

Small Business Regulatory Review Board Meeting

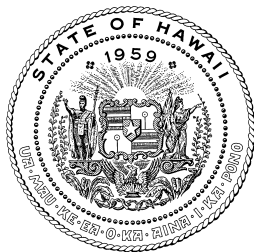
Thursday May 16, 2019

10:00 a.m.

Leiopapa A Kamehameha Building

(State Office Tower)

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



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
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Tel: 808 586-2419

AGENDA

Thursday, May 16, 2019 ★ 10:00 a.m.

Leiopapa A Kamehameha Building - State Office Tower

Conference Room 405

235 South Beretania Street, Honolulu, HI 96813

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Anthony Borge
Chairperson
O'ahu

Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of April 18, 2019 Meeting Minutes

III. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11 Chapter 218, **Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf/Blind**, promulgated by Department of Health (DOH) - *attached and incorporated as Exhibit 1*
- B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 37, **Solar Water Heater Variance**, promulgated by Department of Business Economic Development & Tourism – *attached and incorporated as Exhibit 2*

IV. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Subtitle 11 Ocean Recreation and Coastal Areas, promulgated by Department of Land and Natural Resources (DLNR), as follows - *attached and incorporated as Exhibit 3*
 1. Part I Small Boat Harbors – Chapter 234 **Fees and Charges**
 2. Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253 **Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees**

- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Rules and Regulations for Kauai County Code, Section 18-5.3, **Revocable Permits to Vend Within County Right-of-Ways**, promulgated by Department of Parks and Recreation / County of Kauai – *attached and incorporated as Exhibit 4*

V. Regulation Review Card

- A. Discussion, Fact Finding and Action on Request Received through this Board's "Regulation Review Card" for Discussing Whether or Not All Bottomfish Restricted Fishing Areas Should be Opened and/or Disestablished under HAR Title 13 Chapter 94, **Bottomfish Management**, promulgated by DLNR – *attached and incorporated as Exhibit 5*

VI. Legislative Matters

- A. Update on Senate Bill 1348 SD1 HD1 CD1 **Relating to the Small Business Regulatory Review Board** – Clarifies the intent of the small business regulatory review board when reviewing state and county administrative rules and ordinances that impact small business and appropriates funds

VII. 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), as follows:
 - 1. Meetings with Board Members and State Department Directors
 - 2. Hawaii Small Business Fair at Leeward Community Conference on May 4, 2019
 - 3. Maui Small Business Conference at Maui Arts & Cultural Center on May 8 and 9, 2019
 - 4. Review of "Discussion Leader Assignments" for State and County Agencies' Administrative Rule Review

VIII. Next Meeting: Thursday, June 20, 2019, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

IX. Adjournment

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

II. Approval of April 18, 2019 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

April 18, 2019

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present. All those attendees interested in testifying will be allotted three minutes.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- Mark Ritchie

ABSENT MEMBERS:

- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. INTRODUCTION OF NEW BOARD MEMBERS

Chair Borge welcomed the Board's two new members; Mr. Jonathan Shick is from Oahu and Mr. James (Kimo) Lee is from the Big Island. The Board now has a very good distribution of talent throughout neighbor islands and Oahu.

Chair Borge advised the new members to review the Board's statute, Chapter 201M, HRS, and to take the Office of Information Practices' (OIP's) online Sunshine law tutorial as Sunshine law governs State board meetings and board members' interactions.

III. APPROVAL OF MARCH 21, 2019 MINUTES

Mr. Ritchie made a motion to accept the March 21, 2019 minutes, as amended. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Title 8, Department of Liquor Control, Subtitle 1, Liquor Commission, promulgated by Department of Liquor Control, County of Maui:

- a. Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui; and
- b. Chapter 102, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui

Discussion Leader Ms. Albitz stated that none of the proposed rule changes will make it more difficult for businesses to operate. Thus, it was agreed that the overall changes will benefit small businesses.

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

- c. Discussion and Action on Proposed New HAR Title 16, Corporate Governance Annual Disclosure, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Ms. Martha Im, Staff Attorney at DCCA's Insurance Division, explained that the proposed rules represent the National Association of Insurance Commissioners' (NAIC's) CGAD Model Act and CGAD Model Regulation which require that an insurer or group of insurers provide a confidential disclosure regarding its corporate governance practices to the lead state and/or domestic regulator on an annual basis. The rules will therefore set forth procedures for filing and for the required contents of the corporate governance annual disclosure.

In response to discussion leader Mr. Ritchie's question as to whether the rules had a small business impact, Ms. Im replied that DCCA opted to bring the rules in front of this Board for its consideration because a definitive answer could not be made as to whether or not the rules would impact small business; in general however, it would be the larger companies that would be impacted. It was noted that the rules do not have a chapter number because there is currently a bill being heard in the legislature that would create the rules; as such, they are expected to be finalized upon the approval of the measure.

Overall, the rules are intended to show that the insurance companies are financially sound and that there are no surprises in the event an insurance company falters. Further, the rules represent an accreditation requirement of the NAIC, effective January 1, 2020.

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

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

Ms. Im, Staff Attorney at DCCA's Insurance Division, explained that the rule amendments represent various minor changes by NAIC, which reflect internal controls that are required for insurance companies to be organizationally independent from management. Insurance companies are also required to report at least annually to the audit committee on the results of internal audit activities. Ms. Im, again, explained that because it was unclear as to

whether the rule changes would result in small business impact, DCCA opted to bring them in front of this Board for consideration.

Discussion leader Mr. Ritchie acknowledged that the rule changes appear to be housekeeping measures and that there was likely "big" business impact. Chair Borge added that if when the rules are heard at the public hearing there is any input from small business, that it would be appreciated if DCCA would relay the input to this Board.

Mr. Ritchie made a motion to move the rule amendments to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

e. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 186, Certificate of Need Program, promulgated by Department of Health (DOH)

Ms. Sue Radcliffe, Administrator, and Mr. Darryl Shutter, Regulatory Branch Chief from DOH's State Health Planning and Development Agency explained the certificate of needs program and the proposed revisions to the program's requirements. The purpose of the rules is to establish a health planning and resources development program to promote accessibility for all residents of the state to quality health care services at reasonable cost.

Although the rules have not been updated since 1998 there are no new fees or fines. Mr. Shutter stated that in the past several years about 450 applications were processed; most, if not all, of the businesses that applied are considered small business based on the Board's definition. However, there are a few larger businesses such as the hospitals that would be affected by the changes.

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

V. LEGISLATIVE MATTERS

A. Update on the following Legislative Measures:

a. Senate Bill 1348 SD1 HD1, Relating to the Small Business Regulatory Review Board

Chair Borge noted that this measure, which has been in front of the legislature for a few years now, clarifies the intent of the small business regulatory review board when reviewing state and county administrative rules and ordinances that impact small business; the measure also appropriates an undisclosed amount of funds.

The bill is in the process of going into "conference committee." While the Senate conferees members have been named, House conferees have not yet been announced. Chair Borge encouraged the members to write to the conferees to support the measure once all are named. It was noted that the most current draft still has "ordinances" in the body of the bill despite the Board requesting that "ordinances" be deleted from the statute.

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

The Senate confirmed Mr. Shick's nomination on April 12, 2019; congratulations to Mr. Shick.

Chair Borge mentioned that subsequently, the Governor will have a swearing-in ceremony sometime this year honoring all the newly confirmed board members.

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

The Senate confirmed Mr. Lee's nomination on April 12, 2019; congratulations to Mr. Lee.

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

The Senate confirmed Mr. Yamanaka's nomination on April 12, 2019; congratulations to Mr. Yamanaka.

VI. ADMINISTRATIVE MATTERS

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

- a. Meetings with Board Members and State Department Directors

Chair Borge explained to the newest members that each Board member is assigned as a "discussion leader" for a state agency where the member believes he/she may have knowledge and expertise when reviewing proposed and new administrative rules. The "discussion leader" oversees the discussion of the respective rules at the monthly board meetings.

Mr. Nakamoto met with the director of DOH; he indicated that DOH is extremely receptive to the outreach of the stakeholders as well as the process of coming before this Board. Mr. Yamanaka met with Department of Taxation, and Ms. Albitz and Chair Borge met with Department of Labor and Industrial Relations; both meetings went well.

- b. Changes to the Board's Website

Mr. Ritchie stated that the website taskforce will be meeting on a bi-weekly basis with Hawaii Information Consortium (HIC) for the next few months. HIC is currently doing a nice, organized job and an up-to-date status was discussed.

HIC has not yet started to create the “email sign-up” section for agendas, etc. Chair Borge re-affirmed that automatic sign-ups for agendas was a very good tool for the small business community to utilize. It is expected that the new revamped website will be finalized by fiscal year end June 30, 2019.

c. Hawaii Small Business Fair at Leeward Community College on May 4, 2019

Mr. Ritchie distributed flyers for the upcoming small business fair at Leeward Community College, sponsored in part by DBEDT; the fair is from 8:30 a.m. to 1:15 p.m.

Various workshops are offered with approximately 35 exhibitors, including various state agencies and non-profit service organizations. About a third of the attendees are not yet businesses but are thinking about it, and the other two thirds already have small businesses but are looking to expand. There are generally about 300 attendees that show up.

Mr. Ritchie also mentioned that DBEDT is very interested in sponsoring similar small business fairs on the neighbor islands. He asked that if any of the neighbor island members see an opportunity for a similar fair to let him know.

d. Maui Small Business Conference at Maui Arts & Cultural Center on May 8, and 9, 2019

DBEDT staff will be attending the Maui Small Business Conference once again this year. As DBEDT was offered a “complimentary table” to distribute brochures, it will be taken advantaged of to distribute not only this Board's literature but also some of the other small business programs offered at DBEDT. The conference is very well done with excellent speakers with an opportunity to do outreach on a neighbor island.

VII. NEXT MEETING – The next meeting is scheduled for Thursday, May 16, 2019, in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VIII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Ms. Albitz seconded the motion; the meeting adjourned at 10:50 a.m.

III. New Business — Before Public Hearing

A. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 218, Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf/Blind, promulgated by DOH

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes §201M-2)

Date: 4/16/2019

Department or Agency: Disability and Communication Access Board

Administrative Rule Title and Chapter: Title 11, Chapter 218

Chapter Name: Communication Access Services

Contact Person/Title: Colin Whited/Communication Access Specialist

E-mail: colin.whited@doh.hawaii.gov Phone: (808) 829-3641

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

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

☐

Yes

☒

No

If "Yes," provide details: _____

I. Rule Description:

☐

New

☐

Repeal

☒

Amendment

☐

Compilation

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

☒

Yes

☐

No

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

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

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

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

☐

Yes

☒

No

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

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

☐

Yes

☒

No

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

*

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RECEIVED

By JetaimeA at 8:21 am, May 06, 2019

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

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

The proposed rules apply to communication access providers, such as sign language interpreters, who are independent contractors. The proposed amendments **will not** add a significant economic burden on those independent contractors, as they are not required to comply with the proposed rules.

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

See Attachment 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.

See Attachment A.

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

See Attachment A.

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

See Attachment A.

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

See Attachment A.

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

See Attachment A.

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

See Attachment A.

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

DCAB did not consider alternatives to amending the rules because amending the rules is the only legal option of making the proposed rule changes.

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.

DCAB did not consider other methods of compliance for small businesses because amending the rules is the only legal option of making the proposed rule changes.

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

DCAB's Standing Committee on Communication Access held a total of thirty-three (33) meetings since beginning the process of amending the rules in May 2014. Progressive drafts of the proposed amendments to the rules as approved by the Committee have been made available to the public throughout the process. Comments were provided in support of the proposed amendments by small business stakeholders, including sign language interpreters who are independent contractors, sign language interpreter referral agencies, and the Hawaii Registry of Interpreters for the Deaf.

- 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.

See Attachment 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.

No, the proposed rules do not include provisions that are more stringent than those mandated by any comparable or related federal, state or county standards.

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

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

* * *

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

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

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

Attachment A

- 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.**

Sign language interpreters who have been issued a Hawaii State Sign Language Interpreter Credential by taking and passing the HQAS test may have a loss of revenue if they do not participate in the continuing education program before their credential expires. In this instance, they may not continue business as a credentialed independent contractor unless they re-take and pass the HQAS test or obtain national interpreter certification.

