N/A.

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

The proposed amendments to section 12-15-90, HAR, and billing codes in Exhibit A, were surveyed and amended pursuant to Act 97, (SLH 2013), The DLIR conducted the survey using current procedural terminology (CPT) codes representing medical services that have been delivered and paid for (“transacted CPT codes”) to allow the Director to decide whether to retain or remove codes from the fee schedule.

The DLIR’s Research and Statistics Office (R&S) sent letters to five pre-paid health care plan contractors (PHCPC) and four dental insurers. Based on the results of the survey, reimbursement amounts for 152 codes were increased, and 302 codes were removed from the 2018 Exhibit A, with no additional new codes being added to the proposed 2026 Exhibit A.

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

N/A.

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.

The proposed Medical Fee Schedule changes in the proposed 2026 Exhibit A will affect physicians and other providers of service, who are small business owners and who treat injured workers, by providing a potential increase in the reimbursable amount for medical services for treatment of the injured workers. The proposed changes may also affect all businesses (large and small) which are required to have workers' compensation insurance, because of a potential increase in premium costs.

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

The DLIR's R & S Office sent letters to five prepaid health care plan contractors (PHCPC) and four dental insurers requesting their schedule of all maximum allowable medical fees (prevalent physician fee without tax) for a non-work related injury. The survey was conducted using frequently transacted CPT and CDT codes.

Codes in Exhibit A will include the following changes due to the survey of prevailing charges. Exhibit A will contain a total of 604 codes (580 CPT, 24 CDT, and DLIR created codes). The changes to each section in Exhibit A are as follows:

Evaluation and Management: 6 codes were revised. Total of 28 codes are retained.

Medicine: 108 codes are retained with no changes.

Radiology: 79 codes were revised. Total of 146 codes are retained.

Surgery: 67 codes were revised. Total of 296 are retained.

Special Evaluation and Management Services: 2 codes retained.

Dental Services: 24 codes are retained with no changes.

By letter dated May 28, 2025, DLIR requested from the Department of Commerce and Consumer Affairs (DCCA) and the Insurance Commissioner an assessment by the NCCI and review by DCCA 's actuary regarding the proposed 2026 Exhibit A. By response dated June 27, 2025 DCCA reported that NCCI estimates that the impact on overall workers' compensation system costs in Hawaii due to the physician fee schedule change is an increase of 0.2% or less than  $\frac{1}{4}$  of 1%. The DCCA consulting actuary, Daniel W. Lupton, in an independent analysis, found the NCCI's methodologies used in determining the overall impact to be reasonable and logical. The DCCA actuary was also asked to comment on the effect the proposed changes will have on motor vehicle insurance since the personal injury protection benefits ("PIP") under motor vehicle insurance is tied to the workers' compensation fee schedule. The DCCA actuary's analysis indicates that if NCCI's assumptions for medical costs are applied to PIP, then there will also be an increase of 0.168% or less than  $\frac{1}{4}$  of 1% to PIP rates.

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.

N/A.

The Hawaii Workers' Compensation Medical Fee Schedule is based on the Medicare Fee Schedule. When the Medicare reimbursement rates drop or increase, there is a corresponding drop or increase in the workers' compensation reimbursement rates. By using transacted codes, the proposed changes to the Medical Fee Schedule, Exhibit A, will result in a slightly higher fee reimbursements to some workers' compensation providers of service. The proposed fees in the Workers' Compensation Supplemental Medical Fee Schedule Exhibit A in general continues to reimburse at a higher rate than Medicare, as is the intent of the statute.

The proposed changes to Exhibit A may have an impact on the injured workers if business owners see a change in their premium costs for workers' compensation and no fault insurance coverages. If there is an increase in premium costs, these increases may be passed down to the consumers.

The Hawaii Small Business Regulatory Flexibility Act (Chapter 201M) requires an assessment of the impact on small business. Assessments such as these were conducted in coordination with the NCCI and reviewed by Daniel W. Lupton, the DCCA's consulting actuary. NCCI estimates the impact of the changes to the Hawaii Workers' Compensation Supplemental Medical Fee Schedule proposed to be effective January 1, 2026, would result in an increase of 0.2% on Hawaii's overall workers' compensation system costs. The consulting actuary agrees with NCCI's assessment of an overall increase of 0.2% on workers' compensation costs and adds that there will also be an increase of 0.168% on the no-fault personal injury protection (PIP) rates.

