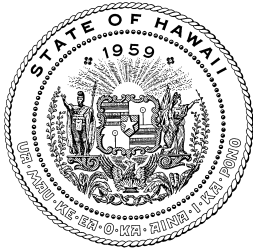


**Small Business Regulatory Review Board Meeting**

**March 20, 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, March 20, 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 calling 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, March 19, 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*

**Mary Albitz**  
*Vice Chairperson*  
*Maui*

**Sanford Morioka**  
*2nd Vice Chairperson*  
*O'ahu*

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

**Garth Yamanaka**  
*Hawai'i*

**Robert Cundiff**  
*O'ahu*

**Tessa Gomes**  
*O'ahu*

**Nikki Ige**  
*Kaua'i*

**Dr. Jennifer Salisbury**  
*Maui*

**Mark Ritchie for**  
*Director, DBEDT*  
*Voting Ex Officio*

**I. Call to Order**

**II. Approval of February 20, 2025 Meeting Minutes**

**III. Old Business**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Rules and Regulations Relating to the Use of Parks and Park Facilities by Peddlers and Concessionaires, Part VI – **Rules and Regulations Governing the Operation of Concessionaires at the Spouting Horn Park**, promulgated by County of Kauai, Department of Parks and Recreation – *Discussion Leader – Nicolle Ige*

**IV. New Business**

- A. Discussion and Action on the Small Business Impact Statement and Proposed New Hawaii Administrative Rule (HAR) Title 4 Chapter 159, **Agricultural Enterprises Lands Program Rules**, promulgated by Department of Agriculture – *Discussion Leader – Nicolle Ige*

**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 on the following:
1. **House Bill 1024 and Senate Bill 1343 – 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
  2. Governor’s Message 617 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Nicolle Ige**, for a term to expire June 30, 2028
  3. Governor’s Message 513 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **James Lee**, for a term to expire June 30, 2028
  4. Governor’s Message 514 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Jennifer Salisbury**, for a term to expire June 30, 2028

**VII. Next Meeting:** Thursday, April 17, 2025 at 10:00 a.m., held via Zoom and at 250 South Hotel Street – No. 1 Capitol District Building, Conference Room 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 February 20, 2025 Meeting Minutes**

## Small Business Regulatory Review Board

### MEETING MINUTES - **DRAFT**

February 20, 2025

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

**MEMBERS PRESENT:**

- Jonathan Shick, Chair
- Mark Ritchie
- Robert Cundiff
- Nikki Ige
- Garth Yamanaka
- James (Kimo) Lee

**ABSENT MEMBERS:**

- Mary Albitz, Vice Chair
- Jennifer Salisbury
- Tessa Gomes
- Sanford Morioka,  
Second Vice Chair

**STAFF:** DBEDT

Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL of January 16, 2025 MINUTES**

Mr. Cundiff motioned to approve the January 16, 2025 meeting minutes, as is. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **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

Mr. Yamanaka stated that he attended the past two meetings of the taskforce that entailed an understanding of what its purview is and what steps are needed to accomplish the required goals. At the most recent meeting Permitted Interaction Groups (PIG) were formed. Mr. Yamanaka was placed in the Regulation group. The initial goal is to gather feedback from networks and businesses about what regulations are most impactful. A basic survey was created, and Mr. Yamanaka is asking board members to share it with their networks. Mr. Yamanaka is concerned about the time constraint but is still hoping to create a substantial report to Legislature.

Mr. Ritchie raises concerns about the accuracy and specificity of rankings used to evaluate Hawaii's business climate. He suggests the committee should delve deeper into understanding the metrics used by ranking entities like CNBC to determine Hawaii's 50<sup>th</sup> place ranking. Mr. Yamanaka emphasizes the need to identify specific metrics contributing to the low ranking and then develop strategies to improve them, rather than simply acknowledging the existing problem. Mr. Ritchie notes that focusing on specific metrics and developing strategies to address them would be more effective than general discussions.

Mr. Cundiff suggests using the board's website and email list to distribute the survey for feedback. He also discusses the role of the board in addressing this issue, considering if they need to expand the scope or resources. Mr. Cundiff highlights the existing role of the board in providing support for businesses facing regulatory issues and questions if there is an overlap in the work being done by the Permitted Interaction Groups (PIG).

Ms. Ige emphasizes the importance of identifying the real issues and focusing on solutions that address those issues, rather than pursuing general improvements. She adds that the focus needs to be on understanding the specific data and metrics used to rank states for business, as well as the underlying reasons behind those rankings. The survey mentioned aims to gather priorities and provide guidance on areas to focus on, Ms. Ige emphasizes the need to delve deeper and understand the reasons behind the rankings to ensure effective decision-making.

Mr. Yamanaka encourages board members to share any necessary information or questions and offers to share it with the taskforce Chair. He also invited any of the board members interested in attending the next meeting to let him know and he will request an invite.

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

Ms. Ariola mentioned that the January 30, 2025 meeting was cancelled. She will reach out to Becker Communications, Inc. to see if a social media post can be created for all platforms to include the survey link mentioned by Mr. Yamanaka.

3. Presentations to Industry Associations

Ms. Ige is attending a Chamber Pau Hana at the Community College this month.

4. Staff's Small Business Outreach

Ms. Ariola has no update.

#### IV. LEGISLATIVE MATTERS

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

1. House Bill 1024 and Senate Bill 1343 SD1 – 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

There has been no activity on House Bill 1024. Senate Bill 1343 SD1 has been scheduled for decision making with the Judiciary Committee on February 20, 2025 at 10:01 a.m.

2. Governor’s Message 513 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, James Lee, for a term to expire June 30, 2028

Mr. Lee indicated that Senator DeCoite’s office contacted him to schedule an interview.

3. Governor’s Message 514 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Jennifer Salisbury, for a term to expire June 30, 2028

There has been no activity on GM 514.

4. Governor’s Message 617 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Nicolle Ige, for a term to expire June 30, 2028

Ms. Ige indicated that Senator DeCoite’s office contacted her to schedule an interview.

- V. NEXT MEETING** – Thursday, March 20, 2025 at 10:00 a.m., via Zoom and in Conference room 436 at No. 1 Capitol District Building, 250 S. Hotel Street, Honolulu, HI 96813.

- VI. ADJOURNMENT** – Ms. Ige motioned to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 10:34 a.m.



### **III. Old Business**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Rules and Regulations to the Use of Parks and Park Facilities by Peddlers and Concessionaires, Part VI – Rules and Regulations Governing the Operation of Concessionaires at the Spouting Horn Park, promulgated by County of Kauai, Department of Parks and Recreation**

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

**Department or Agency:** County of Kauai, Department of Parks and Recreation

**Administrative Rule Title and Chapter:** Operation of Concessionaires at the Spouting Horn Park

**Chapter Name:** N/A

**Contact Person/Title:** Darcie Agaran, Executive Secretary to the Director

**Phone Number:** 808-241-4456

**E-mail Address:** dagaran@kauai.gov      **Date:** \_\_\_\_\_

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

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

Yes       No

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

**I. Rule Description:**     **New**     **Repeal**     **Amendment**     **Compilation**

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

**Yes**       **No** (If “No,” no need to submit this form.)

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

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

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

Yes       No

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

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

Yes       No

(If “Yes” no need to submit this form.)

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

While these rules are considered "new rules", most of these conditions were previously in effect for previous Concessionaires, since they were in the Concession Bid document, which... (see attachment)

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

There were none. There was one member of the public who attended the public hearing on the proposed rules on March 6, 2025; however, she had no comments.

**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.**

The Notice of Public Hearing was published in The Garden Island Newspaper and upon request, sent via email to a former Concessionaire at the Spouting Horn Park.

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

There were no comments received from the public nor small businesses.

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

As there were no comments from the public nor small businesses, the Director announced his decision to recommend approval of the rules.

**4. The number of persons who:**

(i) Attended the public hearing: 1

(ii) Testified at the hearing: 0

(iii) Submitted written comments: 0

**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.

There was no request made to change the rules.

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>

## Attachment

### A. Statement of the Topic of the Proposed Rule:

The Department proposes to establish uniform regulations for the operation of Concessionaires at the Spouting Horn Park and uniform processes to acquire a Contract to operate a Concession at the Spouting Horn Park.

### V. ...included the Instructions to Bidders, that became part of their contracts.

The changes, which were reviewed by the Attorney General's Office, confirmed that they were reasonable and non-substantive. In response to Mr. Ritchie's inquiry, Ms. Yonashiro explained that the analysis of the rules regarding reasonable accommodations was not changed by the rule modifications but are instead meant to provide more understanding of the responsibilities and processes.

Regarding the question about the difference between independent contractors and employees posed by Vice Chair Albitz, Ms. Yonashiro responded that the change in the definitions were merely for clarification purposes and are very basic.

Mr. Ritchie motioned to pass the rules on to the Governor for adoption. Dr. Salisbury seconded the motion, and the Board members unanimously agreed.

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

##### **A. Discussion and Action on the Small Business Impact Statement and Proposed New Rules and Regulations Relating to the Use of Parks and Park Facilities by Peddlers and Concessionaires, Part VI – Rules and Regulations Governing the Operation of Concessionaires at the Spouting Horn Park, promulgated by County of Kauai – Department of Parks and Recreation**

Mr. Patrick Porter, Director of Parks and Recreation for the County of Kauai, explained that the tourist attraction, Spouting Horn Park located at Kauai's south shore, previously maintained concession stands. These stands were demolished about six or seven years ago due to their poor condition with the intent to rebuild a brand new facility that was completed just prior to the COVID shut down.

Subsequently, City Council for Parks & Recreation recommended that rules and regulations be created for the concessionaires at the Spouting Horn Park as there were only County Codes governing this attraction. As a result, the proposed new administrative rules generally follow the conditions in the Code.

Chair Shick thanked Mr. Porter for bringing these proposed rules to the Board and acknowledged that the content of the rules were transferred from the Kauai Code to administrative rules.

Mr. Morioka motioned to pass the rules on to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

#### **V. ADMINISTRATIVE MATTERS**

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

**COUNTY OF KAUA‘I DEPARTMENT OF PARKS AND RECREATION  
RULES AND REGULATIONS RELATING TO THE USE OF PARKS AND PARK  
FACILITIES BY PEDDLERS AND CONCESSIONAIRES**

**PART VI – RULES AND REGULATIONS GOVERNING THE OPERATION OF  
CONCESSIONAIRES AT THE SPOUTING HORN PARK**

Under and by virtue of the authority conferred upon him by Chapter 91 of the Hawai‘i Revised Statutes (HRS), Chapter 23, Article 3 of the Kaua‘i County Code 1987, as amended (KCC), and every other enabling power, the Director of Parks and Recreation of the County of Kaua‘i does hereby prescribe the following:

**Part I. General Provisions**

**A. Applicability and Scope.**

These rules and regulations govern Concessionaire operations at the Spouting Horn Park, which are under the jurisdiction of the County of Kaua‘i, Department of Parks and Recreation.

**B. Purpose.**

Under the authority of Chapter 23, Article 3 of the Kaua‘i County Code 1987, as amended, and in accordance with Chapter 102 of the Hawai‘i Revised Statutes, these rules establish uniform regulations for the operation of Concessionaires at the Spouting Horn Park, and uniform processes to acquire a Contract to operate a Concession at the Spouting Horn Park.

**C. Definitions.**

Whenever used in these rules and regulations, the terms below have the following meanings:

“Concession” has the same meaning as in Section 23-3.2 of the Kaua‘i County Code.

“Concession stand premises” means the original individual Concession stand footprint; plus half the distance to the adjacent Concession stand(s) to the sides and back; and the area from the side of the Concession stand to the side roll-up gate, if any; plus any extension of the stand, whether temporary or permanent, not to exceed 12” (inches) outside the front of the Concession stand.

“Concession stands” has the same meaning as in Section 23-3.2 of the Kaua‘i County Code.

“Concessionaire” has the same meaning as in Section 23-3.2 of the Kaua‘i County Code.

“Contract” means the written agreement, including the Invitation for Concession Bids, Instructions to Bidders, Exhibits, Concessionaire’s Bid Proposal, and any amendments, between the County and the Concessionaire, for a Concession.

“County” means the County of Kaua‘i.

“Department” means the Department of Parks and Recreation of the County of Kaua‘i.

“Finance Director” means the Director of Finance of the County of Kaua‘i, or their authorized representative.

“Invitation for Concession Bids” means all documents, whether attached or incorporated by reference, used for soliciting bids for Concession stands at the Spouting Horn Park.

“Parks Director” means the Director of Parks and Recreation of the County of Kaua‘i, or their authorized representative.

“These Rules” means the Rules and Regulations Governing the Operation of Concessionaires at the Spouting Horn Park.