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.**

The current HQAS test fee of \$300.00 was established in 2011. It has not changed since the rules were last amended on January 15, 2011.

The current HQAS credential is free, but the enrollment fee for the continuing education program is \$100.00. This also has not changed since the rules were last amended on January 15, 2011.

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

The proposed amendments to the HQAS test fee would increase from \$300.00 to \$360.00 to begin after the effective date of the rules. This reflects a 20% increase.

The proposed amendments establish a \$50.00 fee for the Hawaii State Sign Language Credential. However, issuance of the credential includes automatic enrollment in the continuing education program to maintain the credential for two (2) years. This fee would replace the cost currently charged to enroll in the continuing education program, thus the net difference in cost to the interpreter is zero.

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

DCAB does not earn revenue from collecting the HQAS test fee. The test fee pays an honorarium to evaluators who assess the sign language interpreter's skill and certification level. Currently, the \$300 is used to pay six (6) raters at \$40 each (for

about 3 hours of time) plus administrative costs including tape purchases and postage. The proposal would increase the rater reimbursement to \$50. DCAB does not earn money on the tests and, if the fee were kept at \$300 with an increase in rater reimbursement, then DCAB would lose money. The majority of feedback received indicated that the increase would not be a major deterrent to applicants but that an increase to \$50 for the raters for their time was important, since the amount is nominal.

The \$50.00 Hawaii State Sign Language Interpreter Credential fee includes automatic enrollment in the continuing education program to maintain the credential for two (2) years. This fee would replace the \$100.00 fee currently charged to enroll in the continuing education program, thus the net difference in cost to the interpreter is zero.

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

The criteria used to determine the amount of the fees were based on the research of national credentialing of sign language interpreters.

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.

DCAB does not earn revenue from HQAS test fees. The test fee pays an honorarium to evaluators who assess the sign language interpreter's skill and certification level. The Hawaii State Sign Language Interpreter Credential fee includes automatic enrollment in the continuing education program to maintain the credential for two years. This will allow independent contractors with the credential to continue operations of their own business. The Hawaii State Sign Language Credential fee to renew the HQAS credential for two (2) years is \$50.00. DCAB maintains between twenty-five (25) to thirty (30) sign language interpreters per credential (two-year) cycle. The estimated total amount collected from credential fees is no more than \$1,500.00 per credential (two-year) cycle.

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.

There were no methods used to reduce the impact on small businesses. The proposed amendments would benefit sign language interpreters by allowing them to continue to provide services as a qualified sign language interpreter. The Hawaii State Sign Language Interpreter Credential will help to streamline the pool of qualified sign language interpreters in Hawaii, as well as increase their skill and knowledge in providing effective communication to consumers of sign language interpreter services.

Additionally, removing the "Recommended Fee Schedules for Providers" from the rules will create flexibility and increase the earning potential of communication access providers.

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

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

A significant amount of comments and recommendations were offered by small business stakeholders, and many of these recommendations were incorporated into the final version of the proposed rules. Changes involving the Hawaii Quality Assurance System test and Continuing Education Program, the "Recommended Fee Schedules for Providers", and the Hawaii State Sign Language Interpreter Credential include recommendations from small business stakeholders.

RECEIVED

By JetaimeA at 8:20 am, May 06, 2019

SMALL BUSINESS IMPACT STATEMENT

Disability and Communication Access Board

Administrative Rule Chapter and Title: Chapter 218, Title 11: Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf-Blind

Name: Colin Whited
Phone: (808) 829-3641

Title: Communication Access Specialist
Email: colin.whited@doh.hawaii.gov

A. Providing the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive 09-01.

B. RULE DESCRIPTION:

1. Amendment

2. Nature of Proposed Changes:

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? No
- b. Is the proposed rule an emergency regulation? No
- c. Will the proposed rule affect small business because it:
 - 1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? Yes
 - 2) Will cause a direct or significant economic burden upon a small business? No
 - 3) Is directly related to the formation, operation, or expansion of a small business? No

3. Summarize the proposed rule(s) and reasons for the proposed rule(s):

The primary purposes of the proposed amendments are to remove the "Recommended Fee Schedules for Providers" from HAR 11-218; make improvements to the Hawaii Quality Assurance System (HQAS) test process; separate the issuance of a state credential from the issuance of a certification via the HQAS test; and implement changes to strengthen and emphasize the purpose of the rules, which is to establish guidelines to ensure the right of consumers to effective communication.

The removal of the "Recommended Fee Schedules for Providers" from the rules does not eliminate the Recommended Fee Schedules entirely. The Disability and

Communication Access Board (DCAB) will maintain the “Recommended Fee Schedules for Providers” as a stand-alone document, which will provide flexibility in revising the Recommended Fee Schedules without going through the process of amending the Hawaii Administrative Rules. This way, the Recommended Fee Schedules will reflect current industry rates for different communication access services and thereby increase the earning potential of communication access providers.

Separating the issuance of a state credential from the issuance of a certification via the HQAS test is to establish the Hawaii State Sign Language Interpreter Credential. This will streamline the pool of qualified sign language interpreters in Hawaii, as well as increase their skill and knowledge in providing effective communication to consumers of sign language interpreter services.

Additional changes are meant to increase and improve access for individuals who are deaf, hard of hearing, deaf-blind, or speech impaired to programs and services offered by entities covered by title II of the Americans with Disabilities Act (ADA). This emphasizes the purpose of the rules, which is to establish guidelines to ensure the right of consumers to effective communication.

C. Small Business Impact Statement pursuant to 201M-2(b):

1. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules and how they may be adversely affected.

The proposed amendments will not add a significant economic burden on sign language interpreters who are independent contractors. Sign language interpreters charge a two-hour minimum fee usually ranging from \$27.00 to \$75.00 an hour, not including travel charges such as mileage and parking. Enrollment in the continuing education program to maintain the Hawaii State Sign Language Interpreter Credential for two years is automatic upon the issuance of the credential, which is a \$50.00 fee. This will allow independent contractors with a Hawaii State Sign Language Interpreter Credential to continue operations of their own business.

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

Sign language interpreters who are independent contractors are not required to comply with the proposed rules.

3. In dollar amounts, the overall aggregate 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, and other costs associated with compliance.

Sign language interpreters who have been issued a Hawaii State Sign Language Interpreter Credential by taking and passing the HQAS test may have a loss of revenue if they do not participate in the continuing education program before their credential expires. In this instance, they may not continue business as a credentialed independent contractor unless they re-take and pass the HQAS test or obtain national interpreter certification.

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

DCAB does not earn revenue from HQAS test fees. The test fee pays an honorarium to evaluators who assess the sign language interpreter's skill and certification level. The Hawaii State Sign Language Interpreter Credential fee includes automatic enrollment in the continuing education program to maintain the credential for two years. This will allow independent contractors with the credential to continue operations of their own business. The Hawaii State Sign Language Credential fee to renew the HQAS credential for two (2) years is \$50.00. DCAB maintains between twenty-five (25) to thirty (30) sign language interpreters per credential (two-year) cycle. The estimated total amount collected from credential fees is no more than \$1,500.00 per credential (two-year) cycle.

5. 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 any other mitigating techniques.

There were no methods used to reduce the impact on small businesses. The proposed amendments would benefit sign language interpreters by allowing them to continue to provide services as a qualified sign language interpreter. The Hawaii State Sign Language Interpreter Credential will help to streamline the pool of qualified sign language interpreters in Hawaii, as well as increase their skill and knowledge in providing effective communication to consumers of sign language interpreter services. Additionally, removing the "Recommended Fee Schedules for Providers" from the rules will create flexibility and increase the earning potential of communication access providers.

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

DCAB's Standing Committee on Communication Access held a total of thirty-three (33) meetings since beginning the process of amending the rules in May 2014. Progressive drafts of the proposed amendments to the rules as approved by the Committee have been made available to the public throughout the process. Comments were provided in support of the proposed amendments by small business stakeholders, including sign language interpreters who are independent contractors, sign language interpreter referral agencies, and the Hawaii Registry of Interpreters for the Deaf.

7. 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.

The proposed rules do not include provisions that are more stringent than those mandated by any comparable or related federal, state or county standards.

- D. Are there new or increased fees or fines? Yes
If yes, provide the following information:

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

The current HQAS test fee of \$300.00 was established in 2011. It has not changed since the rules were last amended on January 15, 2011.

The current HQAS credential is free, but the enrollment fee for the continuing education program is \$100.00. This also has not changed since the rules were last amended on January 15, 2011.

2. Amount of the proposed fee or fine and percentage increased.

The proposed amendments to the HQAS test fee would increase from \$300.00 to \$360.00 to begin after the effective date of the rules. This reflects a 20% increase.

The proposed amendments establish a \$50.00 fee for the Hawaii State Sign Language Credential. However, issuance of the credential includes automatic enrollment in the continuing education program to maintain the credential for two (2) years. This fee would replace the cost currently charged to enroll in the continuing education program, thus the net difference in cost to the interpreter is zero.

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

DCAB does not earn revenue from collecting the HQAS test fee. The test fee pays an honorarium to evaluators who assess the sign language interpreter's skill and certification level. Currently, the \$300 is used to pay six (6) raters at \$40 each (for about 3 hours of time) plus administrative costs including tape purchases and postage. The proposal would increase the rater reimbursement to \$50. DCAB does not earn money on the tests and, if the fee were kept at \$300 with an increase in rater reimbursement, then DCAB would lose money. The majority of feedback received indicated that the increase would not be a major deterrent to applicants but that an increase to \$50 for the raters for their time was important, since the amount is nominal.

The \$50.00 Hawaii State Sign Language Interpreter Credential fee includes automatic enrollment in the continuing education program to maintain the credential for two (2) years. This fee would replace the \$100.00 fee currently charged to enroll in the continuing education program, thus the net difference in cost to the interpreter is zero.

4. Will fee revert to general fund? If not, specify where and how monies will be allocated.

All monies received by DCAB as HQAS test fees or Hawaii State Sign Language Interpreter Credential fees shall be deposited into the DCAB special fund.

Monies in the special fund shall be expended to cover all costs of administering the program for state testing and credentialing of sign language interpreters. All interest earned or accrued on monies deposited into the DCAB special fund shall become part of the DCAB special fund.

5. Criteria used to determine amount of fee or fine.

The criteria used to determine the amount of the fees were based on the research of national credentialing of sign language interpreters.

E. Did the agency consult small businesses, departmental advisory committees, or were other small business organizations consulted during the drafting of the proposed rule?
Yes

If yes, were the recommendations, if any, incorporated into the proposed rule(s)?

DCAB's Standing Committee on Communication Access held a total of thirty-three (33) meetings since beginning the process of amending the rules in May 2014.

Progressive drafts of the proposed amendments to the rules as approved by the Committee have been made available to the public throughout the process. A significant amount of comments and recommendations were offered by small business stakeholders, including sign language interpreters who are independent contractors, sign language interpreter referral agencies, and the Hawaii Registry of Interpreters for the Deaf. Many of these recommendations were incorporated into the final version of the proposed rules.

- F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.

There were no other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs.

- G. Departmental Impact (i.e. fiscal personnel, program)?

There is no departmental impact on the program. The anticipated cost to fund the state interpreter credentialing program, continuing education program, and HQAS will come directly from the administrative fee charged to the sign language interpreter. The cost to retain one full time staff is budgeted in the DCAB biennium budget.

- H. Impact on General Public (i.e. individuals, consumers, and large businesses)?

The proposed amendments would enhance efficiency in maintaining and increasing the pool of qualified sign language interpreters in Hawaii. The quality of sign language interpreters will improve and become more consistent with the ADA definition of a qualified sign language interpreter. This will strengthen compliance with the ADA by ensuring that effective communication is provided to individuals who are deaf, hard of hearing, deaf-blind, or speech impaired.

- I. Impact on state economy?

The proposed amendments would have a short- and long-term positive impact on the economic growth of the State because it would create incentives to retain communication access providers who live in Hawaii, attract communication access providers from other states, and appeal to individuals interested in a career as a communication access provider.