The amendments to the Workers' Compensation Medical Fee Schedule Administrative Rules, in Title 12, Chapter 15 (HAR), and billing codes in Exhibit A of the Workers' Compensation Supplemental Medical Fee Schedule, will update the fee schedule as required by section 386-21(c), HRS, and reflects the current reimbursable amount for medical services.

We request the approval of the Small Business Regulatory Review Board for our proposed amendments to Title 12, Chapter 15, HAR, relating to the Workers' Compensation Medical Fee Schedule and Exhibit A so we may proceed to public hearing.

If you have any questions, you may contact JoAnn A. Vidinhar, Administrator of the Disability Compensation Division, at (808)586-9152. Thank you for your assistance in this matter.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendments to Chapter 12-15  
Hawaii Administrative Rules  
Workers' Compensation  
Relating to Medical Fee Schedule

May 27, 2025

1. Section 12-15-90, Hawaii Administrative Rules, is amended to read as follows:

**"§12-15-90 Workers' compensation medical fee schedule.** (a) Charges for medical services shall not exceed one hundred ten per cent of participating fees prescribed in the Medicare Resource Based Relative Value Scale System fee schedule (Medicare Fee Schedule) applicable to Hawaii or listed in exhibit A, located at the end of this chapter and made a part of this chapter, entitled "Workers' Compensation Supplemental Medical Fee Schedule", dated [~~January 1, 2018~~] January 1, 2026. The Medicare Fee Schedule in effect on January 1, 1995 shall be applicable through June 30, 1996. Beginning July 1, 1996 and each calendar year thereafter, the Medicare Fee Schedule in effect as of January 1 of that year shall be the effective fee schedule for that calendar year.

(b) If maximum allowable fees for medical services are listed in both the Medicare Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule, dated [~~January 1, 2018~~] January 1, 2026, located at the end of this chapter as exhibit A, charges shall not exceed the maximum allowable fees allowed under the Workers' Compensation Supplemental Medical Fee Schedule, dated [~~January 1, 2018~~] January 1, 2026, located at the end of this chapter as exhibit A.

(c) If the charges are not listed in the Medicare Fee Schedule or in the Workers' Compensation Supplemental Medical Fee Schedule, dated [~~January 1, 2018~~] January 1, 2026, located at the end of this

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

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

6. These amendments to Title 12, Chapter 15, Hawaii Administrative Rules, relating to the Hawaii Workers' Compensation Medical Fee Schedule 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 (date to be inserted upon adoption) and filed with the Office of the Lieutenant Governor.

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Director

APPROVED AS TO FORM:

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Deputy Attorney General

## EXHIBIT A

### Chapters 12-15 Hawaii Administrative Rules

# WORKERS' COMPENSATION SUPPLEMENTAL MEDICAL FEE SCHEDULE

January 1, 2026

The codes in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from the American Medical Association, the American Dental Association or the State Department of Labor and Industrial Relations.

The five character codes included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from 2025 Current Procedural Terminology (CPT®), copyright 2024 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians.

The responsibility for the content of the Workers' Compensation Supplemental Medical Fee Schedule is with DLIR and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in the Workers' Compensation Supplemental Medical Fee Schedule. Fee schedules and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of the Workers' Compensation Supplemental Medical Fee Schedule should refer to the most current CPT codes and descriptive terms. Applicable FARS/DFARS apply.

CPT is a registered trademark of the American Medical Association

The five character codes starting with the letter "D" included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from Current Dental Terminology 2025, copyright 2025 by the American Dental Association (ADA). CDT is developed by the ADA to achieve uniformity, consistency and accurate reporting of dental treatment.