## **Part II. Concession Procedures and Fees**

### **A. Bidding.**

1. Bidding procedures shall comply with the requirements of Chapter 102 of the Hawai‘i Revised Statutes.
2. Prospective bidders shall:
  - a. Not less than six calendar days prior to the day designated for opening bids, file a Notice of Intention to Bid and Application to Bid with the Department in accordance with the Invitation for Concession Bids; and
  - b. Meet the minimum qualifications set forth in the Invitation for Concession Bids.
    - i. The Finance Director may investigate the financial status, experience, and records of each prospective bidder, and require additional evidence and information from any prospective bidder, to determine satisfaction of minimum qualifications.
    - ii. The Finance Director shall refuse to receive or consider any bid proposal submitted by a prospective bidder who fails to meet the minimum qualifications or fails to timely submit additional evidence and information requested by the Finance Director. Prior to rejecting a prospective bidder, the following procedures apply:
      - a) The Finance Director shall provide the prospective bidder, in writing, the reason or reasons why the prospective bidder does not qualify to bid;
      - b) The prospective bidder will be allowed to provide a written explanation or further documentation, or both, as proof of having met the minimum qualifications, due within ten calendar days of receiving the Finance Director’s reasons; and
      - c) Within three business days of receipt of the prospective bidder’s written explanation or further documentation, or both, the Finance Director shall notify the prospective bidder in writing of the final decision on whether the prospective bidder has met the minimum qualifications to bid. The Finance Director’s decision is a final decision.

3. Bid Deposits.
  - a. Each bid shall be accompanied by a deposit as required by Section 102-6 of the Hawai‘i Revised Statutes.
  - b. The Parks Director shall identify the specific requirements of the bid deposit in the Invitation for Concession Bids.
4. In accordance with Section 102-5 of the Hawai‘i Revised Statutes, the Finance Director may cancel or reject any and all bids, in whole or in part, or waive any defects, when in the Finance Director’s opinion, such cancellation, rejection, or waiver will be in the best interest of the County.
  - a. Reasons that are “in the best interest of the County” include but are not limited to the following:
    - i. Cancellation or rejection prior to opening bids:
      - a) The County no longer requires the Concession Contracts;
      - b) The Department’s proposed amendments to the Invitation for Concession Bids would be of a magnitude that a new Invitation for Concession Bids is desirable; or
      - c) A determination by the Finance Director that a cancellation is in the public interest.
    - ii. Cancellation, rejection, or waiver after opening bids but prior to award:
      - a) The Concession Contracts are no longer required;
      - b) Modification, addition, or deletion of specifications is needed;
      - c) There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
      - d) A determination by the Finance Director that a cancellation, rejection, or waiver is in the public interest.
  - b. A notice of cancellation, rejection, or waiver shall be posted, and the notice shall include a brief explanation of the reason for cancellation, rejection, or waiver; and where appropriate, an explanation that an opportunity will be given to compete on any re-solicitation.

**B. Advertising, Readvertising, and Rebidding.**

1. Each initial Invitation for Concession Bids for five-year contracts shall include all eight Concession stands.
2. All advertisements for bid shall comply with the requirements of Section 102-4 of the Hawai‘i Revised Statutes.
3. If all eight Concession stands are not awarded through the bidding process, the remaining Concession stands shall be readvertised for bid under the same terms and same duration of the current five-year term and any allowed Contract extension.
4. If any Contract is relinquished or cancelled before the expiration of the Contract term, the Department shall readvertise and conduct new bidding for the resulting vacancy for the duration of the existing five-year term and any allowed Contract extension.



5. If any Concession stand becomes vacant during the two-year extension period, the Department shall readvertise the stand for bid for the duration of the Contract extension.
6. Existing Concessionaires may bid on Concession stands that become available during their Contract term, if it is determined by the Finance Director to not be to the detriment of the County. However, any Concessionaire who is awarded another Concession stand under this section must relinquish their original Concession stand.
  - a. In making this determination, the Finance Director shall consider the existing Concessionaire's current monthly rent versus their bid amount.

**C. Upset Bid Price.**

1. Bidders shall bid the dollar amount they propose to pay as monthly rent.
2. All bids shall be subject to an upset bid price which shall be in the Invitation for Concession Bids.
3. The upset bid price shall be determined by the Parks Director, in consultation with the Finance Director, and shall not be less than three thousand five hundred dollars (\$3,500.00) per month for each individual Concession stand, except for the following:
  - a. If a Concession stand is readvertised for bid under Part II, Section B.4. or Part II, Section B.5. of these Rules, the upset bid price shall not be less than the lowest monthly concession rent in place at the time of readvertisement.
4. The determination of the upset bid price shall include consideration of the following:
  - a. The average of all Concessionaire bids received by the County, including non-awarded bids, from the most recent regular solicitation for 5-year Concession contracts for the Concession stands at the Spouting Horn Park.
  - b. The average Concessionaire monthly rent from the most recent regular solicitation for 5-year Concession contracts for the Concession stands at the Spouting Horn Park.
  - c. The cost to the County of maintenance, upkeep, and improvements for the concession facility at the Spouting Horn Park.
  - d. The lease price for similar retail vendor facilities on Kauai, if any, with due consideration for the terms and conditions of a Concessionaire contract at the Spouting Horn Park, including the uniqueness of a retail space within the Spouting Horn Park that includes dedicated Concession stands.

**D. Contracts.**

1. All Contracts shall be processed and awarded in accordance with the requirements of Chapter 102 of the Hawai'i Revised Statutes.
2. The Finance Director shall award a Contract, if any, to the responsible bidder proposing to pay the highest monthly rent, if such bidder qualifies by providing the performance bond as required by Section 102-11 of the Hawai'i Revised Statutes and proof of insurance as required by Part II, Section F. of these Rules.
  - a. Contracts shall be awarded in an ascending order until all Concession stands have been awarded, starting with Concession stand 1 and ending with Concession stand 8.
  - b. A successful bidder awarded a Concession stand shall not be considered for any additional stand award.

- c. In the event of a tie bid or bids, the Contract award shall be made by drawing lots at the place, time, and method prescribed by the Finance Director.
3. Each Contract term shall be a period of five years, beginning on the date designated by the County in its "Notice to Proceed," and expiring automatically after five years, without notice to the Concessionaire.
  - a. The Finance Director may extend the term of a Contract for up to two additional years, on a month-to-month basis or for other terms or periods, if the Concessionaire is in compliance with all terms and conditions of their Contract and these Rules.
  - b. Concessionaires who wish to extend their Contract term must make a request in writing to the Finance Director at least one hundred fifty calendar days before the end of the five-year term. If a request for a contract extension is not made within this time frame, or a request for contract extension is denied by the Finance Director, then the Contract will expire automatically as stated in Part II, Section D.3. of these Rules.
4. The Concessionaire shall notify the Parks Director within five business days of any changes regarding the information provided in the Contract.
5. Contracts are nontransferable.
6. All Contracts shall include the following requirements, or similar statements expressing the intent of these requirements. The Parks Director may include further specifications for the below requirements, and include additional requirements, as deemed necessary, in the Invitation for Concession Bids.
  - a. The Concessionaire shall agree to indemnify, defend, and hold harmless the County and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands, arising out of or resulting from the performance of the Contract and operation of the Concession, caused in whole or in part by any act or omission of the Concessionaire or the Concessionaire's employees, officers, agents, or subcontractors, and to reimburse the County for any damages, losses, costs or expenses, including attorneys' fees, incurred in connection therewith.
  - b. The Concessionaire shall assume the risk of any loss, damage, or theft to the Concessionaire's property kept in the Spouting Horn Park, and the Concessionaire's use of the County's property shall be at the risk of the Concessionaire only.
  - c. The Finance Director may cancel or pause a Concession Contract without cause, when the interests of the County so require, by giving the Concessionaire written notice of the cancellation or pause of the Contract. The written notice shall specify when the cancellation or pause becomes effective. Any rent payments already made by the Concessionaire for a time period after the cancellation or pause shall be refunded to the Concessionaire, on a pro rata basis if necessary. The Concessionaire shall bear any other expenses or losses in full, with no recourse against the County.
  - d. The Concessionaire shall comply with all applicable federal, State, and County laws, ordinances, and rules and regulations.
  - e. The Concessionaire shall conduct the Concessionaire's activities and perform the Contract in a manner that does not discriminate against any person in violation of federal, State, or County law; and shall not discriminate against any employee or applicant for employment in violation of federal, State, or County law.

7. The Parks Director shall include a provision addressing breach of contract and any sanctions in the Invitation for Concession Bids.

**E. Performance Bond.**

1. Before any Contract is executed, the bidder who is awarded a Contract must give security for the full and faithful performance of the Contract as required by Section 102-11 of the Hawai'i Revised Statutes.
2. The performance bond shall be held by the County for the term of the Contract and shall be returned to the Concessionaire after the termination of the Contract if the Concessionaire is not in default.
3. The Parks Director shall identify the specific requirements of the performance bond in the Invitation for Concession Bids.

**F. Insurance.**

1. Concessionaires must maintain, on a primary basis and at the Concessionaire's sole expense, at all times during the life of the Concessionaire's Contract, the insurance coverages and limits, including endorsements, described in the Insurance section of the Invitation for Concession Bids. The minimum limits and coverages shall be determined by the Finance Director.
2. Concurrent with the execution of a Contract, the Concessionaire shall furnish the County with original certificates and endorsements effecting required coverage.

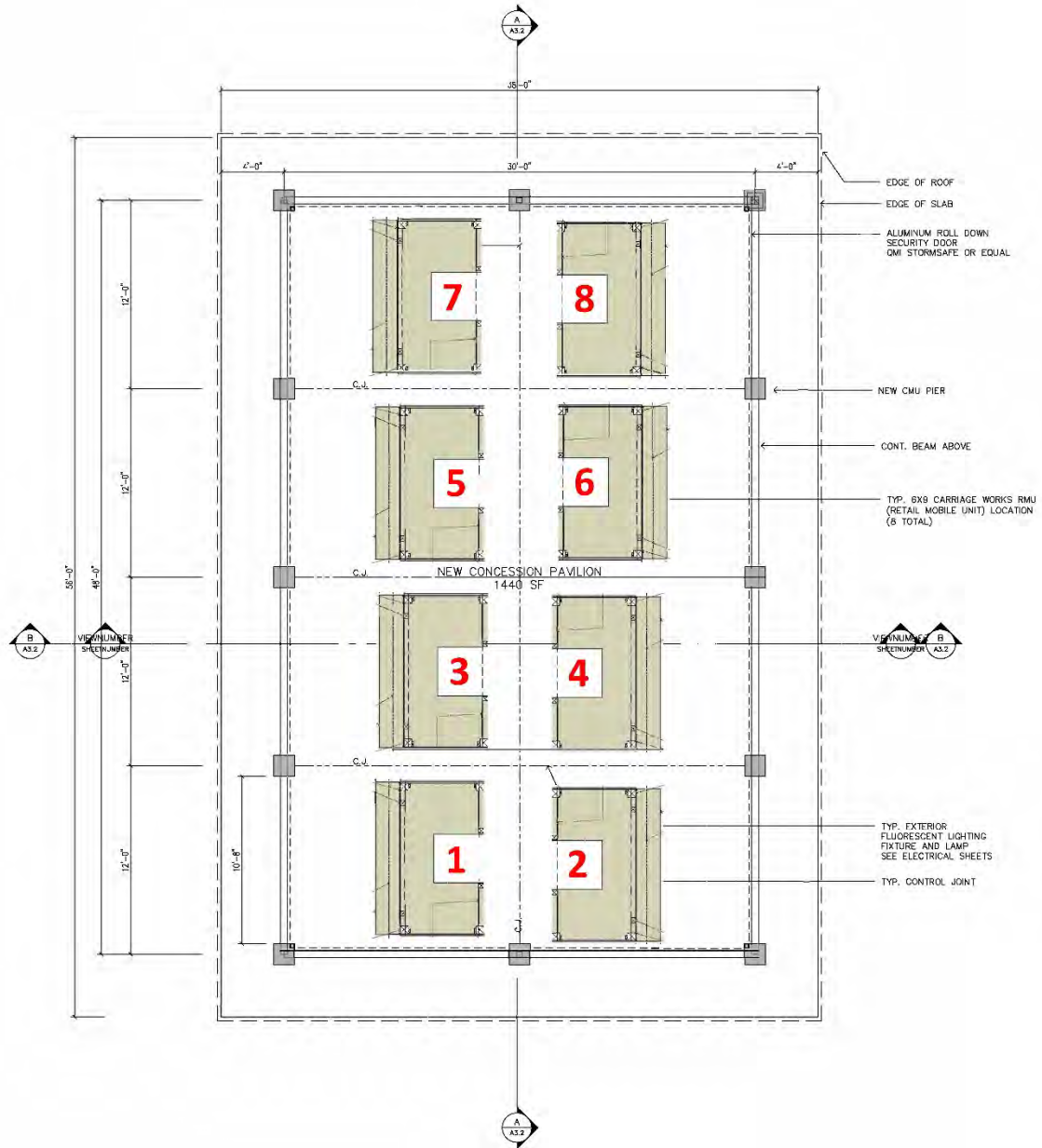
**G. Scope of Concession.**

1. Upon the execution of a Contract, a Concessionaire shall be given sole rights to conduct a specific commercial activity at a designated Concession stand at the Spouting Horn Park.
2. The Concessionaire, by the Contract, and if approved by the Parks Director, shall have the right to sell curios, handcrafted jewelry, Polynesia goods, Kaua'i made products, and other related products.
  - a. Prior to the Contract execution, the Concessionaire awarded a Concession stand must furnish a list of products to be sold at the Concession stand to the Parks Director for review and approval.
  - b. It is highly encouraged that items for sale at the Concession stand are made entirely or partly in Hawai'i.
3. Concessionaires shall not sell food items; clothing; watches; beverages; ice products; services; or any other commodities, goods, and products not approved by the Parks Director.
4. Once a Contract is awarded, the Concessionaire shall not be allowed to change the commercial activity or Concession stand specified in their Contract, except if allowed by Section 102-10 of the Hawai'i Revised Statutes or Section 102-13 of the Hawai'i Revised Statutes.