J. Final result anticipated from the proposed rule change.

The proposed amendments to the rules will positively affect the number of sign language interpreters working as independent contractors in Hawaii. Separating the Hawaii State Sign Language Interpreter Credential from the HQAS test, as well as removing the “Recommended Fee Schedules for Providers” from the rules, will attract providers with credentials issued by other entities to obtain a Hawaii-issued credential. These changes will also appeal to individuals interested in a career as a provider of communication access services.

The adoption of these rules will increase and improve access for individuals who are deaf, hard of hearing, deaf-blind, or speech impaired to programs and services offered by entities covered by title II of the ADA.

K. Alternatives explored to carry out the statutory purpose other than rulemaking.

The DCAB did not consider alternatives to amending the rules because amending the rules is the only legal option of making the proposed rule changes.

RECEIVED

By JetaimeA at 8:19 am, May 06, 2019

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-218
Hawaii Administrative Rules

1. Chapter 218, Hawaii Administrative Rules, entitled "Communication Access Services for Persons Who Are Deaf, Hard of Hearing, and Deaf-Blind", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 218

COMMUNICATION ACCESS SERVICES FOR PERSONS WHO ARE
DEAF, HARD OF HEARING, AND DEAF-BLIND

\$11-218-1	Purpose and scope
\$11-218-2	Interpretation
\$11-218-3	Definitions
\$11-218-3.5	Rights of consumers to communication access services
\$11-218-4	Credentials of providers
\$11-218-5	Repealed
\$11-218-5.1	Fee schedule guidelines
\$11-218-6	Cancellation of services
\$11-218-7	Repealed
\$11-218-7.1	Repealed
\$11-218-7.2	Repealed
\$11-218-8	Provision of services
\$11-218-8.1	Repealed
\$11-218-9	Repealed

§11-218-1

§11-218-9.5	Code of ethics
§11-218-10	Repealed
§11-218-11	Repealed
§11-218-12	Application and renewal of credential
§11-218-12.5	Continuing education program
§11-218-12.6	Provisional credential
§11-218-13	Repealed
§11-218-13.4	Test procedures and grievances
§11-218-13.5	Non refundable and non transferable fees
§11-218-14	Recognition of credentials issued by other entities
§11-218-15	Severability

§11-218-1 Purpose and scope. The purpose of these rules is to establish guidelines for the use of communication access services by persons who are deaf, hard of hearing, or deaf-blind for effective communication in programs and activities of state departments and agencies. The optimal situation is one in which the state program or activity is able to communicate directly with the person who is deaf, hard of hearing, or deaf-blind. When direct communication is not possible, this chapter provides guidelines for hiring communication access providers. [Eff 5/17/91; am and comp 6/10/94; comp 4/3/97; am and comp 11/6/00; am and comp 12/24/01; am and comp 10/13/05; comp 7/23/07; comp 02/27/09; comp 10/27/11; comp] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-2 Interpretation. If any provision of these rules is inconsistent with requirements of the Americans with Disabilities Act of 1990, Public Law 101-336, as amended, and Section 504 of the Federal Rehabilitation Act of 1973, Public Law 93-112, as amended, the provision shall be construed to be

superseded or governed thereby. These rules shall be construed liberally and consistent with the purpose stated in section 11-218-1. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/00; comp 12/24/01; comp 10/13/05; comp 7/23/07; comp 02/27/09; comp 10/27/11; comp] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-3 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Board" means the disability and communication access board.

~~["Certified real-time captioner" means any person who holds any valid certifications awarded by either the National Court Reporters Association (NCRA) or a state board of certified shorthand reporters as defined in Appendix C "Recognized Certifications of a Certified Real-Time Captioner" (April 19, 2010).]~~

"Communication access services" means services rendered by a provider to facilitate communication between the person who is deaf, hard of hearing, or deaf-blind and hearing consumers. Communication access services include, but are not limited to, interpreter services, real-time captioning services, and computer-assisted notetaking services.

"Computer-assisted notetaker" means a person who provides computer-assisted notetaking services.

"Computer-assisted notetaking services" means services performed by a typist using a word processor on a computer~~[-The services]~~ to provide a summary of a speaker's words or notes for situations such as a meeting or a group discussion. The words are typed into a word processor and displayed onto a screen. Computer-assisted notetaking services are distinguished from real-time captioning services in that the words are typed simultaneously but not necessarily verbatim and that stenographic equipment and skills are not involved.

~~["Continuing Education Unit" means the equivalent of ten hours of participation in a state screening~~

~~agency pre-approved workshop, seminar, lecture, conference, class or other educational activity to increase knowledge, skills and competency relevant to the practice of sign language and interpreting.~~

~~"Continuing Education Program" means a state screening agency that establishes the criteria for the number of continuing education units required for HQAS interpreters to maintain their credential as defined in Appendix B "Hawaii Quality Assurance System Continuing Education Program".]~~

~~"Credentials" means [any] certification or [classification] credential that is awarded to providers as defined in this section.~~

~~["Person who is Deaf or hard of hearing" means any person who, with or without amplification, cannot hear and understand spoken language.~~

~~"Person who is Deaf-blind" means any person who, with or without the assistance of hearing or visual aids, has both auditory and visual disabilities that interfere with communication.]~~

"Hawaii State Sign Language Interpreter Credential" means a credential issued by the board to interpreters who pass the HQAS test or who possess a valid credential issued by an entity recognized by the board under section 11-218-14. Functional descriptions of credential levels are included in Appendix A.

"HQAS test" means the Hawaii Quality Assurance System interpreter screening instrument administered by the state screening agency.

"Hearing consumer" means any hearing individual that requires communication access services to communicate with one or more persons who are deaf, hard of hearing, or deaf-blind.

~~["HQAS" means the Hawaii Quality Assurance System, an interpreter screening instrument administered by the state screening agency. Functional descriptions for HQAS levels are shown in Appendix C, "Functional Description of HQAS Levels" (May 20, 2010).]~~

~~"HQAS +H" means the Hawaii Quality Assurance System in addition to the optional local Hawaii language competency test.]~~

"Interpreter services" means services rendered by a ~~[locally-classified or]~~ nationally-certified or state credentialed interpreter as defined in this section[-], to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, between a person who is deaf, hard-of-hearing, or deaf-blind and a hearing consumer.

"Nationally-certified interpreter" means any person who holds a valid ~~[certificates]~~ certificate or [credentials] credential awarded by the Registry of Interpreters for the Deaf, Inc. (RID) or [National Council on Interpreting (NCI), as defined in Appendix D "Registry of Interpreters for the Deaf, Inc. Description of Certifications" (April 19, 2010) or] the National Association of the Deaf, Inc. (NAD) [as defined in Appendix E, "National Association of the Deaf, Inc. Interpreter Assessment and Certification" (April 19, 2010)].

"Person who is deaf or hard of hearing" means any person who, with or without amplification, cannot hear and understand spoken language.

"Person who is deaf-blind" means any person who, with or without the assistance of hearing or visual aids, has both auditory and visual disabilities that interfere with communication.

"Provider" means any provider of communication access services including, but not limited to, a nationally-certified interpreter, a state credentialed interpreter, a certified real-time captioner, or a computer-assisted notetaker.

"Real-time captioner" means any person who holds any valid certifications awarded by either the National Court Reporters Association (NCRA) or a state board of certified shorthand reporters.

"Real-time captioning services" means services performed by a certified real-time captioner ~~[in order]~~ to facilitate communication for persons who are deaf, hard of hearing, and deaf-blind. The services

provide simultaneous transcription of a speaker's words by using a stenographic machine, a computer, and real-time captioning software, and by projecting the words onto a screen.

"State agency" means any department, office, board, or commission of the State, or the University of Hawaii.

"State screening agency" means the disability and communication access board ~~[issuing credentials under the Hawaii Quality Assurance System which shall be honored statewide]~~.

"State credentialed interpreter" means any person who holds a valid ~~[HQAS credentials defined in Appendix C and]~~ Hawaii State Sign Language Interpreter Credential awarded by the ~~[state screening agency]~~ board. Credential levels and functional descriptions are described in Appendix A. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/00; am and comp 12/24/01; am and comp 10/13/05; comp 7/23/07; am and comp 02/27/09; am and comp 10/27/11; am and comp] (Auth: HRS §348F-6)
(Imp: HRS §348F-3)

§11-218-3.5 Rights of consumers to communication access services. Any person who is deaf, hard of hearing, or deaf-blind; or any hearing consumer; as provided in section 11-218-3; shall be provided communication access services when necessary to provide effective communication in any program or activity of a state agency. Persons who are deaf, hard of hearing, or deaf-blind who request communication access services for any program or activity may identify and request their preferred providers. The requirement for a certified or credentialed provider may be waived if the person who is deaf, hard of hearing, or deaf-blind indicates a preference for someone who does not have a credential or certification. The state agency shall document instances when a person requests a provider that does not have a credential or certification. [Eff and comp

] (Auth: HRS §348F-6) (Imp: HRS
§348F-3)

§11-218-4 Credentials of providers. (a) The credentials of providers shall be based on the level and specialization determined by the national organizations or state screening agency which provide the credentials listed in §11-218-3. The board shall review criteria of the credentials awarded by national organizations and the state screening agency with input from the community. Documentation of completion of sign language courses or interpreter training programs shall not be substituted for credentials listed in section 11-218-3.

(b) Currently there are no known national or state organizations [~~or state screening agency~~] that award credentials for computer-assisted notetakers. It is recommended that [the] state agencies [~~utilize~~] hire persons who meet the following characteristics [~~in order~~] to provide computer-assisted notetaking services: ability to organize and summarize information; ability to type at least sixty words per minute; familiarity with the subject being discussed; experience working with persons who are deaf, hard of hearing, or deaf-blind; working knowledge of laptop computers and word processing software; and good auditory, verbal, and spelling skills.

(c) The validity of credentials shall be based on criteria for maintenance of credentials established by the appropriate national or state organizations that issue credentials as referenced in section 11-218-3. Providers shall furnish, upon request, documentation of credentials to the state agency when communication access services are contracted. [Eff 5/17/91; comp 6/10/94; comp 4/3/97; am and comp 11/6/00; am and comp 12/24/01; am and comp 10/13/05; comp 7/23/07; comp 2/27/09; comp 10/27/11; am and comp

] (Auth: HRS §348F-6) (Imp: HRS
§348F-3)

§11-218-5 Repealed. [R 11/6/00]

§11-218-5.1 Fee schedule guidelines. [~~(a)~~

~~State agencies hiring providers as independent contractors on a fee for service basis may negotiate fees with the provider. Appendix A, "Recommended Fee Schedules for Providers" (July 21, 2011), located at the end of this chapter, is made a part of this chapter. The hourly rates listed in Appendix A are recommended rates for providers used by state agencies for one-time, ad-hoc, or single units of service. In addition, Appendix A includes recommendations for mileage, travel, and other allowable charges.~~

~~(b) State agencies hiring providers as independent contractors for on-going or continuing assignments may negotiate fees and terms independent of the hourly rates shown in Appendix A. This paragraph shall not be construed to supersede the provisions of section 11-218-8.~~

~~(c) The Board shall review the recommended fee schedules, annually or as needed, with consideration of the current market value of those services as well as input from consumers, providers, and state agencies.]~~

(a) The board shall issue a recommended fee schedule to guide state agencies in determining the cost of hiring communication access service providers. The recommended fee schedule may include recommendations for mileage, travel, cancellation, and other allowable provider fees. The guidelines shall be advisory only and state agencies may negotiate fees with the providers.

(b) In developing the recommended fee schedule, the board shall seek advice from consumers, providers, and state agencies.

(c) The board shall publish the recommended fee schedule on the board's website.