## TABLE OF CONTENTS

<u>TITLE</u>	<u>CODES</u>	<u>PAGE</u>
<b>SURGERY</b>		
Integumentary System	10060-17004	A-4
Musculoskeletal System	20520-29916	A-4
Respiratory System	31231-32551	A-5
Cardiovascular System	35206-36620	A-5
Digestive System	45378-49651	A-5
Urinary System	51798	A-5
Nervous System	62362-64832	A-5
Eye and Ocular Adnexa	65205-67820	A-6
Auditory System	69200, 69210	A-6
Operating Microscope	69990	A-6
<b>RADIOLOGY</b>		
Diagnostic Radiology (Diagnostic Imaging)	70030-76377	A-6
Diagnostic Ultrasound	76512-76942	A-7
Radiologic Guidance	77001, 77012	A-7
Bone/Joint Studies	77073, 77080	A-7
Radiation Oncology	77290-77336	A-7
Nuclear Medicine	78306, 78452	A-7
<b>MEDICINE</b>		
Vaccines, Toxoids	90636-90746	A-7
Psychiatry	90791-90847	A-7
Biofeedback	90901	A-8
Gastroenterology	91110	A-8
Ophthalmology	92002-92310	A-8
Special Otorhinolaryngologic Services	92507-92611	A-8
Cardiovascular	93000-93325	A-8
Noninvasive Vascular Diagnostic Studies	93926-93976	A-8
Pulmonary	94010-94760	A-8
Neurology and Neuromuscular Procedures	95810-95972	A-8
Hydration, Therapeutic, Prophylactic, Diagnostic		
Injections and Infusions, and Chemotherapy and		
Other Highly Complex Drug or Highly Complex		
Biologic Agent Administration	96360-96376	A-8
Physical Medicine and Rehabilitation	97010-97760	A-9
Acupuncture	97810-97814	A-9
Special Services, Procedures and Reports	99000, 99053	A-9
Other Services and Procedures	99173	A-9

<u>TITLE</u>	<u>CODES</u>	<u>PAGE</u>
<b>DENTAL SERVICES</b>		
Diagnostic	D0120-D0330	A-9
Restorative	D2330-D2954	A-9
Endodontics	D3310	A-9
Prosthodontics, Removable	D5820	A-9
Implant Services	D6010-D6104	A-9
Prosthodontics, Fixed	D6245-D6750	A-10
Oral and Maxillofacial Surgery	D7140-D7210	A-10
Adjunctive General Services	D9310	A-10
<b>EVALUATION AND MANAGEMENT</b>		
Office or Other Outpatient Services	99202-99215	A-10
Hospital Inpatient and Observation Care Services	99232	A-10
Consultations	99242-99255	A-10
Emergency Department Services	99281-99285	A-10
Critical Care Services	99292	A-10
Case Management Services	99366-99368	A-10
Preventive Medicine Services	99395	A-10
Special Evaluation and Management Services	99456A, 99456B	A-11

## SURGERY

### Integumentary System

Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
10060	\$157.64	12005	\$268.32	13132	\$818.38
10061	\$275.03	12011	\$189.70	13160	\$980.01
10120	\$207.95	12013	\$209.90	14040	\$1,120.24
10121	\$389.06	12014	\$234.78	15004	\$478.26
11000	\$77.14	12031	\$365.59	15100	\$1,042.96
11043	\$311.92	12032	\$486.33	15101	\$227.04
11044	\$435.71	12034	\$472.91	15120	\$1,136.58
11602	\$309.48	12035	\$550.06	16000	\$93.91
11730	\$144.22	12041	\$352.17	16020	\$114.04
11740	\$73.79	12042	\$456.14	16025	\$201.24
11750	\$335.40	12044	\$533.29	16030	\$244.84
11760	\$315.28	12051	\$385.71	17003	\$11.57
12001	\$177.25	12052	\$432.67	17004	\$207.48
12002	\$188.55	13101	\$603.72		
12004	\$214.66	13121	\$630.55		