**H. Stall Configuration and Plot Plan**

1. The location of each Concession stand numbered 1 to 8 is shown in Part II, Section H.5. of these Rules.
2. Any extension of the Concession stand, whether temporary or permanent, cannot exceed 12" (inches) outside the front of the Concession stand.
3. No extensions are permitted on the sides or rear of the Concession stand.

4. Concession stands shall not be moved, repositioned, or relocated from their original position.
5. The stall configuration is as follows:



PAVILION FLOOR PLAN  
 SCALE: 1/4" = 1'-0"

### **Part III. Concession Operations**

#### **A. General Conditions.**

All Concessionaires are subject to the following general conditions. The Parks Director may include further specifications for the below conditions, and include additional conditions, as deemed necessary, in the Invitation for Concession Bids.

1. All Concessionaires are prohibited from selling or conducting any part of their operations in any area other than the Concession stand area specified in and designated in the Contract.
2. Signs and Advertising.
  - a. All advertising material, which includes but is not limited to flyers, posted signage, and media advertisement, shall be subject to the prior written approval of the Parks Director.
  - b. Signs, including commercial notices or advertisements, shall not be displayed, posted, or distributed outside of the authorized location specified in the Contract.
  - c. No hawking, solicitation, or unauthorized advertising shall be made by the Concessionaires or their employees on or outside of the Concession stand premises or on a public address system.
3. Parking.
  - a. Each Concessionaire shall be allowed to utilize one parking stall within the Spouting Horn Park parking lot. The Concessionaire's parking stall shall be defined in the Contract.
  - b. In addition, Concessionaires may use the designated loading and unloading area to transport equipment, supplies, goods and wares to and from their vehicle and designated Concession stand area. The loading and unloading area shall be defined in the Contract.
  - c. No vehicles shall be permitted to stand or park next to or adjoining the Concession stand premises.
  - d. Designated bus parking stalls or other public parking stalls shall not be blocked by Concessionaires and their employees' vehicles, equipment, and personnel.
4. Equipment.
  - a. Concessionaires must provide all equipment necessary for the operation of their Concession.
  - b. Concessionaires are not allowed to install equipment that requires alteration, modification, or affixing to the Concession stand premises.
  - c. Concessionaires must remove all of their equipment at the end of each day.
  - d. All displays and equipment must be within the confines of the interior area of the Concession stand.
    - i. All other miscellaneous equipment, excess stock, boxes, cartons, coolers, paraphernalia, and other similar items can be stored within the confines of the interior area of the Concession stand; however, it must be properly hidden from view and neatly stored at all times.

- ii. No other storage is permitted on the Concession stand premises.
- 5. Conduct of Business.
  - a. In conducting their operations, Concessionaires shall not:
    - i. Create, commission, or maintain a nuisance on the Concession stand premises or in the Spouting Horn Park;
    - ii. Cause or create unusual or objectionable noise, or noxious smoke, gasses, vapors and odors; or
    - iii. Use radios, stereos, or amplified music.
  - b. Concessionaires shall not use or allow the Concession stand premises to be used for any illegal purpose, indecent activity, or lodging or sleeping purposes.
  - c. Concessionaires shall not permit disorderly persons to remain upon or loiter within the Concession stand premises.
- 6. Cleaning and Maintenance: Concessionaires shall be responsible for the general cleaning and upkeep of their designated Concession stand premises as well as the pavilion common areas, which includes but is not limited to sweeping and mopping of the floor, maintaining assigned Concession stands, and supplying and emptying of rubbish cans within the immediate area surrounding the Concession stand premises. The Parks Director shall outline specifics in the Invitation for Concession Bids.
- 7. Concessionaires shall display their State of Hawai‘i General Excise Tax License and Workers’ Compensation Certificate, if applicable, in clear public view during operational hours.
- 8. Concessionaires shall not sublet the whole or any part of the Concession stand premises.

**B. Hours of Operation.**

- 1. Concessionaires shall not commence set-up of their equipment and stock at their Concession stand premises before 6:00 a.m., nor remain at the Concession stand premises with their equipment and stock later than 7:00 p.m., or as otherwise authorized by the Parks Director.
- 2. All selling activities at the Concession stand premises shall commence no earlier than 7:00 a.m. and cannot exceed beyond 6:00 p.m., or as otherwise authorized by the Parks Director.

**C. Duties of Concessionaires.**

Concessionaires may be required at the discretion of the Parks Director to perform the following operational duties at the Spouting Horn Concession Pavilion. The Parks Director shall specify any required duties, and may include additional requirements and duties as deemed necessary, in the Invitation for Concession Bids.

- 1. Opening, Closing and Locking Pavilion: Concessionaires may be issued keys to open and close bays of the pavilion that are adjacent to their respective Concession stands. Concessionaires with Concession stands located on the corners of the pavilion may be required to open, close, and lock two bays.

**D. Repairs.**

- 1. Concessionaires shall be responsible for the cost of all repair or replacement work for damages to the Concession stand premises, except for roof damage and normal wear and tear. The County’s only responsibilities shall be the maintenance and repairs of the roof, and

repairs of the Concession stand premises for normal wear and tear. This section is subject to the exceptions below.

- a. Exception: If damages to the roof are caused by Concessionaire or by fire from within the Concession stand premises, the Concessionaire's responsibility for the cost of all repairs or replacement work shall include the cost of repair or replacement work for the roof damages.
  - b. Exception: If damages to the Concession stand premises are caused by an act of God, disaster, emergency not caused by the Concessionaire, or other event that is specified in the force majeure clause of the Contract as excusing performance under the Contract, the Concessionaire shall not be responsible for repair or replacement work for damages caused by those events.
2. The Parks Director has the final decision in determining the responsible party for damages.
  3. Prior to any repair or replacement work, Concessionaires must obtain written approval from the Parks Director. All damages shall be repaired or replaced to the satisfaction of the Parks Director.

**E. Security Measures, Alterations, and Improvements.**

1. Security Measures
  - a. Concessionaires may provide and install, at their expense, security measures necessary for the operation of the Concession.
  - b. Prior to the provision or installation of any such security measures, Concessionaires must obtain written approval from the Parks Director. If approved, they must be installed in conformity with all applicable statutes, rules, regulations, and code sections.
2. Alterations or Improvements
  - a. Concessionaires shall not make alterations or improvements, including the extensions described in Part II, Section H.2. of these Rules, to the Concession stand premises without obtaining prior written approval from the Parks Director.
  - b. Concessionaires shall promptly discharge all debts incurred in making any alterations or improvements, and within sixty calendar days after the completion, must submit to the Parks Director proof of such payments.
3. Any permanent addition or fixture to the buildings or the Concession stand premises shall become the property of the County, without cost to the County, at the expiration of the Contract.

**F. Inspection by the County.**

1. The County may enter the Concession stand premises, without prior notice, at all reasonable times, for the purpose of:
  - a. Examining the state of repair and condition of the Concession stand premises and the equipment; and
  - b. Determining whether these Rules and the terms and conditions contained in the Contract are being fully and faithfully observed and performed.

## **IV. New Business**

### **A. Discussion and Action on the Small Business Statement Before Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 4 Chapter 159, Agricultural Enterprises Lands Program Rules, promulgated by Department of Agriculture**



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

Date: 3/3/2025

Department or Agency: HDOA-Agricultural Resource Management Division

Administrative Rule Title and Chapter: 4-159

Chapter Name: Agricultural Enterprises Lands Program Rules

Contact Person/Title: Kori Koike, Planner

E-mail: kori.a.koike@hawaii.gov Phone: 808-973-9476

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: Rules will be uploaded to HARPS and available to the public at the HDOA & online.

**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.  
4-159 only applies to leases managed by HDOA under the Agricultural Enterprises Lands Program. This new program with accompanying rules will benefit the lessee and their business models, which can include on-site processing, packaging, etc. This program will broaden the scope of allowable business practices on HDOA leased lands. HDOA can not foresee any adverse consequences.
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.

N/A

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.

The HDOA will not impose additional fees on lessees under this program.

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 Agricultural Enterprises Lands Program Rules will be a resource for small businesses as this program will allow processing and other business practices previously restricted on HDOA leases. HDOA cannot foresee any potential negative impact on small businesses owner under the Agricultural Enterprises Lands Program at this time.

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

None at this time.

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 small business affected will be lessees managed by HDOA who are qualified to participate in the Agricultural Enterprise Lands Program. This new program will allow lessees under this newly created program to expand their business models.

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

HDOA will hold a public commenting period, as well as a public hearing to receive valuable comments on the proposed rules.

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

N/A

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.

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/resources/small-business-impact-statements>

DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-159  
Hawaii Administrative Rules

February 11, 2025

1. Chapter 4-159, Hawaii Administrative Rules, entitled "Agricultural Enterprises Lands Program Rules", is adopted to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 8

DIVISION OF AGRICULTURAL RESOURCE MANAGEMENT

CHAPTER 159

AGRICULTURAL ENTERPRISES LANDS PROGRAM RULES

Subchapter 1 General Provisions

- §4-159-1 Definitions
- §4-159-2 Powers and general duties
- §4-159-3 Fees and charges
- §4-159-4 Penalties
- §4-159-5 Covenants against discrimination
- §4-159-6 Irrigation projects
- §4-159-7 Prohibitions

Subchapter 2 Transfer of Agricultural Enterprise  
Lands

- §4-159-8 Conversion of qualified and encumbered  
lands

- §4-159-9 Extension of encumbered agricultural enterprise lands
- §4-159-10 Term, rent, and condition of extension
- §4-159-11 Eligibility for extension
- §4-159-12 Extension restrictions

#### Subchapter 3 Policy, Planning, and Development

- §4-159-13 Planning
- §4-159-14 Development
- §4-159-15 Development by joint ventures
- §4-159-16 Planning; joint ventures
- §4-159-17 Terms of joint venture

#### Subchapter 4 Disposition of Agricultural Enterprise Lands

- §4-159-18 Lease provisions, generally
- §4-159-19 Lease restrictions, generally
- §4-159-20 Additional terms and conditions
- §4-159-21 Appraisals and setting of lease rents
- §4-159-22 Negotiation
- §4-159-23 Drawing of lot
- §4-159-24 Public auction
- §4-159-25 Conduct of drawing
- §4-159-26 Disposition of abandoned or seized property
- §4-159-27 Application requirements
- §4-159-28 Preference right
- §4-159-29 Notices
- §4-159-30 Ineligible applicants
- §4-159-31 Expired leases; holdover

#### Subchapter 5 Management of Agricultural Enterprise Lands

- §4-159-32 Consent to mortgage
- §4-159-33 Notice of breach or default
- §4-159-34 Rights of holder of security interest
- §4-159-35 Re-purchase right, first offer to board; limitation on re-purchase price
- §4-159-36 Condemnation of leases

4-159-1

§4-159-37 Taxes

§4-159-38 Lease forfeiture

Subchapter 6 Other Provisions

§4-159-39 Severability

## SUBCHAPTER 1

## GENERAL PROVISIONS

**§4-159-1 Definitions.** As used in this chapter:

"Abandoned property" means any and all property, unless the context clearly indicates otherwise, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that have been left unattended on land owned or controlled by the State without authority for a continuous period of more than twenty-four hours.

"Administrator" means the head of the division of agricultural resource management, department of agriculture, or any officer or employee to whom authority has been duly designated.

"Agricultural activities" includes the care and production of livestock, livestock products, poultry, and poultry products; the care and production of apiary, horticultural, and floricultural products; the planting, cultivating, harvesting of crops or trees; aquaculture; and any other activity that is directly associated with agriculture; and has the same meaning as defined in section 141D-2, HRS.

"Agricultural commodity" means any agricultural product, including but not limited to, horticultural (including floriculture), nuts, coffee, whether cherry (berry), parchment, or green beans, fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice, whether produced in the State or imported, products, livestock and livestock products, bees and honey, poultry and poultry products, egg and egg products, timber and Christmas trees, fish and fish products either in their natural state or as processed by the producer thereof or by a processor, as defined in this section.