(d) The recommended fee schedule shall be reviewed periodically and may be amended as needed.
[Eff and comp 11/6/00; am and comp 12/24/01; am and

comp 10/13/05; am and comp 7/23/07; am and comp
2/27/09; am and comp 10/27/11; am and comp
] (Auth: HRS §348F-6) (Imp: HRS
§348F-3)

§11-218-6 Cancellation of services. ~~[Fees shall be determined in accordance with the time of cancellation of services:]~~

- ~~(1) For assignments less than two hours in duration, and if a cancellation notice is given at least twenty-four hours in advance, no fee shall be assessed. If the cancellation notice is given less than twenty-four hours in advance, the full charge for the requested period shall be assessed.~~
- ~~(2) For assignments two hours or more but less than four hours in duration, and if a cancellation notice is given at least forty-eight hours in advance, no fee shall be assessed. If the cancellation notice is given less than forty-eight hours in advance, the full charge for the requested period shall be assessed.~~
- ~~(3) For assignments four hours or more in duration, and if a cancellation notice is given at least seventy-two hours in advance, no fee shall be assessed. If the cancellation notice is given less than seventy-two hours in advance, the minimum two-hour fee plus one-half of the fee for the remaining scheduled time shall be assessed. If the cancellation notice is given less than forty-eight hours in advance, the full fee shall be assessed.]~~
- ~~(4) If an essential person who is deaf, hard of hearing, or deaf-blind, or a hearing consumer of interpreting or other communication access services fails to appear, this shall be considered a~~

§11-218-6

~~cancellation and the provider hired for that assignment shall be paid the full fee for the requested period by the state agency.~~

~~(5) If a provider fails to appear, no fee shall be paid by the state agency.~~

~~(6) For assignments where two providers are scheduled and one fails to appear, the sole provider shall be paid the full fee plus 30 per cent of the hourly rate.]~~

(a) State agencies shall follow the cancellation policies and procedures of a referral agency when contracting for the services of a communication access provider. State agencies are encouraged to review such policies and procedures prior to contracting with a referral agency.

(b) When a state agency contracts with a provider without the use of an interpreter referral agency, the state agency is responsible to confirm the cancellation fee policies and procedures with the provider at the same time the communication access service fees are confirmed. If a provider does not have cancellation fee policies and procedures, it is recommended that the state agency and provider follow the cancellation fee guidelines that accompany the recommended fee schedule issued pursuant to §11-218-5.1. [Eff 5/17/91; comp 6/10/94; comp 4/3/97; am and comp 11/6/00; comp 12/24/01; am and comp 10/13/05; comp 7/23/07; comp 02/27/09; comp 10/27/11; am and comp] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-7 Repealed. [R 11/6/00]

§11-218-7.1 Repealed. [R 11/6/00]

§11-218-7.2 Repealed. [R 11/6/00]

§11-218-8 Provision of services. [~~(a) Any person meeting any one of the definitions of nationally-certified or state credentialed interpreter, certified real-time captioner, or computer-assisted notetaker provided in section 11-218-3 may be hired as a provider of interpreter services, real-time captioning services, or computer-assisted notetaking services.~~

~~(b) Any state agency shall acquire the services of a provider with the appropriate credentials when one is necessary for a person who is deaf, hard of hearing, or deaf-blind to effectively participate in an activity or program of that agency. A state agency shall hire the preferred provider of the person who is deaf, hard of hearing, or deaf-blind when possible. If no preference is stated, providers with the highest level of credentials shall be hired first, followed by lesser levels of credentials, in the order listed in Appendix A.~~

~~(c) For assignments of more than one and one-half hours in length, and with continuous work (for example, a workshop or meeting), the state agency shall request two providers for the total time of the assignment to actively work for alternate periods of twenty minutes each. If only one provider is available and hired for an assignment with continuous work of more than one and one-half hours in length, the state agency shall ensure that the provider is given breaks as necessary or as negotiated prior to the assignment.~~

~~(d) Any person who is deaf, hard of hearing, or deaf-blind shall inform the state agency of the need for communication access services, allowing reasonable time to hire providers.]~~

(a) Any person who is deaf, hard of hearing, or deaf-blind shall inform a state agency of the need for communication access services, allowing reasonable time to hire providers.

(b) A state agency shall hire the preferred qualified providers of the person who is deaf, hard of hearing, or deaf-blind to provide effective communication when possible. If no preference is

stated, providers with the highest level of credentials shall be hired first, followed by providers with lesser levels of credentials.

(c) A state agency shall acquire the services of a provider or providers with the appropriate credentials when necessary for a person who is deaf, hard of hearing, or deaf-blind to effectively participate in an activity or program of that agency.

(d) For assignments of continuous work (for example, a workshop or meeting), the state agency shall request a minimum of two providers to actively and alternately work for the total time of the assignment.

(e) If only one provider is available and hired for an assignment with continuous work of more than one and one-half hours in length, the state agency shall ensure that the provider is given breaks as necessary or as negotiated prior to the assignment.

(f) If a person who is deaf, hard of hearing, or deaf-blind cannot benefit from conventional communication access services, then additional providers, including a provider who is deaf, hard of hearing, or deaf-blind, shall be used to relay information between the consumer and the hearing provider to achieve effective communication.

(g) A qualified sign language interpreter is an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/00; am and comp 12/24/01; am and comp 10/13/05; comp 7/23/07; comp 02/27/09; comp 10/27/11; am and comp]
(Auth: HRSS348F-6) (Imp: HRS §348F-3)

~~[§11-218-8.1 Role of a provider who is deaf, hard of hearing, or deaf-blind. If a person who is deaf, hard of hearing, or deaf-blind cannot benefit from conventional communication access services, then a team of two providers shall be hired upon request to~~

~~ensure effective communication. The second provider, who is deaf, hard of hearing, or deaf-blind, would relay information between the consumer and the hearing provider, using a three-way communication.] [Eff and comp 11/6/00; comp 12/24/01; am and comp 10/13/05; comp 7/23/07; comp 02/27/09; comp 10/27/11; R~~
~~]~~ (Auth: HRS §348F-6) (Imp: HRS §348F-3)

~~§11-218-9 Rights of consumers to communication access services. Any person meeting any one of the definitions of person who is deaf, hard of hearing, or deaf-blind or hearing consumer as provided in section 11-218-3 shall be provided communication access services as requested in any program or activity of a state agency. Persons who are deaf, hard of hearing, or deaf-blind who request communication access services for any program or activity may identify and request their preferred provider. The requirement for credentials may be waived if the person who is deaf, hard of hearing, or deaf-blind indicates preference for someone who does not have credentials. The state agency shall certify and document that the person who is deaf, hard of hearing, or deaf-blind specified a provider without credentials.] [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/00; comp 12/24/01; am and comp 10/13/05; comp 7/23/07; comp 02/27/09; comp 10/27/11; R~~
~~]~~ (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-9.5 Code of ethics. Services of [HQAS interpreters] a Hawaii state credentialed interpreter shall be rendered in a manner consistent with Appendix [F, "The Hawaii Quality Assurance System Code of Ethics" (October 19, 2000).] B. [RID, NAD, NCRA, or NAD-RID-NCI-certified interpreters shall follow their respective code of ethics.] Services of a nationally credentialed interpreter or other communication access

§11-218-9.5

provider shall be rendered ~~[by providers]~~ in a manner consistent with ~~[Appendix F, or]~~ their respective certification's code of ethics. [Eff and comp 11/6/00; am and comp 12/24/01; am and comp 10/13/05; comp 7/23/07; comp 02/27/09; am and comp 10/27/11; am and comp] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-10 Repealed. [R 6/10/94]

§11-218-11 Repealed. [R 6/10/94]

§11-218-12 Application and renewal of credential[s]. ~~[Every application for credentials shall be made upon forms available from the appropriate national organizations or the state screening agency which provides credentials, as indicated in section 11-218-3. Fees accompanying the application, if any, shall be set by these organizations.]~~

~~It is the responsibility of the provider to maintain current credentials.]~~

(a) A candidate for a Hawaii State Sign Language Interpreter Credential shall complete an application form available from the board and upon payment of a fee as listed in 11-218-13.5.

(b) Upon receipt of the application, fee, verification of successful passing of the HQAS test or presentation of a valid credential issued by an entity and honored by the board under 11-218-14, and completion of viewing a video on ethics, the board shall issue a Hawaii State Sign Language Interpreter Credential in accordance with Appendix A. The credential shall be valid until December 31 of the subsequent calendar year.

(c) Issuance of a Hawaii State Sign Language Interpreter Credential shall automatically enroll the credential holder in the continuing education program.

(d) A person who possesses a valid Hawaii State Sign Language Interpreter Credential may apply for a renewal of the credential by submitting a renewal application form available from the board by November 30 of the year of expiration of his or her credential.

(e) Upon receipt of the application fee as listed in 11-218-13.5 and verification of completion of required continuing education units in the continuing education program, the board shall issue a Hawaii State Sign Language Interpreter Credential.

(f) A one-time extension of three months per renewal cycle to complete the continuing education units to renew a credential shall be permitted with the payment of an extension fee as listed in 11-218-13.5. When an interpreter is on extension, the interpreter is still considered a credentialed interpreter.

(g) The renewal credential shall become valid in January of the subsequent year for two years. [Eff 5/17/91; am and comp 6/10/94; comp 4/3/97; am and comp 11/6/00; am and comp 12/24/01; comp 10/13/05; comp 7/23/07; comp 02/27/09; comp 10/27/11; am and comp] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-12.5 Continuing Education Program. (a) The board shall operate a continuing education program to allow holders of a Hawaii State Sign Language Interpreter Credential to maintain the credential instead of retaking the HQAS test.

(b) Enrollment in the continuing education program shall be automatic with the issuance of a Hawaii State Sign Language Interpreter Credential.

(c) The requirements for the continuing education program shall be 3.0 continuing education units per two-year cycle for credential level Tier 4

or Tier 5 and 3.5 continuing education units per two-year cycle for credential level Tier 3.

(d) A continuing education unit is the equivalent of ten hours of participation in a state screening agency pre-approved workshop, seminar, lecture, conference, class or other educational activity to increase knowledge, skills and competency relevant to the practice of sign language and interpreting.

(e) Continuing education unit requirements shall be pro-rated for the initial credential cycle.

(f) Continuing education units earned that exceed the required number for renewal of the credential cannot be transferred to the new cycle.

(g) The board shall prepare a continuing education program manual for each credential holder with policies and procedures for accruing continuing education units. [Eff and comp]

(Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-12.6 Provisional credential. (a) Upon application and payment of a fee, the state screening agency may issue a provisional credential to a provider of interpreter services who possesses a credential issued by an entity other than the credentials recognized by the state, provided that the credential is valid and was issued within two years preceding the application.

(b) Upon application and payment of a fee, the state screening agency may issue a provisional credential to a provider of interpreter services who possesses an Educational Interpreter Performance Assessment certification at a level 4.0 or higher and who provides evidence of consistent work as a sign language interpreter within one year preceding the application.

(c) The provisional credential shall be equivalent to the lowest level credential issued by the state screening agency and shall be valid for no longer than one credential cycle. [Eff and comp]

] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

~~[§11-218-13 Validity of credentials. The validity of credentials shall be based on criteria for maintenance of credentials established by the appropriate national organizations or the state screening agency which provides credentials as indicated in section 11-218-3. The continuing education program for HQAS interpreters shall be administered by the state screening agency. Appendix B is the continuing education program for HQAS interpreters. It is the responsibility of the provider to furnish, upon request, documentation of credentials to the state agency when communication access services are contracted.] [Eff 5/17/91; am and comp 6/10/94; comp 4/3/97; am and comp 11/6/00; am and comp 12/24/01; comp 10/13/05; comp 7/23/07; comp 02/27/09; am and comp 10/27/11; R]~~
(Auth: HRS §348F-6) (Imp: HRS §348F-3)

~~§11-218-13.4 [Test Procedures and Grievances.]
Test procedures and grievances. [The HQAS shall be administered by the state screening agency. Candidate grievances shall be filed in writing to the disability and communication access board executive director. The disability and communication access board executive director shall reply in writing within 30 days. If the candidate is not satisfied with the response of the executive director, then the candidate may request a reply from the disability and communication access board. The board shall consider all relevant comments and materials of record before taking final action.]~~

~~(a) The HQAS test shall be administered by the state screening agency.~~

~~(b) To apply for the HQAS test, a candidate shall submit an application form and pay the test~~

application fee. Upon confirmation of the completed application and required fee, the state screening agency shall schedule a performance test.

(c) The performance test shall be scored by a panel of independent evaluators. Candidates shall be notified by the state screening agency when evaluator scores have been aggregated.