### Musculoskeletal System

20520	\$275.03	22849	\$1,565.01	25405	\$1,275.71
20525	\$741.23	22856	\$1,961.79	25447	\$1,021.81
20526	\$101.12	23120	\$725.01	25545	\$841.64
20550	\$80.50	23350	\$207.14	25605	\$828.44
20551	\$80.50	23405	\$765.14	25607	\$922.97
20552	\$73.79	28410	\$1,204.09	25608	\$1,094.27
20553	\$83.85	23412	\$1,203.42	25609	\$1,327.47
20600	\$77.14	23420	\$1,425.45	25628	\$925.74
20605	\$90.56	23430	\$1,056.51	25825	\$984.53
20610	\$103.97	23440	\$924.08	26020	\$677.53
20612	\$80.17	23500	\$287.71	26055	\$788.19
20900	\$653.33	23620	\$348.89	26075	\$423.77
20902	\$611.91	23650	\$415.90	26080	\$486.92
20930	\$230.30	23655	\$586.95	26115	\$708.95
20931	\$132.37	23700	\$241.74	26340	\$456.61
20936	\$224.28	24149	\$1,445.40	26350	\$1,026.32
20937	\$228.07	24305	\$714.34	26356	\$1,703.83
21320	\$402.48	24341	\$1,113.53	26410	\$811.67
22551	\$2,623.25	24342	\$1,044.47	26418	\$831.79
22552	\$575.17	24343	\$896.22	26426	\$768.16
22554	\$1,846.24	24359	\$882.10	26440	\$842.17
22558	\$2,143.21	24600	\$496.39	26445	\$789.26
22600	\$1,612.67	24665	\$811.72	26480	\$987.52
22612	\$2,015.75	24666	\$933.53	26540	\$942.47
22614	\$523.22	24685	\$807.82	26600	\$409.19
22630	\$1,947.78	25000	\$494.63	26720	\$292.03
22633	\$2,286.00	25111	\$440.34	26725	\$466.21
22634	\$589.95	25246	\$245.43	26727	\$670.80
22830	\$988.38	25260	\$910.33	26735	\$868.69
22840	\$975.65	25270	\$734.92	26750	\$258.26
22842	\$1,076.63	25290	\$594.49	26765	\$684.22
22845	\$1,072.27	25295	\$676.06	26770	\$368.94

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
26951	\$898.59	27786	\$403.11	29580	\$78.01
26952	\$873.10	27792	\$932.41	29581	\$115.57
27096	\$308.57	27810	\$572.21	29700	\$78.97
27130	\$2,049.29	27814	\$1,116.88	29806	\$1,509.30
27216	\$1,306.30	27828	\$1,677.54	29807	\$1,472.41
27227	\$2,020.01	27840	\$479.19	29822	\$751.30
27236	\$1,460.79	28090	\$585.57	29823	\$895.52
27245	\$1,843.43	28122	\$769.79	29824	\$859.14
27380	\$774.64	28300	\$801.64	29825	\$747.56
27385	\$811.67	28400	\$303.94	29826	\$297.00
27427	\$872.96	28415	\$1,390.09	29827	\$1,517.72
27446	\$1,412.69	28475	\$324.93	29828	\$1,304.71
27447	\$2,190.16	28485	\$691.72	29838	\$754.47
27486	\$1,715.47	28510	\$154.60	29846	\$665.85
27487	\$2,259.18	28725	\$960.18	29848	\$644.78
27506	\$1,891.66	28730	\$912.06	29867	\$1,623.86
27524	\$1,069.93	29065	\$140.87	29873	\$686.88
27530	\$482.72	29075	\$127.45	29874	\$700.13
27535	\$1,157.13	29105	\$127.45	29875	\$670.75
27536	\$1,452.54	29125	\$100.62	29876	\$832.92
27570	\$198.82	29130	\$60.37	29877	\$885.46
27625	\$713.94	29200	\$37.76	29879	\$942.47
27650	\$972.66	29240	\$43.06	29880	\$960.01
27658	\$463.51	29260	\$40.26	29881	\$896.85
27680	\$562.20	29280	\$39.98	29882	\$929.52
27687	\$562.38	29405	\$120.74	29884	\$788.02
27691	\$923.08	29425	\$124.10	29888	\$1,401.97
27695	\$591.50	29515	\$103.97	29898	\$746.85
27698	\$842.56	29520	\$45.70	29914	\$1,267.98
27759	\$1,301.35	29530	\$40.92	29915	\$1,295.83
27760	\$427.48	29540	\$37.38	29916	\$1,294.29
27766	\$812.38	29550	\$29.30		

### Respiratory System

31231	\$295.15	31575	\$160.82	32551	\$187.59
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### Cardiovascular System

35206	\$930.99	36246	\$1,162.00	36430	\$52.16
35207	\$962.38	36415	\$8.80	36620	\$60.85

### Digestive System

45378	\$516.23	49507	\$708.19	49650	\$528.36
49505	\$670.38	49520	\$774.58	49651	\$672.45

### Urinary System

51798	\$25.86
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### Nervous System