"Agricultural enterprise" means any business, company, or economic activity with direct and demonstrated ties and relations to any definition of "agricultural or aquacultural" activities defined in this section, either for profit or not for profit, and



may include but not be limited to agricultural education centers, food hubs, farmers markets, and feed mills. All agricultural enterprises must be approved by the administrator.

"Agricultural enterprise lands" means agricultural lands that are not designated as agricultural parks or non-agricultural park lands pursuant to chapter 166 or 166E.

"Agricultural processing" means the processing of agricultural produce or products, including dairying, grown, raised, or produced in Hawaii.

"Agriculture or agricultural" means the planting, cultivating, harvesting, and processing of crops, including those planted, cultivated, harvested, and processed for food, ornamental, grazing, or forestry purposes, including aquatic life farmed or ranched.

"Animal unit" means one mature cow or horse; two yearling steers or heifers; five mature sheep; twelve weaned lambs; or two colts.

"Applicant" means any person or entity, which acts to acquire or obtain a lease or any interest therein, including a sublease, or an interest in an association or a partnership which either holds the lease or owns the stock in a corporation which holds the lease.

"Aquacultural activities" means the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment; provided that such farm or ranch is on or directly adjacent to land.

"Board" means the board of agriculture or its designated representative.

"Bona fide operator" means a person who:

- (1) Was an operator of an established agricultural enterprise or similar for at least two years; or
- (2) Has at least four years' experience as a part-time operator of an established agricultural enterprise or similar enterprise and who, in the administrator's judgment, is likely to successfully operate the enterprise by reason of ability, experience, and training as a vocational

trainee.

"Carrying capacity" means the maximum number of animal units that an area is able to support over a period of years without injury to the soil, forage resources, tree growth, watershed, or unwarranted interference with other services of the land.

"Chairperson" means the chairperson of the board of agriculture.

"Commercial exporter" means any person who is engaged in the business of exporting fresh or processed agricultural commodities to points outside the State.

"Commercial importer" means any person who is engaged in the business of importing fresh or processed agricultural products from points outside of the State.

"Consumer" means any person or firm purchasing agricultural commodities for human consumption or animal consumption.

"Conversion" means the extinguishing of an existing encumbrance and the issuance of a new long-term lease to the existing lessee.

"Corporate successor" means a solely-owned corporation which, through assignment of lease, succeeds the interest of a lessee and who shall own all of the stock issued by, and be the principal officer of, the corporation.

"Department" means the department of agriculture.

"Division" means the agricultural resource management division of the department of agriculture.

"Encumbrance" means any instrument issued including but, not limited to, a lease, permit, license, easement, grant, contract, or authorization to occupy and use agricultural enterprise lands under the terms and conditions of this chapter.

"Established date of operation" means the date on which the original agricultural enterprise operation first commenced operation. If the physical facilities of the enterprise operation are subsequently expanded or new technology adopted, the established date of operation for each change shall be the same as the established date of operation for the original

operation, provided that this does not violate existing state law or county ordinances.

"Farm" means the parcel, area or building where the "farming operation" occurs. "Farm" also means "ranch" and "farmer" also means "rancher".

"Farm dwelling" means a single- or multiple-family dwelling or employee dwelling used in connection with agricultural or aquacultural activities.

"Farming operation" means:

- (1) A commercial agricultural, aquacultural facility, or agricultural enterprise or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, ranching, poultry and poultry products, and apiary, horticultural, or floricultural products;
- (2) The planting, cultivating, and harvesting and processing of crops;
- (3) The farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;
- (4) Marketed produce at roadside stands or farm markets;
- (5) Noises, odors, dust, and fumes emanating from a commercial agricultural, aquacultural facility, or agricultural enterprise or pursuit;
- (6) Operation of machinery and irrigation pumps;
- (7) Ground and aerial seeding and spraying;
- (8) Application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor; or
- (9) A "farming operation" that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other agricultural enterprise use shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the

requirements of this definition.

"Holder of record having a security interest" means a person who is the owner or possessor of a security interest in any land covered in section 4-159-32 and who has filed a copy of the interest with the department and the bureau of conveyances of the State.

"Institutional lender" means a federal, state, or private lending institution, licensed to do business in the State, that makes loans to qualified applicants on the basis of a lease awarded for security, in whole or in part, together with any other entity that acquires all or substantially all of an institutional lender's loan portfolio.

"Land" includes all interests therein and natural resources including water, minerals, and all such things connected with land, unless otherwise expressly provided.

"Land agent" means the land agent of the public lands of the district where the land is situated, and is interchangeable with "property manager".

"Land license" means a privilege granted to enter land for a certain special purpose such as the removal of timber, soil, sand, gravel, stone, hapuu, and plants. "Land license" does not include ground or surface water rights, or removal of minerals.

"Land patent" means a government grant of real estate in fee simple.

"Lease" means the right to possess and use land for a term of years.

"Lessee" means a lessee under a lease issued by or transferred to the department or any tenant, licensee, grantee, permittee, assignee, or other person authorized to conduct an agricultural enterprise by the board or department.

"Non-conforming use" means a use formerly permitted but presently incompatible with the permitted land use in a zoning district.

"Offgrade" is a descriptive term applicable to agricultural commodities which have a market value, and designates a quality lower than the lowest applicable grade in Hawaii, or other states in the

United States for each agricultural commodity.

"Partner" means a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for agricultural or aquacultural uses and has the financial ability satisfactory to the board to develop and subdivide land and enter a joint venture as provided in this section.

"Processed" means canned, preserved, frozen, pickled, dried, or otherwise prepared with or without any ingredients added thereto.

"Processor" means any person engaged within this State in the operation of producing for processing, or in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural commodity for the purposes of marketing such product.

"Produce dealer" means any person other than a producer who is engaged in the selling, marketing, or distributing of any agricultural commodity or in the business of soliciting.

"Producer" means any person, or any cooperative association of such persons, engaged within this State in the growing or producing for market of any agricultural commodity.

"Product" means an agricultural commodity which has been produced by the producer and placed in condition for sale or distribution by the producer, distributor, or handler.

"Public lands" means all lands which have been given the status of public lands under chapter 171, HRS, and excluded by section 171-2, HRS; including all of the transferred lands collectively and individually under chapter 141D, HRS, and to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167, HRS.

"Public purpose" as used in this chapter, unless the context clearly indicates otherwise, includes but

shall not be limited to all public uses, the straightening of boundaries of public lands, acquisition of access to landlocked public lands, the consolidation of the holdings of public lands, development of houselots, farmlots, and industrial parks.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land.

"Seized property" or "property seized" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that has been seized by the State as the result of an unauthorized use of or encroachment on land owned or controlled by the State.

"State" means the State of Hawaii.

"Unencumbered public lands" means any lands defined as public lands by section 171-2, HRS, and which have not been:

- (1) Set aside for any purpose, by statute, executive order, or other means to a governmental agency; or
- (2) Encumbered by lease, license, permit, easement, or other document issued by the department.

Unencumbered public lands include, but are not limited to, beach and coastal areas, submerged lands, and mountainous nonforest reserve, wildlife, or park areas. [Eff \_\_\_\_\_] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §2)

**§4-159-2 Powers and general duties.** (a) In addition to the powers and function granted to the board under chapter 26, HRS, the board shall have the power to:

- (1) Prescribe forms of instruments and documents;
- (2) Establish restrictions, requirements, or

- conditions, not inconsistent with those prescribed in chapter 141D, HRS, and this chapter, relating to the use of particular land being disposed of, the terms of lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (3) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural enterprise use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural enterprise use;
  - (4) Delegate to the chairperson or employees of the department, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
  - (5) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving an agricultural purpose;
  - (6) Appoint hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
  - (7) Approve of plans to develop public lands;
  - (8) Award and cancel leases, issue revocable permits, easements, and rights of entry covering lands for use consistent with its purposes;
  - (9) Approve the transfer, assignment, or sublease of a lease or any interest therein, including the transfer of stock of a corporation including a limited liability corporation holding the lease, or the interest in an

association or partnership including a limited partnership holding the lease. To the extent the board reserves such a right in the lease, upon the transfer, assignment, or sublease of a lease or any interest therein, the board may establish additional restrictions, terms, or conditions not inconsistent with this chapter to insure and promote the purposes of the demised lands;

- (10) Waive rental payments due to natural catastrophes and other external factors beyond the lessee's control and determine the period for the waiver;
- (11) Establish lease rentals as provided in section 4-159-21;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands; and
- (13) Do any and all things necessary to carry out its purposes and exercise the powers granted in chapter 141D, HRS, and this chapter.
  - (b) Except as provided by law, the board through the chairperson shall:
    - (1) Enter into joint venture agreements or development contracts for development and infrastructure improvements of agricultural enterprise lands; or contract for subdivision, and installation of infrastructure improvement as provided for in this chapter;
    - (2) Prevent illegal activities on, unlawful occupation of, or trespassing on public lands;
    - (3) Cause all trespassers and persons unlawfully occupying public lands, and their effects, and all animals trespassing on the lands to be removed therefrom and to impound the seized effects and animals according to law;
    - (4) Enter on any public land in order to take possession thereof, and to resume possession of any public land in case of surrender, default, forfeiture, or escheat; and
    - (5) Recover money due the State for damage done to



any public lands by wrongful entry and occupation or by wrongful removal therefrom or destruction of any property or asset.

- (c) The administrator shall have the power to:
- (1) Fine any person causing an encroachment upon public land as allowed by law and the person shall be liable for administrative costs incurred by the department and for payment of damages;
  - (2) Approve other lands for development pursuant to section 141D-10, HRS, and sections 4-159-14 and 15 and lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 141D-4, HRS;
  - (3) Accept and process applications for leases;
  - (4) Disapprove lease applications when the prospective applicant is unable to meet the requirements of the program or the criteria for the particular disposition;
  - (5) Recommend for board action the disposition of lands to qualified applicants;
  - (6) Collect rents, assessments, and other fees and charges;
  - (7) Recommend for board action cancellation of leases where due notice of breach or default has been provided;
  - (8) Issue non-renewable dispositions granting easements, permits, and rights of entry for a period not in excess for fourteen days for use consistent with the purposes of this chapter;
  - (9) Recommend for board action lease rentals as provided in section 4-159-21;
  - (10) Set, charge, and collect interest and a service charge on delinquent payments due on leases, permits, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;
  - (11) Set, charge, and collect additional rentals

for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (10);

- (12) Maintain an accurate inventory of transferred lands;
- (13) Enforce contracts respecting leases, licenses, permits, or other disposition of public lands;
- (14) Conduct all public auctions and drawings pertaining to the disposition of public lands and other property authorized by the board;
- (15) Keep a record of all official transactions, relating to public lands within the chairperson's jurisdiction and such record shall be a public record;
- (16) Establish, operate, maintain, and improve public lands infrastructure;
- (17) Establish additional criteria for the selection of applicants not inconsistent with those prescribed in this chapter, relating to the intended use of particular land being disposed of, the financial feasibility of lot development, or the terms of the disposition, the criteria to be included in the public notice of disposition; and
- (18) Establish conditions of award which shall be met to the satisfaction of the administrator prior to document execution, the conditions to be included in the public notice of disposition. [Eff \_\_\_\_\_ ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §3)

**§4-159-3 Fees and charges.** Fees for the processing of lease or permit documents and records shall be charged as follows:

- (1) Lease, permit, assignment of lease, sublease, consent to mortgage, collateral agreement, and all other documents: \$30/document
- (2) Copy of document: \$0.75/page

The cost of appraisals, surveys, public notices, lease closing and other services relating to lot disposition, reopening, or assignment which are incurred by the department shall be charged to the lessee upon completion of the relevant lease or permit transaction and any other fees or charges incurred by the department. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §4,8 and 11)

**§4-159-4 Penalties.** (a) The chairperson may set, charge, and collect administrative fines and costs, as allowed by law, or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages resulting from a violation of chapter 141D, HRS, or any rule adopted pursuant to chapter 141D, HRS.

(b) Any criminal action against a person for any violation of chapter 141D, HRS, shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of chapter 141D, HRS, or any rule adopted pursuant to chapter 141D, HRS, shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense.