(d) If a candidate does not achieve a desired score on performance test A, the candidate may take performance test B, but not sooner than six months after taking performance test A and upon payment of a new test application fee. If the candidate does not achieve a desired score on performance test B, the candidate may take performance test C, but not sooner than six months after taking performance test B and upon payment of a new test application fee. If the candidate does not achieve a desired score on performance test C, the candidate may take performance test A again, but not sooner than six months after taking performance test C and upon payment of a new test application fee. If the candidate does not achieve a desired score on performance test A the second time, the candidate may take performance test B again, but not sooner than six months after taking performance test A the second time and upon payment of a new test application fee. If the candidate does not achieve a desired score on performance test B the second time, the candidate may take performance test C again, but not sooner than six months after taking performance test B the second time and upon payment of a new test application fee. A candidate may not take the same version of the performance test more than two times.

(e) If a candidate has a grievance regarding the test procedure, the grievance shall be filed in writing to the executive director of the state screening agency before the candidate's test is submitted to the independent evaluators. The executive director shall reply in writing within thirty days. If the candidate is not satisfied with the response of the executive director, then the candidate may request a reply from the board. The

board shall consider all relevant comments and materials of record before taking final action.

(f) If a candidate disagrees with the score received, the candidate may request to have the test re-scored and pay a second test fee as listed in 11-218-13.5 within three months of receiving the aggregated test score.

(g) After a candidate passes the HQAS test, and before the state screening agency will issue a Hawaii State Sign Language Interpreter Credential to the candidate, the candidate shall take and pass the code of professional conduct test. The code of professional conduct test shall be administered and scored by the state screening agency at no cost to the candidate. [Eff and comp 10/13/05; comp 7/23/07; am and comp 02/27/09; comp 10/27/11; am and comp

] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-13.5 [Non-Refundable and Non Transferable Fees.] Refundable and non transferable fees. (a) The [disability and communication access] board shall establish a fee to be charged to each candidate applying for the HQAS [credentials or renewals.] test, a Hawaii State Sign Language Interpreter Credential, renewal of a Hawaii State Sign Language Interpreter Credential, or a provisional credential.

- (1) Fees collected under this section shall be deposited in the special fund.
- (2) Candidate fees for the HQAS or HQAS+H test including the written and interpreting/transliterating performance test shall be \$200 with increased increments of \$50 over a two year period to \$300 to begin after the effective date of the rules.
- (3) A candidate must pass the written test to take the interpreting/transliterating performance test. If the candidate fails the written test, then the candidate may

~~retake the next scheduled written test. If the candidate fails the written test three times, then the candidate shall reapply and submit a HQAS or HQAS+H test fee.~~

~~(4) Candidate fees shall be used to pay for the costs of the independent evaluators' services of the performance test. If a candidate wishes to appeal the test scores, the candidate may request for a second set of evaluations with the payment of a second candidate fee.~~

~~(5) For renewal of HQAS credential, an application fee shall be \$100 for the continuing education program.]~~

(b) Fees collected under this section shall be deposited in the disability and communication access board special fund.

(c) Fees for the HQAS test are as follows:

(1) The candidate fee for the HQAS test shall be \$360.

(2) Candidate fees shall be used to pay for independent evaluator services.

(3) If a candidate applies to take the test but cancels at least two weeks before the scheduled test date, the candidate's fee shall be refunded in full or transferred to a future test. If a candidate cancels less than two weeks before the scheduled test date, the candidate's fee shall not be refundable.

(4) If a candidate wishes to appeal the test scores, the candidate may request a second set of evaluators with payment of a second candidate fee.

(d) Fees for the Hawaii State Sign Language Interpreter Credential are as follows:

(1) The fee for the issuance of a new state credential shall be \$50 with the credential to expire on December 31 of the following calendar year.

(2) The fee for renewal of a Hawaii State Sign Language Interpreter Credential shall be \$50

biennially upon the completion of the required continuing education units pursuant to these rules.

(3) No fee will be charged for a replacement credential.

(4) The fee for a one-time extension to renew the credential shall be \$50.

(e) The fee for a provisional credential shall be \$50. [Eff and comp 12/24/01; am and comp 10/13/05; am and comp 7/23/07, comp 02/27/09; am and comp 10/27/11; am and comp] (Auth: HRS §§348F-7 to 348F-8) (Imp: HRS §§348F-7 to 348F-8)

§11-218-14 [Reciprocal recognition.] Recognition of credentials issued by other entities. [~~State agencies are~~] The board is encouraged to recognize and honor providers with current and valid credentials [from jurisdictions] issued by entities other than the [State of Hawaii for a period of six months or until a state screening or testing is conducted.] State. The board shall examine the parity of credentials issued by other entities to determine if and at what level a provider with another credential may qualify for a Hawaii State Sign Language Interpreter Credential. These credentials shall be considered current and valid if they were awarded not more than two years prior to the date of hire, unless otherwise indicated by the documentation of such credentials. A provider with a credential issued by another entity that is recognized by the board may be issued a Hawaii State Sign Language Interpreter Credential for one credential cycle upon application as set forth in section 11-218-12. The provider must renew a credential through completion of the continuing education program as set forth in section 11-218-12.5. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/00; am and comp 12/24/01; am and comp 10/13/05; comp 7/23/07, comp 02/27/09; comp 10/27/11; am and comp] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-15

§11-218-15 Severability. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be unconstitutional or invalid, the remaining portion of these rules or the application thereof to any person or circumstance shall not be affected." [Eff 5/17/91; comp 6/10/94; comp 4/3/97; comp 11/6/00; comp 12/24/01; am and comp 10/13/05; am and comp 7/23/07, comp 02/27/09; comp 10/27/11, comp]
(Auth: HRS §348F-6) (Imp: HRS §348F-3)

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

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

4. These amendments to and compilation of chapter 11-218, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

BRUCE S. ANDERSON, Ph.D.
Director of Health

APPROVED AS TO FORM:

Deputy Attorney General

**APPENDIX A
HAWAII STATE SIGN LANGUAGE INTERPRETER CREDENTIAL
FUNCTIONAL DESCRIPTIONS**

Hawaii State Sign Language Interpreter Credential Tier V

A Tier V Interpreter-transliterators can function expressively and receptively in virtually all situations. While no restrictions are indicated, all interpreters must demonstrate professional judgment in accepting assignments.

A Hawaii State Sign Language Interpreter Credential Tier V is issued to an individual who passes the Hawaii Quality Assurance System test at a Level V.

Hawaii State Sign Language Interpreter Credential Tier IV

A Tier IV Interpreter-transliterators can function expressively and receptively in most complex and technical situations. This interpreter may accept assignments for one-on-one and group sessions, as well as workshops and platform assignments. This interpreter is qualified for most medical and dental appointments, and limited legal interpreting, including client/lawyer meetings, and traffic or small claims court.

All interpreters must demonstrate professional judgment in accepting assignments.

A Hawaii State Sign Language Interpreter Credential Tier IV is issued to an individual who passes the Hawaii Quality Assurance System test at a Level IV.

Hawaii State Sign Language Interpreter Credential Tier III

A Tier III Interpreter-transliterators is a qualified interpreter at the entry level. This interpreter may accept assignments for many group sessions and workshops and most one-on-one situations.

All interpreters must demonstrate professional judgment in accepting assignments.

A Hawaii State Sign Language Interpreter Credential Tier III is issued to an individual who passes the Hawaii Quality Assurance System test at a Level III.

Provisional Credential

A Provisional Credential is issued to a provider of interpreter services who possesses (1) a credential issued by a jurisdiction or entity other than the credentials recognized by the state, provided that the credential is valid and was issued within two (2) years preceding the application; or (2) an Educational Interpreter Performance Assessment certification at a level 4.0 or higher and who provides evidence of consistent work as a sign language interpreter within one (1) year preceding the application. The provisional credential shall be equivalent to the lowest level credential issued by the state screening agency and shall expire on December 31 of the year following the date of application.

APPENDIX B STATE OF HAWAII CREDENTIALLED INTERPRETERS CODE OF PROFESSIONAL CONDUCT

(Note: To ensure consistency in conduct between State of Hawaii credentialed interpreters and nationally certified interpreters, the following Code of Professional Conduct mirrors the Code of Professional Conduct, formerly known as the Ethics Code, of the National Registry of Interpreters of the Deaf (RID). References to RID are replaced with references to the Disability and Communication Access Board (DCAB) and references to organizational and voting issues of RID are deleted.)

Scope

The Disability and Communication Access Board (DCAB) upholds high standards of professionalism and ethical conduct for interpreters. Embodied in this Code of Professional Conduct are seven tenets setting forth guiding principles, followed by illustrative behaviors.

The tenets of this Code of Professional Conduct are to be viewed holistically and as a guide to professional behavior. This document provides assistance in complying with the code. The guiding principles offer the basis upon which the tenets are articulated. The illustrative behaviors are not exhaustive, but are indicative of the conduct that may either conform to or violate a specific tenet or the code as a whole.

When in doubt, the reader should refer to the explicit language of the tenet. If further clarification is needed, questions may be directed to the Disability and Communication Access Board.

This Code of Professional Conduct is sufficient to encompass interpreter roles and responsibilities in every type of situation (e.g., educational, legal, medical). A separate code for each area of interpreting is neither necessary nor advisable.

Philosophy

The American Deaf community represents a cultural and linguistic group having the inalienable right to full and equal communication and to participation in all aspects of society. Members of the American Deaf community have the right to informed choice and the highest quality interpreting services. Recognition of the communication rights of America's women, men, and children who are deaf is the foundation of the tenets, principles, and behaviors set forth in this Code of Professional Conduct.

Function of the Guiding Principles

It is the obligation of every interpreter to exercise judgment, employ critical thinking, apply the benefits of practical experience, and reflect on past actions in the practice of their profession. The guiding principles in this document represent the concepts of confidentiality, linguistic and professional competence, impartiality, professional growth and development, ethical business

practices, and the rights of participants in interpreted situations to informed choice. The driving force behind the guiding principles is the notion that the interpreter will do no harm.

When applying these principles to their conduct, interpreters remember that their choices are governed by a "reasonable interpreter" standard. This standard represents the hypothetical interpreter who is appropriately educated, informed, capable, aware of professional standards, and fair-minded.

Tenets

1. Interpreters adhere to standards of confidential communication.
2. Interpreters possess the professional skills and knowledge required for the specific interpreting situation.
3. Interpreters conduct themselves in a manner appropriate to the specific interpreting situation.
4. Interpreters demonstrate respect for consumers.
5. Interpreters demonstrate respect for colleagues, interns, and students of the profession.
6. Interpreters maintain ethical business practices.
7. Interpreters engage in professional development.

Applicability

- A. This Code of Professional Conduct applies to interpreters credentialed by the Disability and Communication Access Board.
- B. Federal, state or other statutes or regulations may supersede this Code of Professional Conduct. When there is a conflict between this code and local, state, or federal laws and regulations, the interpreter obeys the rule of law.
- C. This Code of Professional Conduct applies to interpreted situations that are performed either face-to-face or remotely.

Definitions

For the purpose of this document, the following terms are used:

Colleagues: Other interpreters.

Conflict of Interest: A conflict between the private interests (personal, financial, or professional) and the official or professional responsibilities of an interpreter in a position of trust, whether actual or perceived, deriving from a specific interpreting situation.

Consumers: Individuals and entities who are part of a situation that requires the services of a sign language interpreter. This includes individuals who are deaf, deaf-blind, hard of hearing, and hearing.

1.0 CONFIDENTIALITY

Tenet: Interpreters adhere to standards of confidential communication.

Guiding Principle: Interpreters hold a position of trust in their role as linguistic and cultural facilitators of communication. Confidentiality is highly valued by consumers and is essential to protecting all involved.

Each interpreting situation (e.g., elementary, secondary, and post-secondary education, legal, medical, mental health) has a standard of confidentiality. Under the reasonable interpreter standard, professional interpreters are expected to know the general requirements and applicability of various levels of confidentiality. Exceptions to confidentiality include, for example, federal and state laws requiring mandatory reporting of abuse or threats of suicide, or responding to subpoenas.