62362	\$513.49	63042	\$1,654.98	64405	\$129.38
62368	\$70.76	63045	\$1,545.83	64415	\$153.32
62369	\$154.95	63047	\$1,560.24	64450	\$147.58
62370	\$162.36	63048	\$301.63	64455	\$60.97
63030	\$1,368.43	63685	\$463.60	64479	\$336.86
63035	\$271.67	63688	\$453.26	64480	\$167.60

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
64483	\$345.46	64616	\$153.36	64708	\$601.10
64484	\$187.82	64633	\$566.26	64718	\$805.79
64491	\$120.46	64634	\$326.61	64721	\$607.07
64492	\$121.27	64635	\$571.71	64772	\$691.03
64495	\$112.24	64636	\$304.29	64831	\$906.97
64510	\$182.96	64640	\$305.36	64832	\$410.15
64520	\$275.85	64646	\$194.93		

#### Eye and Ocular Adnexa

65205	\$80.50	65222	\$100.62	67820	\$62.56
65210	\$97.27	67036	\$1,125.88		

#### Auditory System

69200	\$191.18	69210	\$73.79
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#### Operating Microscope

69990	\$305.21
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### RADIOLOGY

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

#### Diagnostic Radiology (Diagnostic Imaging)

70030	\$47.01	71120	\$53.66	72192	\$405.83
70100	\$55.85	71250	\$425.96	72193	\$506.45
70110	\$63.06	71260	\$523.22	72195	\$670.30
70140	\$46.96	71275	\$472.11	72197	\$732.21
70150	\$68.30	71550	\$669.54	72200	\$47.74
70160	\$55.22	72020	\$36.89	72202	\$56.57
70200	\$69.67	72040	\$57.00	72220	\$46.96
70220	\$63.73	72050	\$78.05	72295	\$385.71
70250	\$53.66	72052	\$97.27	73000	\$46.64
70260	\$77.14	72070	\$53.66	73010	\$43.60
70330	\$77.45	72072	\$60.37	73020	\$36.89
70355	\$40.25	72074	\$70.43	73030	\$49.91
70360	\$45.34	72080	\$57.02	73040	\$167.70
70450	\$345.46	72100	\$57.61	73050	\$54.08
70470	\$529.93	72110	\$80.50	73060	\$46.96
70480	\$368.39	72114	\$103.97	73070	\$42.07
70486	\$221.80	72120	\$73.79	73080	\$50.31
70491	\$486.33	72125	\$409.19	73090	\$43.60
70496	\$445.95	72128	\$409.19	73100	\$48.99
70498	\$446.10	72131	\$409.19	73110	\$59.47
70540	\$656.55	72132	\$523.22	73115	\$198.32
70543	\$731.69	72141	\$382.04	73120	\$45.02
70544	\$660.51	72146	\$397.51	73130	\$53.21
70547	\$740.74	72148	\$396.36	73200	\$382.36
70551	\$386.24	72149	\$505.81	73201	\$479.62
70553	\$713.21	72156	\$718.45	73218	\$656.66
71100	\$52.92	72157	\$719.04	73220	\$817.48
71101	\$60.72	72158	\$714.37	73221	\$391.01
71110	\$63.73	72170	\$43.60	73222	\$553.61
71111	\$80.50	72190	\$60.83	73223	\$790.22

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
73525	\$192.63	73650	\$41.35	74150	\$405.83
73560	\$49.61	73660	\$42.11	74160	\$533.29
73562	\$59.09	73700	\$382.36	74175	\$467.07
73564	\$67.54	73701	\$479.62	74176	\$385.14
73565	\$58.59	73706	\$465.16	74178	\$636.81
73580	\$198.41	73718	\$567.99	74181	\$669.89
73590	\$45.74	73720	\$730.42	74183	\$733.39
73600	\$46.67	73721	\$390.63	75635	\$849.89
73610	\$53.23	73722	\$554.71	76000	\$72.53
73620	\$40.78	73723	\$788.80	76376	\$42.03
73630	\$49.75	74022	\$71.86	76377	\$105.38

### Diagnostic Ultrasound

76512	\$164.55	76775	\$150.93	76881	\$151.10
76514	\$19.06	76815	\$116.35	76882	\$78.44
76700	\$197.89	76856	\$167.70	76937	\$56.47
76705	\$147.58	76857	\$84.06	76942	\$105.31
76770	\$187.82	76870	\$167.70		