(c) A violation of any provision in this chapter shall be cause for the board to cancel the lease and take possession of the land, or take other action as the board, in its sole discretion, deems appropriate; provided that the board shall provide notice to the lessee of the violation in accordance with rules

adopted pursuant to section 141D-7, HRS. [Eff  
 ] (Auth: SLH 2022, HRS §141D-7,  
 §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-5 Covenants against discrimination.** The board shall provide in every patent, deed, lease, agreement, license, or permit that the use and enjoyment of the premises being granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or a physical handicap. The board shall not dispose of any public land to any person who practices discrimination based upon race, creed, color, national origin, sex, or a physical handicap. As used in this section, "physical handicap" means a physical impairment which substantially limits one or more of a person's major life activities. [Eff  
 ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH, HRS §141D-7[+], §8)

**§4-159-6 Irrigation projects.** In any encumbrance or similar agreement, a condition may be provided requiring the inclusion of the land being disposed in any irrigation project formed or to be formed by the state agency responsible therefor and making the land subject to assessments made or to be made for such project and constituting such assessments a first lien upon the land which if not paid shall result in the forfeiture of the land subject to notice of default as provided in section 4-159-33. [Eff  
 ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9; HRS §171-25)

**§4-159-7 Prohibitions.** The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits is prohibited with the following exceptions:

- (1) The taking of such materials, not in excess of one gallon per person per day for

- (2) reasonable, personal, noncommercial use; For the replenishment or protection of public areas and adjacent public lands or construction or maintenance of state approved reservoirs, harbors, launching ramps, or drainage channels with a permit authorized under chapter 183C, HRS;
- (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5, HRS; provided that the materials removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
- (4) The cleaning of areas for state or county maintenance purposes including the purposes under section 46-12, HRS; provided that the materials removed shall be placed on adjacent areas unless such placement would result in significant turbidity. [Eff  
] (Auth: SLH 2022, HRS §141D-7, §7; 171-58.5) (Imp: SLH 2022, HRS §141D-7, §8; HRS §171-58.5)

## SUBCHAPTER 2

### TRANSFER OF AGRICULTURAL ENTERPRISE LANDS

#### **§4-159-8 Conversion of qualified and encumbered**

**lands.** (a) The board may offer to convert existing encumbrances on transferred lands into new long-term leases. These leases include those persons who:

- (1) Hold a revocable permit for agricultural purposes;
- (2) Has formerly held an agricultural lease or a holdover lease of public land that expired within the last ten years and has continued to occupy the land; or
- (3) Is determined by the department to have a

beneficial impact on agriculture.

In addition, a "bona fide operator" must be named and included in all applications. The "bona fide operator" or qualified representative must be at the enterprise during operational hours.

Prior to the board making an offer to convert an existing encumbrance to a long-term lease, the board shall determine that it is in the public interest to assist those holding encumbrances, who presently operate or operated a viable agricultural enterprise. Further, by allowing conversion of existing encumbrances into new long-term leases, the State would realize greater returns and reduce disruptions to current ongoing farming operations. The lessee may request conversion of the lease if the remaining term is less than ten years, but more than five years.

For land with encumbrances, conversion shall be limited to those lands:

- (1) Not needed by any state or county agencies for any other public purpose; and
- (2) Zoned, classified, or leased for agricultural activity or agricultural enterprise operation.

(b) The board may negotiate and enter into a new lease of no less than fifteen years and not more than sixty-five years. In issuing the new leases the department shall:

- (1) Require appraisal of the parcel in accordance with section 4-159-21;
- (2) Impose other lease terms, provisions, restrictions, and conditions as provided in this chapter as may be required to protect the State's interests;
- (3) Recover from the new lessees the costs of subdividing the parcel as may be required;
- (4) Require the payment of annual lease rent by appraisal and a premium computed at twenty-five per cent of annual base rent, with the premium to be added to the lease rent for each year of lease equal to the number of years that person occupied the land, but not to exceed seven years. For example, if land

is occupied for ten years, the twenty-five per cent premium shall be paid for seven years, the maximum term; and

- (5) The department may negotiate the conversion into the new lease without regard to section 4-159-30. [Eff \_\_\_\_\_ ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §5)

**§4-159-9 Extension of encumbered agricultural enterprise lands.** This section shall apply to those existing encumbrances that meet the following:

- (1) The tenant must hold a current lease or permit for use of lands transferred to the department;
- (2) The holder of an encumbrance shall be satisfactorily performing in full compliance with the terms and conditions of the existing lease, permit, or license;
- (3) The holder of an encumbrance shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county;
- (4) The holder of an encumbrance's agricultural activity, farming operation, or agricultural enterprise operation shall be fully and economically viable as specified in section 4-159-11; and
- (5) The holder, if an agricultural cooperative organized under chapter 421, HRS, or other agricultural associations or partnerships must name a "bona fide" operator. This operator or qualified representative must be at the enterprise during operational hours.

Upon request, the administrator shall evaluate the existing encumbrance to determine whether the enterprise operation and the holder of the encumbrance meets the qualification and eligibility requirements as outlined in section 4-159-11. The department on a case-by-case basis may recommend to the board the option to renegotiate or amend for extension each

existing encumbrance. The board may review the recommendation and shall approve a course of action. The encumbrances deemed not qualified shall continue unabated until the encumbrance termination date expires. [Eff \_\_\_\_\_] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-10 Term, rent, and condition of extension.**

(a) Terms of extension shall not be for a longer term period than sixty-five years, that includes the aggregate of the existing term period with the extension term period cumulatively summed.

(b) All extensions shall require the determination of the base rent and additional rents. The rental value of the existing lease shall be based on the appraisal conducted by a disinterested appraiser or appraisers contracted by the administrator. Should the lessee disagree with the rental value, the lessee may invoke provisions of section 4-159-21. In no case shall the base annual rent of the existing encumbrance be reduced from its current rate.

(c) Conditions of the lease extension shall remain the same or not less restrictive than those conditions specified in sections 141-159-11 and 12. The board may impose certain lease requirements or condition the extension provisions to make whole any holders of security interest in order that any outstanding loan status shall not be jeopardized or foreclosed upon as a result of the extension.

(d) An extension may be granted to extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic



life of the improvements as determined by the administrator or an independent appraiser; provided that the approval of any extension shall be subject to the following:

- (1) The demised premises are developed and utilized according to a plan of utilization and development approved by the department;
- (2) The lessee is otherwise in compliance with lease terms;
- (3) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;
- (4) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (5) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled;
- (6) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands;
- (7) The board may increase the rent and adjust the rental period; and
- (8) Additional restrictions, terms, and conditions to insure and promote the purposes of the demised lands, to the extent the board has reserved this right in the lease. [Eff \_\_\_\_\_] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-11 Eligibility for extension.** (a) The existing agricultural activity, farming operation, or agricultural enterprise operation shall meet at least three of the following criteria to qualify for extensions under this section:

- (1) Conforms with provisions of the Hawaii State Plan or the State Functional Plan for

- Agriculture;
- (2) Protects and conserves suitable agricultural lands within the land district;
  - (3) Promotes diversified agriculture industry and development of new crops;
  - (4) Increases the State's self-sufficiency of agricultural commodities and products;
  - (5) Produces an agricultural commodity that contributes to reducing imported produce;
  - (6) Ensures the continued availability of suitable agricultural lands in the land district; or
  - (7) Conforms with any other agricultural uses that the board may deem worthwhile for the preservation of the diversified agricultural industry for the land district.

Upon request, the administrator shall evaluate each encumbrance and determine whether or not a recommendation to the board for permission to negotiate a lease extension is justified.

(b) Eligibility requirements. Holders of existing encumbrances shall meet at least four of the following requirements:

- (1) Has filed a general excise tax (state) G-49 form for the past seven years either with the state tax department or the Internal Revenue Service showing farming revenues;
- (2) Possesses a general excise tax license from the state tax department and has filed tax returns on it;
- (3) Has maintained a viable agricultural enterprise operation;
- (4) Has not filed for bankruptcy during the term of the existing lease or not in default of more than six months rent or cited to be in violation of any lease terms, conditions, or covenants;
- (5) Possesses an agricultural enterprise business financial plan, farm business financial plan or conservation plan; or
- (6) If applicable, is an approved co-operator with the state soil and water conservation

district program under chapter 180, HRS. The administrator shall request each lessee or permittee to file an affidavit showing that existing holders of encumbrance meet the above criteria or submit proof, whichever is acceptable. Any willful violation of this requirement shall be cause for the cancellation of the existing encumbrance and forfeiture of the land to the department without due course. [Eff \_\_\_\_\_] (Auth: SLH 2022, Act[7] 221, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-12 Extension restrictions.** The board may impose the following restrictions on any lease extensions:

- (1) No aggregate term period shall be less than fifteen years nor exceed sixty-five years;
- (2) The purpose of the extension shall be for a specific agricultural enterprise operation and may include waste or unusable lands for preservation of the surrounding environment and continuity of farming operations; and
- (3) The lease shall not be in violation of existing lease terms or conditions or be in arrears of rents due at the date of extension. [Eff \_\_\_\_\_] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

### SUBCHAPTER 3

#### POLICY, PLANNING, AND DEVELOPMENT

**§4-159-13 Planning.** (a) The division from time to time shall:

- (1) Formulate and implement general plans, including but not limited to functional plans for agriculture;
- (2) Reassess the agricultural enterprise lands program and define new directions and

- priorities for the program;
- (3) Identify and analyze potential agricultural enterprise lands required to support the development of agricultural industries in the State; and
  - (4) Select and recommend suitable sites for future agricultural enterprise lands projects to meet the needs of agricultural commodity industries.

(b) The department, or its lessees subject to the department's approval, may plan, design, and develop, and manage agricultural enterprise lands and agricultural enterprise on:

- (1) Public lands set aside by executive order pursuant to section 171-11 for use as agricultural enterprise lands and agricultural enterprise;
- (2) Other lands with the approval of the board that may be subject to a joint venture partnership agreement pursuant to section 141D-10, HRS; and
- (3) Lands acquired by the department.

(c) Prior to the development of an agricultural enterprise lands project, and subject to section 141D-10, HRS, the administrator shall prepare or cause to be prepared plans and specifications as a package for board action, including but not limited to:

- (1) Site selection analysis, including preliminary site inspection and boundary mapping, sufficient to establish the suitability of the land for its intended uses;
- (2) Development plan and preliminary engineering report, including alternative land use plans and infrastructure requirements, configurations, and costs required to service the project area, and schedule of governmental permits and approvals required to implement the project;
- (3) Feasibility analysis, including

identification of potential markets, costs

- and economic returns, and recommended lot sizes;
- (4) Environmental impact statement prepared in accordance with chapter 11-200 (department of health);
  - (5) Land use district boundary amendment and county plan and zoning amendments as required for the project;
  - (6) Survey and cadastral work, including topographic and feature map, profile, and cross section survey, preliminary and final subdivision map, parcel descriptions, and installation of property pins for individual lots;
  - (7) Design of project improvements (such as roads and irrigation facilities), including construction drawings and specifications, cost estimates, soils and drainage reports, quantity takeoffs, approval signatures from permitting agencies, and arrangements for utilities installations; and
  - (8) Consultation and advice during construction phase, including resolution of problems due to unforeseen conditions, approval of substitutions by the contractor, and as-built drawings. [Eff ]  
(Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

**§4-159-14 Development.** The division shall cause agricultural enterprise lands infrastructure improvements approved by the board to be established, improved, operated, and maintained. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

**§4-159-15 Development by joint ventures.** Any agricultural enterprise lands developed by the department in partnership with a federal agency, county, or a private party shall be subject to a

partnership agreement approved by the board of agriculture, which agreement shall provide, at a minimum:

- (1) A determination by the board that it is in the public interest to enter into the partnership agreement;
- (2) Long-term assurance that the land will be utilized for agricultural enterprise purposes;
- (3) Board approval of the agricultural enterprise lands development plans and specifications;
- (4) Selection and management of lessees in a manner approved by the board; and
- (5) Conditions to ensure a public benefit from any state funds expended for the project.  
[Eff \_\_\_\_\_ ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

**§4-159-16 Planning; joint ventures.** (a) Prior to entering into a partnership agreement, the board shall:

- (1) Determine:
  - (A) Whether the lands shall be developed by disposition or contract;
  - (B) The location, area, and size of the lands to be developed;
  - (C) The use or uses to which the lands shall be put;
  - (D) The estimated period of time to construct and complete the development;
  - (E) Minimum requirements for on-site and off-site improvement, if any; and
  - (F) Such other terms and conditions as shall be deemed necessary by the board;
- (2) Set the minimum or upset rental and additional rental, if any, on the basis of an appraisal report prepared by an appraiser for the board, determining the rental value of the lands for the use or uses for which

they are to be developed using generally accepted appraisal methods; the appraised value may be adjusted as provided in section 4-159-21;

- (3) Give notice of the proposed partnership agreement by publication at least once in a newspaper of general circulation in the State. The notice shall invite interested persons to submit applications to be selected as the partner for the project. The notice shall also state in general terms the size, location, the minimum rental and additional rent, if any, of the area to be developed, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which such lands shall be put, the last date on which applications will be received by the department, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the partnership agreement may be secured by interested persons;
- (4) Require each interested person to include a financial statement, and performance and experience records in agricultural or related development; provided that the board may also, in its discretion, require the interested person to submit answers, under oath, to questions contained in a questionnaire prepared by the department;
- (5) Require each interested person to submit a sealed bid, which shall include a development plan in as much detail as possible including but not limited to the following: the interested person's proposal as to how and when the person intends to develop the land in partnership with the

board, including any permitted incremental development, the amount of money the person intends to commit to the total project, the method of recovery of the interested person's costs and profits, the amount the person agrees to pay to develop the land, and the income the board will receive from leases;