Illustrative Behavior – Interpreters:

- 1.1 Share assignment-related information only on a confidential and “as-needed” basis (e.g., supervisors, interpreter team members, members of the educational team, hiring entities).
- 1.2 Manage data, invoices, records, or other situational or consumer-specific information in a manner consistent with maintaining consumer confidentiality (e.g., shredding, locked files).
- 1.3 Inform consumers when federal or state mandates require disclosure of confidential information.

2.0 PROFESSIONALISM

Tenet: Interpreters possess the professional skills and knowledge required for the specific interpreting situation.

Guiding Principle: Interpreters are expected to stay abreast of evolving language use and trends in the profession of interpreting as well as in the American Deaf community. Interpreters accept assignments using discretion with regard to skill, communication mode, setting, and consumer needs. Interpreters possess knowledge of American Deaf culture and deafness-related resources.

Illustrative Behavior – Interpreters:

- 2.1 Provide service delivery regardless of race, color, national origin, gender, religion, age, disability, sexual orientation, or any other factor.
- 2.2 Assess consumer needs and the interpreting situation before and during the assignment and make adjustments as needed.
- 2.3 Render the message faithfully by conveying the content and spirit of what is being communicated, using language most readily understood by consumers, and correcting errors discreetly and expeditiously.
- 2.4 Request support (e.g., certified deaf interpreters, team members, language facilitators) when needed to fully convey the message or to address exceptional communication challenges (e.g., cognitive disabilities, foreign sign language, emerging language ability, or lack of formal instruction or language).
- 2.5 Refrain from providing counsel, advice, or personal opinions.
- 2.6 Judiciously provide information or referral regarding available interpreting or community resources without infringing upon consumers' rights.

3.0 CONDUCT

Tenet: Interpreters conduct themselves in a manner appropriate to the specific interpreting situation.

Guiding Principle: Interpreters are expected to present themselves appropriately in demeanor and appearance. They avoid situations that result in conflicting roles or perceived or actual conflicts of interest.

Illustrative Behavior – Interpreters:

- 3.1 Consult with appropriate persons regarding the interpreting situation to determine issues such as placement and adaptations necessary to interpret effectively.
- 3.2 Decline assignments or withdraw from the interpreting profession when not competent due to physical, mental, or emotional factors.
- 3.3 Avoid performing dual or conflicting roles in interdisciplinary (e.g., educational or mental health teams) or other settings.
- 3.4 Comply with established workplace codes of conduct, notify appropriate personnel if there is a conflict with this Code of Professional Conduct, and actively seek resolution where warranted.

- 3.5 Conduct and present themselves in an unobtrusive manner and exercise care in choice of attire.
- 3.6 Refrain from the use of mind-altering substances before or during the performance of duties.
- 3.7 Disclose to parties involved any actual or perceived conflicts of interest.
- 3.8 Avoid actual or perceived conflicts of interest that might cause harm or interfere with the effectiveness of interpreting services.
- 3.9 Refrain from using confidential interpreted information for personal, monetary, or professional gain.
- 3.10 Refrain from using confidential interpreted information for the benefit of personal or professional affiliations or entities.

4.0 RESPECT FOR CONSUMERS

Tenet: Interpreters demonstrate respect for consumers.

Guiding Principle: Interpreters are expected to honor consumer preferences in selection of interpreters and interpreting dynamics, while recognizing the realities of qualifications, availability, and situation.

Illustrative Behavior – Interpreters

- 4.1 Consider consumer requests or needs regarding language preferences, and render the message accordingly (interpreted or transliterated).
- 4.2 Approach consumers with a professional demeanor at all times.
- 4.3 Obtain the consent of consumers before bringing an intern to an assignment.
- 4.4 Facilitate communication access and equality, and support the full interaction and independence of consumers.

5.0 RESPECT FOR COLLEAGUES

Tenet: Interpreters demonstrate respect for colleagues, interns, and students of the profession.

Guiding Principle: Interpreters are expected to collaborate with colleagues to foster the delivery of effective interpreting services. They also understand that the manner in which they relate to colleagues reflects upon the profession in general.

Illustrative Behavior – Interpreters:

- 5.1 Maintain civility toward colleagues, interns, and students.
- 5.2 Work cooperatively with team members through consultation before assignments regarding logistics, providing professional and courteous assistance when asked and monitoring the accuracy of the message while functioning in the role of the support interpreter.
- 5.3 Approach colleagues privately to discuss and resolve breaches of ethical or professional conduct through standard conflict resolution methods; file a formal grievance only after such attempts have been unsuccessful or the breaches are harmful or habitual.
- 5.4 Assist and encourage colleagues by sharing information and serving as mentors when appropriate.
- 5.5 Obtain the consent of colleagues before bringing an intern to an assignment.

6.0 BUSINESS PRACTICES

Tenet: Interpreters maintain ethical business practices.

Guiding Principles: Interpreters are expected to conduct their business in a professional manner whether in private practice or in the employ of an agency or other entity. Professional interpreters are entitled to a living wage based on their qualifications and expertise. Interpreters are also entitled to working conditions conducive to effective service delivery.

Illustrative Behavior – Interpreters:

- 6.1 Accurately represent qualifications, such as certification, educational background, and experience, and provide documentation when requested.
- 6.2 Honor professional commitments and terminate assignments only when fair and justifiable grounds exist.
- 6.3 Promote conditions that are conducive to effective communication, inform the parties involved if such conditions do not exist, and seek appropriate remedies.
- 6.4 Inform appropriate parties in a timely manner when delayed or unable to fulfill assignments.
- 6.5 Reserve the option to decline or discontinue assignments if working conditions are not safe, healthy, or conducive to interpreting.

- 6.6 Refrain from harassment or coercion before, during, or after the provision of interpreting services.
- 6.7 Render pro bono services in a fair and reasonable manner.
- 6.8 Charge fair and reasonable fees for the performance of interpreting services and arrange for payment in a professional and judicious manner.

7.0 PROFESSIONAL DEVELOPMENT

Tenet: Interpreters engage in professional development.

Guiding Principle: Interpreters are expected to foster and maintain interpreting competence and the stature of the profession through ongoing development of knowledge and skills.

Illustrative Behavior – Interpreters:

- 7.1 Increase knowledge and strengthen skills through activities such as:
 - pursuing higher education;
 - attending workshops and conferences;
 - seeking mentoring and supervision opportunities;
 - participating in community events; and
 - engaging in independent studies.
- 7.2 Keep abreast of laws, policies, rules, and regulations that affect the profession.

III. New Business — Before Public Hearing

B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 37, Solar Water Heater Variance, promulgated by DBEDT

RECEIVED

By JetaimeA at 2:22 pm, May 10, 2019

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

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

Phone Number: _____

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

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.

Are the draft rules available on the Lieutenant Governor's Website pursuant to HRS §91-2.6? Yes No

If **Yes**, provide webpage address: _____

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

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

"Small business" is defined as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." (HRS §201M-1)
(If No, you do not need to submit this form.)

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? (e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) (HRS §201M-2(d)) **Yes No** (If Yes, you do not need to submit this form.)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking?
(HRS §201M-2(a)) **Yes No** (If Yes, you do not need to submit this form.)

Pre-Public Hearing Small business Impact Statement
Page 2

* * *

If the proposed rule(s) affect 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 directly affected by, bear the costs of, or directly benefit from the proposed rules, that are required to comply with the proposed rules, and how they may be adversely affected.
2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

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

- a. Amount of the current fee or fine and the last time it was increased.
 - b. Amount of the proposed fee or fine and the percentage increase.
 - c. Reason for the new or increased fee or fine.
 - d. Criteria used to determine the amount of the fee or fine.
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.

Pre-Public Hearing Small business Impact Statement
Page 3

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses.
7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.
8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Pre-Public Hearing Small business Impact Statement
Page 4

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

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

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594
Email: sbrrb@dbedt.hawaii.gov
Website: <http://dbedt.hawaii.gov/sbrrb>

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

RECEIVED

By JetaimeA at 9:31 am, May 10, 2019

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Amendment and Compilation of Chapter 15-37
Hawaii Administrative Rules
(Ramseyer Format)

(Date TBD)

SUMMARY

1. \$15-37-5 is amended.
2. Chapter 15-37 is compiled.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

[Adopting] Amendment and Compilation of Chapter 15-37
Hawaii Administrative Rules

(Date TBD)

1. Chapter 15-37, Hawaii Administrative Rules,
entitled, "Solar Water Heater Variance," is
[adopted] amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

CHAPTER 37

SOLAR WATER HEATER VARIANCE

Subchapter 1 General Purpose

\$15-37-1 Purpose

\$15-37-2 Definitions

Subchapter 2 Eligibility for, Selection
Criteria, and Amendment of a SWHV

\$15-37-3 Eligibility criteria for a SWHV

\$15-37-4 Procedure for a SWHV

§15-37-1

§15-37-5 Criteria for state review of a SWHV request

§15-37-6 Procedure for amendment of a SWHV

Subchapter 3 Administration

§15-37-7 Administration

§15-37-8 Fee increases

§15-37-9 Waiver

§15-37-10 Severability

SUBCHAPTER 1

GENERAL PURPOSE

§15-37-1 Purpose. The purpose of this chapter is to provide rules for administration of the state solar water heater variance program authorized by section 196-6.5, Hawaii Revised Statutes.

[Eff 8/25/18; comp] (Auth: HRS §196-6.5)

(Imp: HRS §196-6.5)

§15-37-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Authorized to do business in the State" means a domestic or foreign profit corporation incorporated under chapter 414, HRS; domestic general partnership or foreign general partnership incorporated under chapter 425, HRS; domestic limited partnership or domestic limited liability partnership incorporated under chapter 425E, HRS; foreign limited partnership or foreign limited liability partnership incorporated under chapter 425E, HRS; domestic limited liability company or foreign limited liability company incorporated under chapter 428, HRS; a domestic limited liability partnership or foreign limited liability partnership incorporated under chapter 425, HRS; or a sole proprietorship.

"County" or "counties" means the City and County of Honolulu and the counties of Hawaii, Kauai, and Maui.

"DBEDT" means the State of Hawaii Department of Business, Economic Development, and Tourism.

"Department" means the State of Hawaii Department of Business, Economic Development, and Tourism.

"Director" means the director of the Department of Business, Economic Development, and Tourism.

"Family" means any group of people, which may include children, living together as a unit.

"HRS" means Hawaii Revised Statutes, the laws of the State of Hawaii, which were passed by the State Legislature and signed by the Governor or allowed to become law without signature.

"Program" means the state solar water heater variance program authorized by section 196-6.5, HRS.

"Qualified professional" means any architect or mechanical engineer licensed to do business in the State, which is:

- (1) Subject to the state corporate or individual income tax under chapter 235, HRS; and
- (2) Engaged in design or engineering of a Hawaii single-family dwelling.

"Representative" is a person who submits a "Request for Variance from the Mandatory Solar Water Heater Law" on behalf of and with the consent of the homeowner or future homeowner.

"Request" means a valid "Request for Variance from the Mandatory Solar Water Heater Law" form.

"Requestor" is a homeowner or homeowner's representative requesting a Solar Water Heating Variance.

"Single-family dwelling" means a building designed for one family to live in. This excludes duplexes, triplexes, apartments, condominiums, and other structures built for multiple families.

"Solar water heater" is a device in which water is heated by the sun to provide domestic hot water. Most solar water heater systems in Hawaii use a series

§15-37-2

of large glass and metal panels containing a metal pipe winding itself inside. The panels are usually installed on a building's roof. The heated water is usually stored in a large tank (eighty gallons or more). In an active system, an electric pump pumps the water from the supply pipe through the pipe that runs through the panels and into the storage tank. In a passive system, the heated water moves through the pipe through natural convection.

"State" means the State of Hawaii.

"SWHV" is a "solar water heater variance," a request to be exempt from section 196-6.5, HRS, which requires a solar water heating system for new single-family residential construction.

"Valid form" is a template, usually in Microsoft "Word" or an online form for the "Request for Variance from the Mandatory Solar Water Heater Law" that is designated by the State to be the most recent version that complies with state requirements.