### Radiologic Guidance

77001	\$148.02	77012	\$274.25
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### Bone/Joint Studies

77073	\$65.10	77080	\$71.88
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### Radiation Oncology

77290	\$674.15	77334	\$264.97	77336	\$140.87
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### Nuclear Medicine

78306	\$355.52	78452	\$706.42
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## MEDICINE

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

### Vaccines, Toxoids

90636	\$99.07	90715	\$46.96	90746	\$63.32
90714	\$21.90	90732	\$86.62		

### Psychiatry

90791	\$189.93	90834	\$119.19	90847	\$151.70
90792	\$213.05				

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
<b>Biofeedback</b>					
90901	\$53.27				
<b>Gastroenterology</b>					
91110	\$1,217.70				
<b>Ophthalmology</b>					
92002	\$110.68	92025	\$48.21	92134	\$52.21
92004	\$201.24	92071	\$45.43	92136	\$115.85
92012	\$110.68	92082	\$62.57	92250	\$86.01
92014	\$160.99	92083	\$83.46	92286	\$49.17
92015	\$23.50	92132	\$39.75	92310	\$78.69
92020	\$42.42	92133	\$47.73		
<b>Special Otorhinolaryngologic Services</b>					
92507	\$97.37	92542	\$67.08	92567	\$26.83
92526	\$106.68	92548	\$140.87	92610	\$106.71
92541	\$69.74	92557	\$63.40	92611	\$107.45
<b>Cardiovascular</b>					
93000	\$33.45	93017	\$83.85	93282	\$97.51
93005	\$20.12	93018	\$20.12	93306	\$298.79
93010	\$11.21	93042	\$10.06	93308	\$137.15
93015	\$135.82	93280	\$96.61	93325	\$80.50
93016	\$26.86				
<b>Noninvasive Vascular Diagnostic Studies</b>					
93926	\$171.42	93971	\$158.92	93976	\$250.52
<b>Pulmonary</b>					
94010	\$46.80	94667	\$35.44	94729	\$69.46
94060	\$80.14	94726	\$69.18	94760	\$6.71
94640	\$24.64	94727	\$54.02		
<b>Neurology and Neuromuscular Procedures</b>					
95810	\$821.21	95908	\$157.64	95913	\$462.85
95861	\$224.72	95909	\$214.66	95930	\$172.20
95885	\$87.20	95910	\$285.09	95971	\$61.93
95887	\$107.33	95911	\$342.11	95972	\$72.10
95907	\$147.58	95912	\$399.13		
<b>Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration</b>					
96360	\$92.58	96366	\$24.00	96376	\$20.77
96361	\$24.07	96367	\$39.97		
96365	\$91.06	96375	\$29.03		

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
<b>Physical Medicine and Rehabilitation</b>					
97010	\$5.04	97116	\$36.89	97545	\$119.69
97012	\$20.12	97140	\$36.89	97546	\$51.17
97014	\$16.77	97150	\$20.67	97605	\$51.27
97016	\$24.15	97530	\$46.96	97606	\$61.71
97032	\$23.48	97535	\$43.90	97750	\$40.25
97110	\$43.60	97537	\$37.31	97760	\$56.08
97112	\$43.60	97542	\$38.34		
<b>Acupuncture</b>					
97810	\$52.39	97811	\$35.31	97814	\$39.55
<b>Special Services, Procedures and Reports</b>					
99000	\$8.17	99053	\$70.50		
<b>Other Services and Procedures</b>					
99173	\$3.42				
<b>DENTAL SERVICES</b>					
<b>Diagnostic</b>					
D0120	\$41.81	D0210	\$94.66	D0330	\$83.69
D0140	\$52.13	D0220	\$19.29		
D0150	\$57.69	D0230	\$15.07		
<b>Restorative</b>					
D2330	\$84.86	D2335	\$183.74	D2950	\$179.19
D2331	\$127.28	D2740	\$837.28	D2954	\$204.42
<b>Endodontics</b>					
D3310	\$412.71				
<b>Prosthodontics, Removable</b>					
D5820	\$395.17				
<b>Implant Services</b>					
D6010	\$1,712.90	D6059	\$1,131.93		
D6057	\$566.15	D6104	\$296.69		