- (6) Establish reasonable criteria for the selection of a private party or parties as a partner; and
- (7) Determine within forty-five days of the last day for filing applications the person or persons who meet the criteria for selection set by the board, and notify all persons who submitted applications of the board's determination within seven days of such determination. Any person may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any person does not notify the board of any objections and the grounds therefore, in writing, within ten days of such notice, the person shall be barred from proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

(b) If only one person meets the criteria for selection as the partner, the board then may enter into a partnership agreement with that person; provided that the terms of the partnership agreement shall not be less than those proposed by the partner in the application. If two or more persons meet the criteria for selection, the board shall consider all of the relevant facts of the partnership agreement, the proposals submitted by each person, the experience and financial capability of each person, and shall within forty-five days from the date of selection of the persons that met the criteria, select the person who submitted the best proposal. The board then may



negotiate the details of the partnership agreement; provided that the terms of the agreement shall not be less than those proposed by the partner in the application. [Eff \_\_\_\_\_ ] (Auth: HRS §141-1; SLH 2022, HRS §141D-7) (Imp: SLH 2022, HRS §141D-7, §9)

**§4-159-17 Terms of joint venture.** Any partnership agreement for a joint venture shall be approved by the board and shall be in conformity with section 4-159-15. The terms of a partnership agreement for joint venture shall include the following, wherever appropriate:

- (1) The development and subdivision shall comply with appropriate state and county zoning and subdivision requirements; provided that, pursuant to section 141D-10, HRS, the development and subdivision may be exempt from the requirements;
- (2) The partners shall file with the department a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the partnership agreement;
- (3) The dates on which the partners must submit to the board for approval the preliminary plans and final plans and specifications for the total development. No construction shall commence until the board has approved the final plans and specifications, provided that with board approval, construction on an incremental basis may be permitted;
- (4) The date of completion of the total development, including the date of completion of any permitted incremental development;
- (5) The minimum requirements for off-site and onsite improvements that the partner must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and

- establish the minimum requirements for offsite and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development;
- (6) A partnership agreement may provide that the board shall issue a lease to the nominees of the partner, including the partner, pursuant to the terms previously negotiated and agreed upon between the partner and the board, including lease rent to the lessee and method of recoupment of expenses by the partner;
  - (7) In the event of a lease, the partner may be permitted, after the partner has completed construction of any required offsite improvement, to assign or sublease with board approval portions of the leased lands in which the construction of any offsite improvement has been completed to an assignee or sublessee who shall assume the obligations of the partner relative to the parcel being assigned or subleased, including the construction of any onsite improvement. The board may permit a partner to share in the lease rent for a fixed period in order to recover costs and profit;
  - (8) The board may include in any partnership agreement or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in this chapter; and
  - (9) Other terms and conditions set by the board.  
 [Eff \_\_\_\_\_ ] (Auth: SLH 2022,  
 HRS §141D-7, §7) (Imp: SLH 2022, HRS  
 §141D-7, §9)

## SUBCHAPTER 4

## DISPOSITION OF AGRICULTURAL ENTERPRISE LANDS

**§4-159-18 Lease provisions, generally.** Every lease issued by the board shall contain:

- (1) The specific use or uses to which the land is to be employed, provided that the use or uses shall be for agricultural enterprise operations or activities only;
- (2) The improvements required, provided that a minimum reasonable time shall be allowed for the completion of the improvements, and provided further that the board may permit the lessee to offset the cost of any improvements to the leasehold against not more than two years of lease rental. This provision shall not apply to lease conversions as defined in section 4-159-8;
- (3) Restrictions against alienation as set forth in section 4-159-5;
- (4) The rent as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas; reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches; and prevention of nuisance and waste;
- (6) A "bona fide operator" must be named and included in all applications. The "bona fide operator" or qualified representative must be at the enterprise during operational hours; and
- (7) Such other terms and conditions as the board deems necessary to preserve and protect agricultural enterprise lands and to effectuate the purposes of the state constitution and chapter 141D, HRS.  
[Eff \_\_\_\_\_ ] (Auth: SLH 2022,

HRS §141D-7, §7) (Imp: SLH 2022, HRS  
§141D-7, §8)

**§4-159-19 Lease restrictions, generally.** Except as otherwise provided, the following restrictions shall apply to all leases:

- (1) No lease shall be for a term of less than fifteen years nor more than sixty-five years, including any extension granted for mortgage lending or guarantee purposes;
- (2) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or to any person who, during the five years preceding the date of disposition, has had a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof;
- (3) No lease shall be transferred, assigned, or subleased without the prior written approval of that board; any transferee, assignee, or sublessee of an agricultural enterprise land lease shall first qualify as an applicant under this chapter. No lease or any interest therein, including corporate stock or interest in a partnership or association, shall be transferred or assigned without the consent of the board, except by devise, bequest, or intestate succession.
- (4) With the approval of the board, and subject to the provisions of section 4-159-35, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:
  - (A) The lessee becomes mentally or physically disabled;
  - (B) Extreme economic hardship is demonstrated to the satisfaction of the

- board; or
- (C) The assignment is to the corporate successor of the lessee;
- (5) Prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional rental pursuant to the method outlined in section 4-159-21;
- (6) The lessee shall not sublet the whole or any part of the demised premises without the approval of the board; provided that:
- (A) Prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee;
  - (B) In the case where the lessee is required to pay rent based on a percentage of its gross receipts, the rents paid by the sublessee shall be included as part of the lessee's gross receipts; and
  - (C) The board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that

the rent may not be revised downward;  
and

- (7) The lease shall be for a specific use or uses, and shall not include wastelands unless it is impractical to provide otherwise. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-20 Additional terms and conditions.** (a)

The lessee, shall promptly provide all information and documents requested by the administrator and in accordance with the plan of development and utilization provided for in subsection (d), shall provide data and documents to show profit, viability, and fiduciary responsibility, including but not limited to tax forms, cashflow statement, and financial statements.

(b) The lessee shall furnish the department, prior to the issuance of the executed lease, the following:

- (1) A certificate of comprehensive liability insurance to be maintained throughout the term of the lease with coverage in an amount to be determined by the administrator and approved by the board, subject to periodic review and adjustment at intervals specified in the lease. The certificate of insurance shall name the department as an additional insured and shall require a thirty-day notice to the department of any policy change or cancellation; and
- (2) A performance bond to be maintained throughout the term of the lease in an amount equal to two times the annual base rental; provided that the bond requirement may be waived by the administrator upon evidence that the lessee is substantially in compliance with lease terms and the lessee's lot is substantially developed according to plans approved by the department; provided

further that the department may reinstate the waived bond at any time during the term of the lease.

(c) The board, at its discretion, may permit a dwelling or dwellings on a leased lot if the need is clearly demonstrated. The dwelling or dwellings shall be used in connection with the agricultural enterprise activities on the lot and shall not be used for rental purposes. The dwelling shall be subject to such additional terms and conditions as the board may require, including, but not limited to, adjustment of the base rental to reflect residential use.

(d) The lessee shall utilize the land only for the purposes specified in the lease, in accordance with a plan of development and utilization which shall be submitted for the administrator's approval prior to the issuance of the lease. The lessee shall not modify or deviate from the plan without the approval of the department and any unapproved modification or deviation from the plan may be cause for the termination of the lease.

(e) All construction on the leased lot shall be in accordance with plans approved by the administrator and shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules, including but not limited to laws regarding environmental quality control.

(f) When a notice of lease disposition covers more than one lot or parcel, each lessee shall bear a pro rata share of the cost of the services referenced in subsection (b) and the pro rata share shall be determined by the administrator.

(g) The administrator or the administrator's authorized representative has the right to inspect, at reasonable hours and without notice, the leased property and the improvements, crops, livestock, equipment, chattels, books, and records of the lessee in connection with the administration of the lease.

[Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-21 Appraisals and setting of lease rents.**

(a) Public auction. The appraisal of lands for the determination of the upset lease rental at public auction may be made by an employee of the department qualified to appraise lands, or by one but not more than three disinterested appraisers contracted by the administrator; provided that the upset lease rental shall be determined by disinterested appraisal when prudent management so dictates. Except as otherwise provided in this subchapter, no such lands shall be leased for a sum less than the rental value fixed by appraisal; provided that for any lease at public auction, the board may establish the upset lease rental at less than the appraisal value set by an employee of the department and the land may be leased at that price. The department shall be reimbursed by the lessee for the cost of any appraisal made by a disinterested appraiser or appraisers contracted for by the department.

(b) Drawing or negotiation. The base rental and additional rental lands to be disposed of by drawing or by negotiation shall, except as otherwise provided in this subchapter, be no less than the rental value determined by a disinterested appraiser or appraisers contracted by the administrator, and such appraisal, and any further appraisal which is made at the request of the lessee and with the approval of the department, shall be reimbursed to the department by the lessee.

(c) Reopening. In the case of reopenings of the rental for a lease, the base rental and additional rental for any ensuing period shall be the rental value at the time of reopening determined in conformance with the uniform standards of professional appraisal practice as adopted by national professional appraisal organizations. At least six months prior to the time of reopening, the rental value of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the administrator, and the lessee shall be promptly notified of the determination; provided that should the lessee disagree with the appraised rental, the lessee may



appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the appraised rental shall be determined by arbitration as provided in chapter 658A, HRS. In that case the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department.

(d) Assignment of lease. In the event of an assignment of lease, the base rental and additional rental for any ensuing period may be redetermined by the board pursuant to appraisal conducted by a disinterested appraiser or appraisers contracted by the administrator; provided that the base rental and additional rental shall be the rental value at the time of assignment determined by generally accepted appraisal methods. The cost of redetermining the base rental and additional rental shall be borne by the lessee.

(e) When more than one appraiser is appointed, each shall prepare and submit an independent appraisal. All appraisal reports shall be available for review by the public.

(f) All appraisals are required to be performed by using the Uniform Standards of Professional Appraisal Practices.

(g) Notwithstanding anything to the contrary contained in this chapter, the administrator may recommend to the board for approval an adjustment of an appraised value. The administrator may recommend using any of the following adjustments:

- (1) An adjustment of the fee simple value determined through appraisal as necessary to maintain equitable fee simple values between, among, or throughout the department's land lease system for lands having the same designated use and which are put out to lease within twelve months of each other;
- (2) An adjustment of the rental value determined through appraisal by factoring in a lot's

unproductive acreage, e.g., drainageways, restricted easements, common usage, mixed use, and uncontributory land areas, for those lots for which the specified use is for crops to be grown "in the soil or ground".

An adjustment of the rental determined through appraisal at the time of reopening or conversion, as the case may be, by:

- (A) Factoring in the income for a particular lessee using a percentage increase that reflects the increase in the value of the leasehold since commencement of the lease;
- (B) Using an appropriate index (e.g., consumer price index, producers' price index, etc.) to calculate an escalation of the rental over a specified period of time.

[Eff ] (Auth: SLH 2022,  
HRS §141D-7, §7) (Imp: SLH 2022, HRS  
§141D-7, §8)

**§4-159-22 Negotiation.** (a) A lease of agricultural enterprise lands may be disposed of through negotiation with any person who:

- (1) Holds a revocable permit for agricultural purposes;
- (2) Has formerly held an agricultural lease or a holdover lease of public land that expired within the last ten years and has continued to occupy the land; or
- (3) Is determined by the department to have a beneficial impact on agriculture, per 141D HRS.

(b) After a determination is made to negotiate the disposition of a lease, the administrator shall:

- (1) Give notice to eligible applicants in writing pursuant to section 141D-11, HRS, of the department's intention to lease agricultural enterprise lands through negotiation, setting forth the terms,

conditions, and restrictions.

- (2) Interested eligible applicants shall apply for a lease by submitting a written application within thirty days from the date of receipt of the notification; provided that the department may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease.
- (3) Determine the applicants who meet the criteria for selection set by sections 4-159-8 or 4-159-18, as applicable, and the department and notify all applicants of the administrator's determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the administrator of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the department to follow the conditions and criteria.

(c) If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in subsection (b) (2), dispose of the lease by negotiation.

(d) If two or more applicants meet the criteria for the selection of the lessee, the department shall select the lessee who submits the highest offer contained in a sealed bid deposited with the administrator.

(e) Disposition of agricultural enterprise lands set aside for common use or for the processing of agricultural products may be negotiated without regard to the limitations set forth in this section and section 4-159-29; provided that the disposition encourages competition within the agricultural processing industry and shall not exceed a maximum

term of sixty-five year.

(f) The lease shall be issued when conditions of the award of lease are fulfilled.

(g) Notwithstanding the provisions of this section and section 4-159-29, the board may renegotiate leases as provided in section 4-159-2.