[Eff 8/25/18; comp] (Auth: HRS §196-6.5)

(Imp: HRS §196-6.5)

SUBCHAPTER 2

ELIGIBILITY FOR, SELECTION CRITERIA, AND AMENDMENT OF A SWHV

§15-37-3 Eligibility criteria for a SWHV. a) To be eligible for a solar water heater variance, a home shall be:

- (1) Built on or after January 1, 2010;
- (2) A single-family dwelling; and
- (3) Located within the State of Hawaii.

(b) The requestor shall submit to the State a valid, correctly completed "Request for Variance from the Mandatory Solar Water Heater Law" form.

(c) The request must be submitted by a qualified professional who is an architect or mechanical

engineer licensed to do business in the State of Hawaii according to chapter 464, HRS.

(d) The form should be printed on the letterhead of the architect or mechanical engineer, or correctly completed online.

(e) A valid form can be obtained by:

- (1) Accessing the DBEDT Energy Division Solar Water Heater Variance website and completing the online form;
- (2) Downloading a form from the DBEDT Energy Division Solar Water Heater Variance website; or
- (3) E-mailing the program office at:
DBEDT.SWH-Variance@hawaii.gov.

(f) A request must be submitted for each dwelling.

(g) A SWHV processing fee of \$25 shall be charged for each SWHV request. The request shall be processed when the fee is received. [Eff 8/25/18; comp] (Auth: HRS §196-6.5) (Imp: HRS §196-6.5)

§15-37-4 Procedure for a SWHV. (a) Homeowner or representative (requestor) submits a properly completed, valid "Request for Variance from the Mandatory Solar Water Heater Law" form and fee payment to the State via:

- (1) Online at the DBEDT Energy Division Solar Water Heater Variance website;
- (2) E-mail: DBEDT.SWH-Variance@hawaii.gov;
- (3) Fax: 808-586-2536;
- (4) U.S. Postal Service: SWH Variance, c/o DBEDT Energy Division, P.O. Box 2359, Honolulu, HI 96804-2359; or
- (5) Hand delivery.

(b) The State reviews the request.

(c) The State shall inform the requestor of any errors on the request, if the request is on an invalid form, or if there is a problem with the fee payment.

(d) After review, the correct and paid requests are sent to the director or director's designee.

§15-37-4

(e) The director or director's designee approves or denies the request.

(f) The requestor is notified of the director's or director's designee's decision.

(g) A copy of the approved request is sent to the requestor.

(h) Information about the request is posted on the department's SWHV webpage, including the director's approval or denial of the request.

[Eff 8/25/18; comp] (Auth: HRS §196-6.5)

(Imp: HRS §196-6.5)

§15-37-5 Criteria for state review of a SWHV request. (a) Upon receiving a "Request for Variance from the Mandatory Solar Water Heater Law" form and fee payment, the request is reviewed to ensure that the:

- (1) Request is on a valid form;
- (2) Fee is paid; and
- (3) Request is correctly completed, including:
 - (A) Printed on architect's or mechanical engineer's letterhead with name, address, e-mail address, and phone number. In lieu of a letterhead, the architect's or mechanical engineer's name, address, e-mail address, and phone number shall be written on the form or inputted into the online form.
 - (B) Return e-mail address to which the "Request for Variance from the Mandatory Solar Water Heater Law" form should be returned.
 - (C) The property's address (at least the street name), town, and island.
 - (D) The property's Tax Map Key (TMK) number.
 - (E) One of the options is checked:
 - (i) If Option 1 (SWH installation impracticable or cost-prohibitive) is checked, a Life Cycle Cost Comparison, also available from the SWHV website or the program office,

is included and properly completed, including architect's or mechanical engineer's stamp and signature;

- (ii) If Option 2 (renewable energy technology) is checked, the renewable system to be installed is circled or otherwise marked; or
- (iii) If Option 3 (~~gas-tankless on-demand~~ gas-tankless instantaneous water heater) is checked, at least one additional gas appliance is listed on the line under the Option 3 paragraph. In addition, it must be certified by the architect or mechanical engineer submitting the application that:

1. The SWHV request is made by the homeowner who will pay for the utility bill.
2. The applicant has demonstrated that a SWH system, regardless of location or circumstance, is not cost effective in the context of a 30-year mortgage term.
3. The gas-tankless instantaneous water heater to be installed has been approved by Underwriters Laboratories, Inc., unless otherwise mandated by the State of Hawaii Legislature.

(F) Request is signed and stamped by the architect or mechanical engineer.

(b) The request shall be reviewed by the department and sent to the director or director's designee for review.

(c) The director or director's designee shall approve or deny a request based upon requirements of section 196-6.5, HRS, including the following requirement set forth in Section 13 of Act 155 (June 25, 2009):

- (1) It is the intent of the legislature that the variances provided for in Act 204, Session

Laws of Hawaii 2008 (Act 204) will be rarely, if ever, exercised or granted because the burden of proof will lie with the applicant to demonstrate that a solar water heater system, regardless of location or circumstance, is not cost effective in the context of a 30-year mortgage term.

- (2) The legislature intended for a consumer to have the option to use gas appliances with the full knowledge that such a system may be more costly and less efficient. To obviate any attempt to circumvent Act 204, then, the legislature intends that if the potential variance applicant is not the party who will ultimately pay for the energy cost consumption, then only paragraph (1), (2), or (3) of subsection (a) in section 196-6.5 HRS, should apply.

(d) A requestor whose variance request is denied shall be notified and provided with the reasons for denial. [Eff 8/25/18; am and comp]
(Auth: HRS §196-6.5) (Imp: HRS §196-6.5)

§15-37-6 Procedure for amendment of a SWHV.

(a) A homeowner may request amendment of an approved SWHV by submitting a written notification to the department and a revised SWHV request.

(b) Requests for an amendment will be considered if the amendment relates to a change in the homeowner's choice of water heating device.

(c) If the amendment is to change to a solar water heater, no fee will be required. All other amendments require payment of the current SWHV processing fee.

(d) The request for amendment shall be reviewed by the department and forwarded to the director or director's designee.

(e) If approved by the director or director's designee, the amendment shall take effect on the date of approval.

(f) A homeowner whose application for amendment is denied by the director or director's designee shall be notified and provided with the reasons for denial.
[Eff 8/25/18; comp] (Auth: HRS §196-6.5)
(Imp: HRS §196-6.5)

SUBCHAPTER 3

ADMINISTRATION

§15-37-7 Administration. (a) The department is authorized to implement and enforce this chapter.

(b) The department shall monitor the program to ensure adherence to this chapter, the effectiveness of this chapter, and that the purpose of the program is still relevant to the intent of section 196-6.5, HRS.
[Eff 8/25/18; comp] (Auth: HRS §196-6.5)
(Imp: HRS §196-6.5)

§15-37-8 Fee increases. From time to time, it may be necessary to increase the SWHV processing fee required by section 15-37-3(g). A fee increase shall be instituted when approved by the director and posted on the department's website for thirty calendar days.
[Eff 8/25/18; comp] (Auth: HRS §196-6.5)
(Imp: HRS §196-6.5)

§15-37-9 Waiver. The director may waive particular provisions of this chapter to conform to applicable federal requirements. [Eff 8/25/18; comp]
(Auth: HRS §196-6.5) (Imp: HRS §196-6.5)

§15-37-10 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person, transaction, or other circumstance, is for any reason held to be

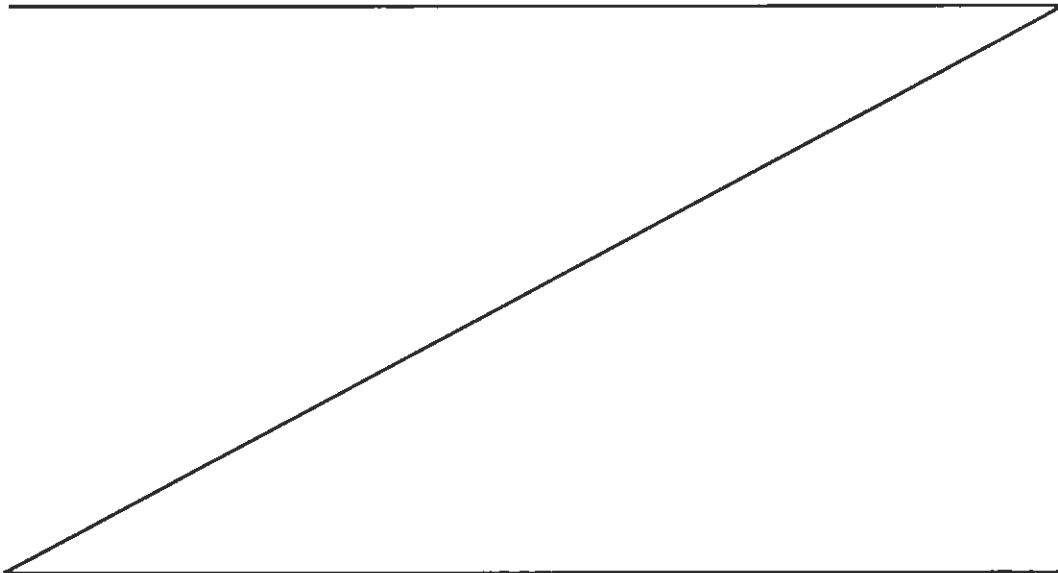
§15-37-10

unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or its application to other persons, transactions, or circumstances shall not be affected."
[Eff 8/25/18; comp] (Auth: HRS §196-6.5)
(Imp: HRS §196-6.5)

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

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

4. These amendments to and compilation of chapter 15-37, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.



I certify that the foregoing is a copy of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, HRS, which was adopted on _____, and filed with the Office of the Lieutenant Governor.

MIKE MCCARTNEY
Director
Department of Business,
Economic Development, and
Tourism

DAVID Y. IGE
Governor, State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

IV. Old Business – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Subtitle 11 Ocean Recreation and Coastal Areas, promulgated by DLNR:

- 1. Part I Small Boat Harbors – Chapter 234 Fees and Charges**
- 2. Part II Ocean Waters, Navigable Streams and Beaches – Chapter 253 Catamaran Registration, Other Registration, and Commercial Use Permits**

RECEIVED

By JetaimeA at 7:46 am, Apr 26, 2019

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

Department or Agency: DLNR Division of Boating and Ocean Recreation**Administrative Rule Title and Chapter:** 13-234 & 13-253**Chapter Name:** Fees & Charges; Catamaran Reg. Cert., Other Reg., & Comm. Use Permit Fees**Contact Person/Title:** Todd Tashima/Legal Research Specialist**Phone Number:** 808-587-0142**E-mail Address:** todd.h.tashima@hawaii.gov**Date:** April 26, 2019

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

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

☒ **Yes** ☐ **No**

(If "Yes," please provide webpage address and when and where rules may be viewed in person. 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.

See attachment.

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

See attachment.

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.

See attachment.

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

See attached BLNR submittal.

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

See attachment.

4. The number of persons who:

(i) Attended the public hearing: See attached BLNR submittal.

(ii) Testified at the hearing: See attached BLNR submittal.

(iii) Submitted written comments: See attached BLNR submittal.

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

(i) If "Yes," was the change adopted? ☒ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

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

This statement may be found on the SBRRB Website at:

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

Post-Public Hearing Small Business Impact Statement Attachment
Department of Land and Natural Resources, Division of Boating and Ocean Recreation
Proposed amendments to Hawai'i Administrative Rules Chapters 13-234 and 13-253

- V. DOBOR sent out notices to businesses in their billing statements and through email to inform them of plans to amend administrative rules regarding fees and charges since October 2017. DOBOR made draft rules available online at its website and also made desk copies available at all DOBOR district offices.
- a. Yes, one business commented on delinquency rule amendments and how there was ambiguity in determining when a payment would be considered delinquent. DOBOR worked with the business to clarify delinquency provisions as they apply to commercial operators in HAR §§ 13-234-2, 13-234-25, and 13-253-1.2.
- VI.
1. DOBOR accepted testimony at public hearings from small businesses, both verbal and written. DOBOR also accepted written testimony in hardcopy and electronic form for one week after the conclusion of the last public hearing.
 3. DOBOR made revisions to proposed amendments, subject to the approval of the Board of Land and Natural Resources, in response to the comments and recommendations of some testifiers. DOBOR received more testimony from non-commercial individuals than from commercial operators but included commercial operators' recommendations where possible, such as with the delinquency rule revisions in HAR §§ 13-234-2, 13-234-25, and 13-253-1.2.