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
<b>Prosthodontics, Fixed</b>					
D6245	\$756.50	D6750	\$786.07		
<b>Oral &amp; Maxillofacial Surgery</b>					
D7140	\$92.58	D7210	\$198.03		
<b>Adjunctive General Services</b>					
D9310	\$91.08				
<b>EVALUATION AND MANAGEMENT</b>					
<b>Office or Other Outpatient Services</b>					
99202	\$114.00	99211	\$37.07	99215	\$212.24
99203	\$165.55	99212	\$66.74		
99204	\$245.01	99213	\$107.83		
99205	\$304.83	99214	\$158.77		
<b>Hospital Inpatient and Observation Care Services</b>					
99232	\$124.79				
<b>Consultations</b>					
99242	\$99.81	99245	\$244.45	99254	\$183.81
99243	\$143.46	99252	\$87.99	99255	\$232.77
99244	\$194.76	99253	\$127.63		
<b>Emergency Department Services</b>					
99281	\$50.31	99283	\$133.00	99285	\$322.51
99282	\$90.19	99284	\$225.58		
<b>Critical Care Services</b>					
99292	\$147.36				
<b>Case Management Services</b>					
99366	\$65.67	99367	\$85.93	99368	\$55.55
<b>Preventive Medicine Services</b>					
99395	\$116.14				

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Code	Maximum Fee	Code	Maximum Fee	Code	Maximum Fee
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### Special Evaluation and Management Services

Code	Description	Maximum Fee
99456A*	Complex consultation pursuant to Section 386-79, HRS - work related or medical disability examination by other than the treating physician that includes: <ul style="list-style-type: none"> <li>▪ completion of a medical history commensurate with the patient's condition;</li> <li>▪ performance of an examination commensurate with the patient's condition;</li> <li>▪ formulation of a diagnosis, assessment of capabilities and stability, and calculation of impairment;</li> <li>▪ development of future medical treatment plan;</li> <li>▪ completion of necessary documentation/certificates and report; and</li> <li>▪ review of records relating to the patient's condition.</li> </ul>	
	First hour .....	\$207.25
99456B*	Each additional 30 minute increment (an increment must be at least 30 minutes.).....	\$103.63

\*Department of Labor Code

**Bundled Services:** Certain codes, such as telephone calls, are considered by the Health Care Financing Administration (HCFA) to be "bundled" services. Bundled services are not payable, nor should they be billed, when performed incident to or in conjunction with another service even if the other service is performed on a different day. When services that are designated as bundled are denied, the physician may not collect from the patient.

## **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 (HRS)**

1. Update on the Business Revitalization Taskforce's most current meeting pursuant to Act 142 (Sessions Law Hawaii 2024, Senate Bill 2974 Relating to Economic Development) – Mandates that DBEDT establish a task force in order to identify methods to improve Hawaii's general economic competitiveness and business climate, including the mitigations of regulatory and tax burdens – *No Attachment*
2. Update and Discussion on Becker Communications Inc., regarding the Board's Small Business Outreach – *No Attachment*
3. Presentations to Industry Associations – *No Attachment*
4. Staff's Small Business Outreach – *No Attachment*

## **VI. Legislative Matters**

### **A. Update and Action on the following:**

- 1. House Bill 1406 HD1 SD2 CD1 - Relating to Government Procedures** – Establishes the Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force to identify actions taken, challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental development permit processes; and appropriates funds

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



GOV. MSG. NO. 1233

EXECUTIVE CHAMBERS  
KE KE'ENA O KE KIA'ĀINA

May 29, 2025

The Honorable Ronald D. Kouchi  
President of the Senate,  
and Members of the Senate  
Thirty-Third State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Nadine Nakamura  
Speaker, and Members of the  
House of Representatives  
Thirty-Third State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Aloha President Kouchi, Speaker Nakamura, and Members of the Legislature:

This is to inform you that on May 29, 2025, the following bill was signed into law:

H.B. NO. 1406, H.D. 1,  
S.D. 2, C.D. 1

RELATING TO GOVERNMENT PROCEDURES.  
**ACT 133**

Mahalo,

A handwritten signature in black ink that reads "Josh Green M.D.".