(h) Upon negotiating and executing a lease pursuant to this section, the board shall:

- (1) require the appraisal of the parcel using the Uniform Standards of Professional Appraisal Practice to determine the rental amount, including percentage of rent;
- (2) Require a payment of a premium, computed as twenty-five per cent of the annual lease rent; provided that the premium to be added to the annual lease rent for each year of the lease shall be equal to the number of years the lessee has occupied the land; provided that the premium period shall not exceed seven years; and
- (3) recover from the lessee the costs of expenditures required by the department to convert the parcel into a leasehold. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §11)

**§4-159-23 Drawing of lot.** When the board determines that agricultural enterprise lands are to be leased by drawing, the administrator shall give public notice inviting applications for the drawing as provided in section 4-159-29, with such details concerning the drawing as it deems necessary and desirable. Applications to participate in the drawing shall be filed with the department within two weeks after the last publication date of the notice. Within not more than one hundred twenty days after the closing date for applications, the administrator shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection, and conduct a drawing. The date of the drawing shall be published as set forth in section

4-159-29. All applicants shall be notified of the results of the drawing, and the award of leases shall be made by the board at its next regularly scheduled meeting. The lease shall be issued when conditions of the award of lease are fulfilled. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-24 Public auction.** (a) Disposition of agricultural enterprise lands may be made at public auction after public notice as provided in section 4-159-29. All public auctions shall be held at the department or at any other convenient place in the district in which the land is located, and shall be conducted by the administrator or by an authorized employee of the division under the direction of the administrator, who shall perform this service without extra compensation.

(b) To be eligible to bid in an auction for a agricultural enterprise lands lease, a bidder shall qualify as a bona fide operator as defined in this chapter. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-25 Conduct of drawing.** (a) Qualified applicants shall be present in person or shall be represented by an agent with appropriate credentials authorizing representation. Applicants who are not present or arrive late at the drawing shall be disqualified.

(b) All qualified applicants shall be placed in the following groups:

- (1) Group I, all persons given preference pursuant to section 4-159-28; or
- (2) Group II, applicant with "bona fide operator" as defined in this chapter.
- (c) The department may determine the order of lot selection as follows:
  - (1) Within Group I, by prioritizing in any sequence the different preference categories

identified in section 4-159-28.

- (2) Within the Group I preference categories and within Group II, by establishing subgroups of priority based on qualification for agricultural enterprise land lots.

(d) After all lots have been selected, five additional names each may be drawn as alternates from Group I and Group II remaining applicants. In the event awards are canceled for failure to satisfy conditions of award or other reason, the lots made available shall be offered for award to the alternates, first from Group I and then from Group II in the order in which their names were drawn. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-26 Disposition of abandoned or seized property.** The department may sell, donate, or otherwise dispose of property abandoned or seized on public land upon compliance with the requirements of section 171-31.5, HRS. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-27 Application requirements.** (a) An applicant shall identify at least one "bona fide operator" pursuant to section 4-159-1 and meet such other qualifications as the board may prescribe pursuant to section 4-159-2.

(b) All applicants. In addition to satisfying the requirements of subsection (a), all applicants shall demonstrate the ability to perform the lease terms and shall provide the following information, at a minimum, to the administrator:

- (1) A resume of the "bona fide" operator, including experience identified by month and year;
- (2) A business plan and financial plan;
- (3) A preliminary plan of utilization and development of the land;
- (4) Certificate of good standing from the Hawaii

- department of commerce and consumer affairs;
- (5) An affidavit that the applicant is not delinquent in any obligation to the State or any of its political subdivisions; and that the applicant has not had a sale, lease, license, permit or easement covering public land canceled for failure to satisfy any terms or conditions thereof;
  - (6) A financial statement, in the format outlined in the application instructions, including a balance sheet current within six months; and
  - (7) Copies of state income tax returns for the last five years.

(c) Additionally, applicants which are partnerships, including limited partnerships, corporations, including limited liability corporations, associations, trusts, or agricultural cooperatives shall provide the following information:

- (1) In the case of a corporation, a copy of articles of incorporation reflecting date of filing, purpose of the corporation, and disclosure of all directors and officers; and
- (2) Name and experience of "bona-fide operator."

(d) Hawaii Business Registration. All applicants shall be a registered business with the Hawaii department of commerce and consumer affairs. The registered business and Certificate of good standing shall be maintained throughout the lease.

(e) Whenever the board establishes additional criteria for the selection of lessees, pursuant to section 4-159-2(a)(2), in support of qualification, each applicant shall provide documentation to the satisfaction of the administrator. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-28 Preference right.** (a) Any person otherwise qualified to take a lot shall have preference in any disposition by drawing of lots if

the person has been displaced by reason of any natural disaster as defined in this chapter.

After the above preference, any person who is a citizen of the United States and who is otherwise qualified shall be given preference over non-citizens.

(b) Proof of preference status. Any applicant claiming preference status shall furnish proof of veteran status, as called for in the instructions to applicants and which shall be submitted together with the application. [Eff \_\_\_\_\_] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-29 Notices.** (a) Any disposition of public lands shall require public notices as prescribed in the following paragraphs. In addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner, or on the department's website.

(b) Each notice of proposed lease disposition shall contain the following information:

- (1) General information regarding all the parcels or lots offered for lease, such as time and place of disposition, terms and conditions of disposition, qualification of applicants, procedure for filing application, conditions of award, if any and time and place at which more detailed information regarding the lease disposition may be obtained;
- (2) Specific information pertaining to the individual parcels or lots offered for lease such as the parcel or lot number, its description, location and area, minimum, base, or upset rental, basis for additional rent if any, method of payment, purpose for which leased, the term of lease, building requirement, and other such covenants and conditions; and
- (3) The lessee's responsibility for applicable



lease disposition costs pursuant to section 4-159-3.

(c) Auctions. Public notice of any proposed disposition by auction shall be given at least once in the land district where the land being disposed of is located. Notice of the auction shall contain in addition to information in subsection (a) the following:

- (1) General description of the land, including the address and tax map key;
- (2) Specific use for which the disposition is intended;
- (3) Minimum upset price or rental; and
- (4) The maps showing the metes and bounds description and the classification of the land shall be kept in the division or its land agent in the land district in which the land is situated, and shall be available for inspection at normal business hours.

(d) Drawings. Whenever a disposition by drawing by lots is proposed, notice inviting applications to participate in the drawing shall be given at least once in the land district where the land being disposed of is located. The notice shall contain, in addition to information in subsection (a):

- (1) The qualifications required;
- (2) A general location and tax map key;
- (3) The specific use for which the disposition is intended;
- (4) Base rental to be charged, and basis for additional rent, if any; and
- (5) The date by which all applications shall be filed, which date shall be not less than fourteen days after the last publication date.

Within not more than one hundred twenty days after the closing date for applications, the administrator shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing. The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing,

shall be mailed to each applicant, whether or not the applicant in fact qualified. The notice of the drawing shall state the time and place of the drawing. Upon completion of the drawing, the award of leases shall be announced at the next regularly scheduled meeting of the board and the lease issued when conditions of the award are fulfilled.

(e) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once in the land district where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general the terms and conditions that will be negotiable and those terms which shall be predetermined and the last date on which application will be received by the department which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested person. If more than one applicant qualifies then the administrator shall review and may recommend to the board for approval to negotiate the best terms. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-30 Ineligible applicants.** (a) No person shall be eligible to lease public lands who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.

(b) No person shall be eligible to lease public land who is in arrears in the payment of taxes or other obligations to the State or any of its counties.

(c) No person shall be eligible to become an applicant who is not of legal age. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-31 Expired leases; holdover.** Upon expiration of the lease term, if the leased land is not otherwise disposed of, the board may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe; provided that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested. The term "cycle" as used in this section means the period required to plant and cultivate the original crop, including the harvesting of the first ratoon, being a period exceeding two years.

Upon expiration of the one-year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the department may issue a temporary permit to the lessee, subject to section 4-159-2 and the rent and such other terms and conditions as the board may prescribe. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8) SUBCHAPTER 5

#### MANAGEMENT OF AGRICULTURAL ENTERPRISE LANDS

**§4-159-32 Consent to mortgage.** (a) Whenever under this chapter or under any lease, license, permit, or other instrument issued by the board, consent of the board is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the chairperson of the board may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at the foreclosure to any purchaser, including the mortgagee, provided the

purchaser shall be qualified under this chapter to lease, own, or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, Department of Veterans Affairs, the Small Business Administration, the United States Department of Agriculture, or any other federal agency and their respective successors and assigns, or any lending institution authorized to do business in the State or elsewhere in the United States; provided that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

(b) Notwithstanding any provision in this chapter to the contrary, in leases or sales for agricultural residential purposes, the board may waive or modify any restrictions of the lease or sale or any restrictions contained in any such lease or sale if the waiver or modification is necessary to enable any of the federal agencies specified in subsection (a) or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the land or the leasehold interest; provided any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration or the United States Department of Agriculture. [Eff  
] (Auth: SLH 2022, HRS §141D-7, §7  
(Imp: SLH 2022, HRS §141D-7, §13)

**§4-159-33 Notice of breach or default.** Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease or patent heretofore or hereafter issued under this chapter, the administrator shall deliver a written

notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent issued under this chapter, the written notice shall include a demand to pay the rent within sixty days after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided or within such additional period as the board may allow for good cause, the board subject to section 4-159-34, may exercise such rights as it may have at law or as set forth in the lease or encumbrance. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §13)

**§4-159-34 Rights of holder of security interest.**

(a) Whenever any notice of breach or default is given to any party under section 4-159-33 or under the terms of any lease, license, agreement, or other instrument issued or to be issued under this chapter, a copy of the notice shall be delivered by the department to all holders of record of any security interest in the land or interest covered by the lease, license, agreement, or other instrument whose security interest has been recorded with the department. Should the board seek to forfeit the privilege, interest, or estate created by the lease, license, agreement, or other instrument, each holder may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all the terms, covenants, restrictions, or conditions of any lease, license, agreement, or other instrument capable of performance by the holder, as determined by the board, within the time period provided in section 4-159-33 or within such additional

period as the board may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the board may:

- (1) Pay to the holder from any moneys at its disposal, which is made available for that purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof the board shall be entitled to a conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or
  - (2) If the property cannot be reasonably reassigned without loss to the department then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redispense of the affected land to a qualified and responsible applicant free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when it may still resolve the violation created by the breach or default involved.
- (b) The proceeds of any redispense under subsection (a) (2) shall be applied: first, to

reimburse the department for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the department in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the department upon disposition which exceeds the fair market lease value of the land as previously determined by the department's appraiser; and fourth, to the owner of the privilege, interest, or estate. Nothing contained in this section shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date of a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(c) Prior board action shall be required when an institutional lender acquires the lessee's interest through a judicial or nonjudicial foreclosure sale, by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a judicial or nonjudicial foreclosure sale. The institutional lender shall convey to the board a copy of the sale or assignment as recorded in the bureau of conveyances.

(d) Notwithstanding any other provision of this chapter, for any lease that is subject to a security interest held by an institutional lender who has given to the board a copy of the encumbrance as recorded in the bureau of conveyances:

- (1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a

term equal to the term of the lease remaining immediately before the cancellation termination, or rejection, with all terms and conditions being the same as in the canceled, terminated or rejected lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before the cancellation, termination, or rejection; provided that a lease that is rejected or deemed rejected under bankruptcy law shall be deemed canceled and terminated for all purposes under state law;

- (2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of paragraph 141D-13(b)(1), HRS acquisition of the lessee's interest pursuant to a judicial or nonjudicial foreclosure sale, or an assignment in lieu of foreclosure:
- (A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of the lessee's interest; provided that the institutional lender shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and
  - (B) Sections 141D-8(b)(1) and (2), HRS, shall not apply to the lease or the demised land during the time the institutional lender has hold the lease; provided that:
    - (i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the board; and
    - (ii) The new lease issued to the



institutional lender shall terminate one hundred twenty days from the effective date of issuance, at which time the institutional lender shall either sell or assign the lease and sections 141D-8(b)(1) and (2), HRS, shall apply to the new lease.

- (3) If there is a delinquent loan balance secured by a security interest:
  - (A) The lease shall not be canceled or terminated, except for cancellation by reason of default of the lessee;
  - (B) No increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, shall be imposed or become payable;
  - (C) No lands shall be withdrawn from the lease, except either by eminent domain proceedings beyond the control of the board or with prior written consent of the institutional lender, which shall not be unreasonably withheld, and
- (4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender have been paid in full.
  - (d) Ownership of both the lease and the security interest by an institutional lender shall not affect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the lease and security interest with the consent of the board.
  - (e) The board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease

mortgageable or more acceptable for mortgageability by an institutional lender.

(f) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

- (1) The purchase, assignment, or transfer shall conform with subsection 141D-13(b)(4), HRS; and
- (2) The purchase, assignments, of transfer of the rights shall be reserved for and exercisable only by an institutional lender.

Other purchasers shall not be precluded from acquiring the institutional lender's security interest but shall not have exercisable rights as successor in interest to the original institutional lender. [Eff ] (Auth: SLH 2022, HRS §141D-7, §13) (Imp: SLH 2022, HRS §141D-7, §13)

**§4-159-35 Re-purchase right, first offer to board; limitation on re-purchase price.** (a) A lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the board, as follows:

- (1) The board may have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this subsection, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements and "appreciated value" means the replacement cost for developing the leased premises. If

the board does not exercise its option, the provisions of section 4-159-19(4) shall apply;

- (2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value;
- (3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the administrator; provided that should the lessee disagree with the values, the lessee may appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658A, HRS. In this event, the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department;
- (4) The board may re-purchase the lease and improvements with funds from the special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the board; and
- (5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the board at the time of the re-purchase.

(b) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-159-34. [Eff ]

(Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-36 Condemnation of leases.** The lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the State, county, or any other governmental agency, the lease rental shall be reduced in proportion to the value of the portion of the premises condemned, and the lessee shall be entitled to receive from the condemning authority:

- (1) The value of growing crops, if any, which the lessee is not permitted to harvest; and
- (2) The proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided that the lessee may remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee.

The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lease and be discharged for any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within such reasonable period allowed by the department. [Eff ] (Auth: SLH 2022, HRS §141D-7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-37 Taxes.** Any provision to the contrary notwithstanding, leases and licenses issued by the board and permits issued to permittees, who are holdover lessees or licensees, shall be subject to real property taxes which shall be assessed on a pro rata basis against the lessee, licensee, or the permittee and the lessee's, licensee's, or permittee's successor in interest.

Upon notice from the appropriate tax agency, the administrator shall notify the lessee, licensee, or permittee and each holder of record having a security interest as provided in section 4-159-34 of any default in the payment of the taxes and upon failure to remedy the default within sixty days after receipt of notice of default, the board may cancel and terminate the lease, license, or permit without prejudice to any other remedies the department may have against the lessee, licensee, or permittee. [Eff ] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

**§4-159-38 Lease forfeiture.** (a) Upon the violation of any condition or term of any lease to be observed or performed by the lessee, the board shall, after the notice of default as provided in section 4-159-33, and subject to the rights of each holder of record having a security interest as provided in section 4-159-34, terminate the lease or tenancy and take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations.

(b) The board shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was

demised, the base annual rental shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the demised premises by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal the lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the demised premises by the lessee of the leased land being withdrawn. For tree or orchard crops taken, payment shall be based on the residual value of trees taken and, if there are unharvested crops, the value of such unharvested crops. [Eff \_\_\_\_\_] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

## SUBCHAPTER 6

### OTHER PROVISIONS

**§4-159-39 Severability.** This chapter shall be deemed to be severable, and in the event a section of this chapter is determined to be invalid, such invalidity shall affect that section only and not invalidate this chapter in its entirety." [Eff \_\_\_\_\_] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: HRS §91-2)

### DEPARTMENT OF AGRICULTURE

Chapter 4-159, Hawaii Administrative Rules, on the Summary Page dated \_\_\_\_\_, was adopted on \_\_\_\_\_, following public hearings held on \_\_\_\_\_,

\_\_\_\_\_, after public notices were given  
in the \_\_\_\_\_ on  
\_\_\_\_\_.

The adoption of chapter \_\_\_\_\_ shall take  
effect ten days after filing with the Office of the  
Lieutenant Governor.

\_\_\_\_\_  
Sharon Hurd  
Chairperson  
Board of Agriculture

APPROVED

\_\_\_\_\_  
Josh Green M.D.  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Filed

## **V. Administrative Matters**

### **B. 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 on the following:

1. **House Bill 1024 and Senate Bill 1343 – 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
2. Governor’s Message 513 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **James Lee**, for a term to expire June 30, 2028
3. Governor’s Messages 514 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Jennifer Salisbury**, for a term to expire June 30, 2028
4. Governor’s Message 617 Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Nicolle Ige**, for a term to expire June 30, 2028

# HB1024



Measure Title: RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

Report Title: SBRRB; Small Business; Quorum Requirements

Description: Amends the quorum requirements to do business and validate acts of the Small Business Regulatory Review Board.

Companion: [SB1343](#)

Package: Governor

Current Referral: ECD, JHA

Introducer(s): NAKAMURA (Introduced by request of another party)

## Sort by Date

## Status Text

1/23/2025	H	Referred to ECD, JHA, referral sheet 3
1/23/2025	H	Introduced and Pass First Reading.
1/21/2025	H	Pending introduction.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

# HB1024

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A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

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

1 SECTION 1. Section 201M-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3 "(d) A majority of all the members [~~to which the board is~~  
4 ~~entitled~~] currently serving on the board shall constitute a  
5 quorum to do business, and the concurrence of a majority of all  
6 the members [~~to which the board is entitled~~] currently serving  
7 on the board shall be necessary to make any action of the board  
8 valid[-]; provided that at least five members are necessary to  
9 constitute a quorum to do business and validate any action of  
10 the board."

11 SECTION 2. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

14

15

INTRODUCED BY: *Nedra K. Rubin*

16

BY REQUEST

JAN 21 2025

# H.B. NO. 1024

**Report Title:**

SBRRB; Small Business; Quorum Requirements

**Description:**

Amends the quorum requirements to do business and validate acts of the Small Business Regulatory Review Board.

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

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

PURPOSE: To amend the quorum requirements to do business and validate acts of the Small Business Regulatory Review Board (SBRRB) to account for vacancies.

MEANS: Amend section 201M-5(d), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The SBRRB has had trouble meeting current quorum requirements due to vacancies. This bill will allow a majority of the SBRRB's currently appointed members to constitute a quorum to do business and take official action.

Impact on the public: Authorizing business to be conducted and actions to be validated by the majority of actual members will allow the SBRRB to function without interruption and thus benefit small business owners.

Impact on the department and other agencies: Having a flexible quorum requirement that accounts for vacancies will reduce potential delays in the rulemaking process caused by meeting cancellations due to a lack of quorum.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-142.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.

# SBI343 SD1 HD1



Measure Title: RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

Report Title: SBRRB; Small Business; Quorum Requirements

Description: Amends the quorum requirements to do business and validate acts of the Small Business Regulatory Review Board. Effective 7/1/2050. (HD1)


Companion: [HB1024](#)

Package: Governor

Current Referral: ECD, JHA

Introducer(s): KOUCHI (Introduced by request of another party)

<u>Sort by Date</u>	Status	Text
3/18/2025	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JHA with none voting aye with reservations; none voting no (0) and Representative(s) Cochran, Ward excused (2).
3/18/2025	H	Reported from ECD (Stand. Com. Rep. No. 1289) as amended in HD 1, recommending passage on Second Reading and referral to JHA.
3/14/2025	H	The committee on ECD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 6 Ayes: Representative(s) Ilagan, Hussey, Tam, Templo, Todd, Matsumoto; Ayes with reservations: none; 0 Noes: none; and 1 Excused: Representative(s) Holt.
3/11/2025	H	Bill scheduled to be heard by ECD on Friday, 03-14-25 10:00AM in House conference room 423 VIA VIDEOCONFERENCE.
3/6/2025	H	Referred to ECD, JHA, referral sheet 19
3/6/2025	H	Pass First Reading
3/4/2025	H	Received from Senate (Sen. Com. No. 310) in amended form (SD 1).
3/4/2025	S	Report adopted; Passed Third Reading. Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
2/28/2025	S	One Day Notice 03-04-25.
2/28/2025	S	Reported from JDC (Stand. Com. Rep. No. 1065) with recommendation of passage on Third Reading.
2/20/2025	S	The committee(s) on JDC recommend(s) that the measure be PASSED, UNAMENDED. The votes in JDC were as follows: 4 Aye(s): Senator(s) Rhoads, Chang, San Buenaventura, Awa; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Gabbard.

2/18/2025	S	The committee(s) on JDC will hold a public decision making on 02-20-25 10:01AM; CR 016 & Videoconference.	
2/12/2025	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to JDC.	
2/12/2025	S	Reported from EDT (Stand. Com. Rep. No. 396) with recommendation of passage on Second Reading, as amended (SD 1) and referral to JDC.	
2/6/2025	S	The committee(s) on EDT recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in EDT were as follows: 5 Aye(s): Senator(s) DeCoite, Wakai, Fukunaga, Kim, Awa; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.	
2/3/2025	S	The committee(s) on EDT has scheduled a public hearing on 02-06-25 1:15PM; Conference Room 229 & Videoconference.	
1/27/2025	S	Referred to EDT, JDC.	
1/23/2025	S	Introduced and passed First Reading.	
1/21/2025	S	Pending Introduction.	

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## **SBI343 SDI HDI**

STAND. COM. REP. NO. 1289

Honolulu, Hawaii  
, 2025

RE: S.B. No. 1343  
S.D. 1  
H.D. 1

Honorable Nadine K. Nakamura  
Speaker, House of Representatives  
Thirty-Third State Legislature  
Regular Session of 2025  
State of Hawaii

Madame:

Your Committee on Economic Development & Technology, to which was referred S.B. No. 1343, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD,"

begs leave to report as follows:

The purpose of this measure is to amend the minimum quorum and voting requirements for the Small Business Regulatory Review Board to conduct its business and validate its actions.

Your Committee received testimony in support of this measure from the Department of Business, Economic Development, and Tourism; and Small Business Regulatory Review Board.

Your Committee finds that existing law entitles the Small Business Regulatory Review Board to eleven members, thereby requiring six members to constitute a quorum to do business. By lowering the number of members required to achieve quorum by one, this measure maintains the integrity of the Board while allowing it to function with less interruption in the event of vacancies, all to the benefit of Hawaii's small businesses.

Your Committee has amended this measure by:



(1) Clarifying that quorum will consist of Board members who are appointed and confirmed, rather than members that are currently serving; and

(2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development & Technology that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1343, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1343, S.D. 1, H.D. 1, and be referred to your Committee on Judiciary & Hawaiian Affairs.

Respectfully submitted on  
behalf of the members of the  
Committee on Economic  
Development & Technology,

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GREGGOR ILAGAN, Chair

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# A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

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

1           SECTION 1. Section 201M-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3           "(d) A majority of all the members [~~to which the board is~~  
4 ~~entitled~~] appointed and confirmed to serve on the board, but no  
5 less than five, shall constitute a quorum to do business, and  
6 the concurrence of a majority of all the members [~~to which the~~  
7 ~~board is entitled~~] appointed and confirmed to serve on the  
8 board, but no less than five, shall be necessary to make any  
9 action of the board valid."

10           SECTION 2. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12           SECTION 3. This Act shall take effect on July 1, 2050.



**Report Title:**

SBRRB; Small Business; Quorum Requirements

**Description:**

Amends the quorum requirements to do business and validate acts of the Small Business Regulatory Review Board. Effective 7/1/2050. (HD1)

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





**Measure Title:** Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, JAMES LEE, for a term to expire 06-30-2028.

**Report Title:** Small Business Regulatory Review Board

**Description:**

**Companion:**

**Package:**

**Current Referral:** EDT

**Introducer(s):**

<u>Sort by Date</u>	<u>Status</u>	<u>Status Text</u>
2/27/2025	S	The recommendation of the committee(s) on EDT is to ADVISE AND CONSENT to the nomination(s). The votes in EDT were as follows: 5 Aye(s): Senator(s) DeCoite, Wakai, Fukunaga, Kim, Awa; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
2/24/2025	S	The committee(s) on EDT has scheduled a public hearing on 02-27-25 1:00PM; Conference Room 229 & Videoconference.
1/23/2025	S	Referred to EDT.
1/23/2025	S	Received.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

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**Measure Title:** Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, JENNIFER SALISBURY, for a term to expire 06-30-2028.

**Report Title:** Small Business Regulatory Review Board

**Description:**

**Companion:**

**Package:**

**Current Referral:** EDT

**Introducer(s):**

<u>Sort by Date</u>	<u>Status</u>	<u>Status Text</u>
2/27/2025	S	The recommendation of the committee(s) on EDT is to ADVISE AND CONSENT to the nomination(s). The votes in EDT were as follows: 5 Aye(s): Senator(s) DeCoite, Wakai, Fukunaga, Kim, Awa; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
2/24/2025	S	The committee(s) on EDT has scheduled a public hearing on 02-27-25 1:00PM; Conference Room 229 & Videoconference.
1/23/2025	S	Referred to EDT.
1/23/2025	S	Received.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.



**Measure Title:** Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, NIKKI IGE, for a term to expire 06-30-2028.

**Report Title:** Small Business Regulatory Review Board

**Description:**

**Companion:**

**Package:**

**Current Referral:** EDT

**Introducer(s):**

<u>Sort by Date</u>	<u>Status</u>	<u>Status Text</u>
2/27/2025	S	The recommendation of the committee(s) on EDT is to ADVISE AND CONSENT to the nomination(s). The votes in EDT were as follows: 5 Aye(s): Senator(s) DeCoite, Wakai, Fukunaga, Kim, Awa; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
2/24/2025	S	The committee(s) on EDT has scheduled a public hearing on 02-27-25 1:00PM; Conference Room 229 & Videoconference.
1/23/2025	S	Referred to EDT.
1/23/2025	S	Received.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

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