Josh Green, M.D.  
Governor, State of Hawai'i

Approved by the Governor

on MAY 29 2025

HOUSE OF REPRESENTATIVES  
THIRTY-THIRD LEGISLATURE, 2025  
STATE OF HAWAII

**ACT 133**  
**H.B. NO.** 1406  
H.D. 1  
S.D. 2  
C.D. 1

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## A BILL FOR AN ACT

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RELATING TO GOVERNMENT PROCEDURES.

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

1       SECTION 1. (a) There shall be established within the  
2 house of representatives the Simplifying Permitting for Enhanced  
3 Economic Development (SPEED) task force to identify actions  
4 taken, challenges encountered, and legislative measures  
5 necessary to facilitate, expedite, and coordinate state and  
6 intergovernmental development permit processes.

7       (b) The speaker of the house of representatives shall  
8 appoint one member of the house of representatives to serve as  
9 chairperson of the task force.

10       (c) The membership of the task force shall include  
11 representatives of the following bodies, to be designated by the  
12 body's head or, in the case of a board or commission, by the  
13 chairperson:

14       (1) The office of the governor;

15       (2) The Hawaii state senate;

16       (3) The department of business, economic development, and  
17 tourism;



- 1           (4) The commission on water resource management of the  
2           department of land and natural resources;  
3           (5) The Hawaii community development authority;  
4           (6) The Hawaii housing finance and development  
5           corporation;  
6           (7) The land use commission;  
7           (8) The office of planning and sustainable development;  
8           (9) The Hawaii state energy office;  
9           (10) The public utilities commission;  
10          (11) The small business regulatory review board;  
11          (12) The state historic preservation division of the  
12          department of land and natural resources;  
13          (13) The wastewater branch of the department of health; and  
14          (14) The state building code council of the department of  
15          accounting and general services.

16          (d) The task force shall invite the following individuals  
17 to participate in the task force:

- 18          (1) Representatives from each of the offices of the  
19          State's Congressional delegation;  
20          (2) Representatives from each of the county planning and  
21          permitting departments; and



1 (3) An individual having knowledge, experience, and  
2 expertise in the area of labor.

3 (e) Members shall be designated no later than August 1,  
4 2025.

5 (f) The task force shall hold its first meeting no later  
6 than sixty days after the finalization of its members or  
7 October 1, 2025, whichever is earlier.

8 (g) The members of the task force shall serve without  
9 compensation for their service on the task force.

10 (h) The task force shall cease to exist on June 30, 2027.

11 SECTION 2. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$100,000 or so much  
13 thereof as may be necessary for fiscal year 2025-2026 and the  
14 same sum or so much thereof as may be necessary for fiscal year  
15 2026-2027 for the staffing and administrative costs of the  
16 Simplifying Permitting for Enhanced Economic Development (SPEED)  
17 task force.

18 The sums appropriated shall be expended by the office of  
19 planning and sustainable development for the purposes of this  
20 Act.

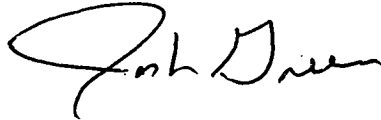


1       SECTION 3. This Act shall take effect upon its approval;  
2 provided that section 2 shall take effect on July 1, 2025.



H.B. NO. 1406  
H.D. 1  
S.D. 2  
C.D. 1

APPROVED this 29th day of May, 2025

A handwritten signature in black ink, appearing to read "Josh Green". The signature is fluid and cursive, with a large initial "J" and a stylized "G".

GOVERNOR OF THE STATE OF HAWAII

HB No. 1406, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2025  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Third Legislature of the State of Hawaii, Regular Session of 2025.

A handwritten signature in black ink, appearing to read "Nadine K. Nakamura", with a long horizontal flourish extending to the right.

Nadine K. Nakamura  
Speaker  
House of Representatives

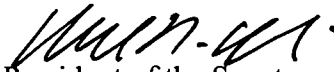
A handwritten signature in black ink, appearing to read "Brian L. Takeshita", with a horizontal flourish.


Brian L. Takeshita  
Chief Clerk  
House of Representatives

**THE SENATE OF THE STATE OF HAWAI‘I**

Date: April 30, 2025  
Honolulu, Hawai‘i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate  
of the Thirty-Third Legislature of the State of Hawai‘i, Regular Session of 2025.

  
President of the Senate

  
Clerk of the Senate