RECEIVED

By JetaimeA at 12:19 pm, Apr 25, 2019

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

June 14, 2019

RECEIVED

By JetaimeA at 1:16 pm, Apr 25, 2019

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL AND ADOPTION OF AMENDMENTS TO TITLE 13, HAWAII ADMINISTRATIVE RULES (HAR), CHAPTERS 13-234, FEES AND CHARGES, AND 13-253, CATAMARAN REGISTRATION CERTIFICATE, OTHER REGISTRATION, AND COMMERCIAL USE PERMIT FEES FOR THE PURPOSE OF REVISING FEE AND CHARGE REQUIREMENTS AND INCREASING BOATING AND OCEAN RECREATION FEES AND CHARGES, INCLUDING, BUT NOT LIMITED TO, MOORING FEES, STATE BOATING FACILITY-RELATED FEES, COMMERCIAL USE PERMIT FEES, RAMP DECAL FEES, AND PASSENGER CRUISE-RELATED FEES.

The proposed rules can be reviewed in person at a Division of Boating and Ocean Recreation (DOBOR) district office from 8:00 am to 3:30 pm, Monday through Friday, except state Holidays as follows: Hawai'i District: Honokōhau Small Boat Harbor 74-380 Kealahou Parkway Kailua-Kona, HI 96740; Kaua'i District: Nawiliwili Small Boat Harbor 2494 Niumalu Road Līhu'e, HI 96766; Maui District: Ma'alaea Small Boat Harbor 101 Ma'alaea Boat Harbor Road Wailuku, HI 96793; O'ahu District: Ke'ehi Small Boat Harbor 4 Sand Island Access Road Honolulu, HI 96819.

The proposed rules can be reviewed online at: <http://ltgov.hawaii.gov/the-office/administrative-rules>. The proposed rules can also be viewed online at: <http://dlnr.hawaii.gov/dobor/draft-rules>. Location and contact information for DOBOR offices is available online at: <http://dlnr.hawaii.gov/dobor/contact>.

PURPOSE:

The purpose of these amendments is to increase fee amounts in HAR Chapter 13-234 in order to improve revenue-generating potential of boating and ocean recreation related activities within state small boat harbors and nearshore waters, and to reorganize HAR provisions relating to DOBOR fees and charges in an effort to place as many fee-related rules in the same HAR

chapter. Reorganization of fees and charges will allow affected individuals to find information more quickly and easily.

STATUTES:

Hawaii Revised Statutes (HRS) §§ 200-2, 200-3, 200-4, 200-6, 200-8, 200-10, 200-12, 200-19, 200-22, 200-24, 200-25, 200-39

BACKGROUND:

At the October 12, 2018 Board of Land and Natural Resources (Board) meeting, DOBOR brought the proposed amendments to Chapters 13-234 and 13-253 to request to begin the HRS Chapter 91 rulemaking process. The Board deferred action on this request and directed DOBOR to bring this item back to the October 26, 2018 Board meeting. DOBOR was directed to provide the following information to the Board at the October 26, 2018 meeting:

- Mooring fee appraisal, of which a hardcopy was sent to each Board member.
- Financial breakdown of deferred maintenance projects
- Revenue and expense report
- Expected revenue generation for certain major small boat harbors

On October 17, 2018, DOBOR went before the Small Business Regulatory Review Board (SBRRB) to discuss small business impacts. DOBOR informed SBRRB that there would be an impact to small business due to the fact that mooring and commercial use fees were to be increased, which would increase operating costs for small business. SBRRB voted unanimously to recommend that the proposed amendments proceed to public hearing.

At the Board's October 26, 2018 meeting, the Board again deferred action on DOBOR's request to hold public hearings. At the Board's December 7, 2018 meeting, the Board approved public hearings for the proposed amendments to HAR Chapters 13-234 and 13-253.

In advance of the public hearings, the proposed rules package was sent to all staff in DOBOR, as well as to as many members of the public that would be affected, for informal comment and feedback. DOBOR staff sent notices to boaters through various methods, including: along with registration renewal documents, along with billing statements, and through email. DOBOR began sending these notices out in October 2017 and has sent in excess of 10,000 notices to date. The notices state that DOBOR is planning to amend HAR Chapters 13-234 and 13-253 and that the public is welcome to view proposed amendments online at the DOBOR website or in person at any DOBOR district office.

The Department of the Attorney General, Land and Transportation Division has reviewed the draft rules and approved them as to form, pending approval by the Board, SBRRB, and the Governor pursuant to HRS Chapter 91.

Based on testimony received during the public hearing process, DOBOR is recommending revisions to its proposed language in HAR §13-234-2, Payment and delinquency, HAR § 13-234-10, Electricity fee, HAR § 13-234-11, Shower fee, HAR § 13-234-25, Fees for commercial use permits, and HAR § 13-253-1.2, No additional fees. DOBOR is also recommending that the Board remove proposed changes to HAR § 13-234-26, Passenger fees, because of an error in language. DOBOR staff will revisit HAR § 13-234-26 in a separate rule package and plans to work with affected stakeholders to create language. The revised proposed rules package contains the following amendments (see ATTACHED **EXHIBIT A**):

1. Increases fee amounts for the following:
 - a. State boating facility mooring fees under HAR § 13-234-3
 - b. Offshore mooring fees under HAR § 13-234-4
 - c. Stay-aboard and principal habitation fees for transient vessels under HAR § 13-234-8(b)
 - d. Electricity fees under HAR § 13-234-10
 - e. Shower fees under HAR § 13-234-11
 - f. Dry storage fees under HAR § 13-234-12
 - g. Gear locker fees under HAR § 13-234-13
 - h. Permit processing fees under HAR § 13-234-16
 - i. Commercial use permit fees under HAR § 13-234-25(a)
 - j. Service charge for any dishonored check, draft, certificate of deposit, or other negotiable instrument under HAR § 13-234-28(a)
 - k. Vessel inspection fees under HAR § 13-234-29
 - l. Application fee for recognition as an approved marine surveyor under HAR § 13-234-30
 - m. Fees for commercial use of boat launching ramps and other boating facilities under HAR § 13-234-31
 - n. Facility shower key deposit under HAR § 13-234-32
 - o. Recreational ramp decal fee under HAR § 13-234-34
2. Makes payments due on or before the last day of the month in which they are incurred; changes the time period for which a payment becomes delinquent from thirty days after it is due to four days after it is due and specifies that delinquent payments will be referred to the Credit Bureau Services if unpaid twenty-five days after the account becomes delinquent. Clarifies delinquent payment provisions for commercial operators who pay DOBOR a percentage of gross revenues.
3. Imposes a delinquent service charge of the greater of five per cent or one hundred dollars per month on any delinquent account; also imposes interest of one per cent per month on an unpaid balance for all delinquent payments, which includes the unpaid balance, all prior interest charges, and all delinquent service charges.
4. Removes Schedule A and Schedule B mooring rates in HAR § 13-234-3 and replaces mooring fee categories with "Catwalk" and "Tahiti Moor" categories.

5. Increases the minimum age allowed to obtain a shower key under HAR § 13-234-11 from four to eighteen; specifies that each eligible individual eligible to obtain a shower key cannot obtain more than one male key and one female key per mooring permit; clarifies that the shower key fee is for access and not actual usage.
6. Revises dry storage requirements under HAR § 13-234-12 to require that a person wishing to use any location on land under DOBOR jurisdiction must, in addition to holding a valid use permit to moor their vessel in a state small boat harbor, have their vessel registered with the department, have a properly registered and inspected trailer, if the vessel is trailered, and have a properly insured vessel; reduces the time period for dry storage without a fee from ten days to seven days; charges fees for storage of equipment or items used in connection with vessels for trailers; creates increased fees for vessels, trailers, or other items stored on land under the jurisdiction of the department without permission.
7. Allows a person who pays a fee not required under HAR Chapter 13-234 to request a refund in writing; requires such a request to be made within thirty days after the date of the payment.
8. Imposes a requirement in HAR § 13-234-18(b) that any fresh water provided at boating facilities must be used in relation to proper activities at small boat harbors or other boating facilities.
9. Repeals HAR § 13-234-19, Parking fees – reserved space. This section is irrelevant because DOBOR does not have any reserved parking spaces.
10. Repeals fees for copies of DOBOR administrative rules under HAR § 13-234-27.
11. Specifies that the business transfer fee assessed by HAR § 13-234-33 does not apply to transfers between spouses or first-generation lineal descendants.
12. Removes use of fresh water as a resource to be provided for the payment of a ramp decal fee under HAR § 13-234-34.
13. Amends HAR Chapter 13-253, Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees, to remove any outlying fees and move the fees to Chapter 13-234, Fees and Charges.
14. Makes technical edits for style, grammar, and consistency with other HAR sections.

Legal ads were placed in newspapers in accordance with HRS § 91-3 to notify the public of the public hearings on the proposed amendments, a press release was issued notifying the public of the upcoming public hearings, paper notices were placed in DOBOR small boat harbors notifying the public of the upcoming public hearings, the proposed rule amendment package file

was uploaded on the DOBOR website for public viewing, and email notices were sent out to persons who requested such notices. Print copies of the proposed amendments were made available for viewing at DOBOR district offices.

PUBLIC HEARING ASSESSMENTS

DOBOR received comments from the public with the majority of comments opposing the proposed fee increases. DOBOR also received comments on commercial operator fees in HAR § 13-234-25 and passenger fees for cruise vessels in HAR § 13-234-26. The comments received are broken down as follows:

OAHU 3/2/2019 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Roughly 115 to 120 individuals attended the O‘ahu District public hearing on 3/2/19. One hundred thirteen individuals signed in on the DOBOR sign-in sheet.

ORAL TESTIMONY

Forty-four individuals provided oral testimony at the public hearing.

WRITTEN TESTIMONY

Six individuals submitted written testimony at the public hearing.

SUMMARY

One testifier provided comments on HAR § 13-234-26, regarding passenger fees for cruise vessels that use DOBOR facilities.

Forty-three individuals provided testimony opposing amendments to HAR § 13-234-3, regarding mooring fees for state small boat harbors. Testifiers also discussed: harbor repair and maintenance issues; harbor program mismanagement; issues with illegal liveaboard tenants; harbor enforcement and security issues; opposition to the electricity fee; using meters to determine water and electricity fees; cleanup of abandoned and derelict vessels; paperwork processing and turnaround time; and the possibility of gradual fee increases.

HAWAII ISLAND 3/4/2019 PUBLIC HEARING ASSESSMENT (KONA):

ATTENDANCE

Roughly 45-50 individuals attended the Hawai‘i District public hearing in Kona on 3/4/19. Forty-one individuals signed in on the DOBOR sign-in sheet.

ORAL TESTIMONY

Five individuals provided oral testimony.

WRITTEN TESTIMONY

No written testimony received from attendees.

SUMMARY

One individual discussed maintenance and security issues at the Honokōhau and Kawaihae Small Boat Harbors and recommended implementing gradual increases.

One individual commented that they would be open to the proposed fee increases.

Three individuals opposed the fee increases.

MAUI 3/6/2019 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Roughly 35-40 individuals attended the Maui District public hearing on 3/6/19. Sixteen individuals signed in on the DOBOR sign-in sheet.

ORAL TESTIMONY

Nineteen individuals provided oral testimony.

WRITTEN TESTIMONY

One individual submitted written testimony at the public hearing.

SUMMARY

Three individuals supported the proposed fee increases.

Twelve individuals opposed the proposed fee increases. One of the individuals in opposition specifically opposed HAR § 13-234-34, regarding boat launch ramp fee increases. One of the individuals in opposition specifically opposed offshore mooring fee increases in HAR § 13-234-4. Two of the individuals in opposition had issues with commercial fee delinquency provisions in HAR § 13-234-2.

Four individuals provided comments on the proposed fee increases. Comments included: repair and maintenance at the harbor and boat launching ramp; navigational aid maintenance; groundskeeping at DOBOR facilities; creating a harbor advisory group; and implementing

gradual fee increases.

HAWAII ISLAND 3/7/2019 PUBLIC HEARING ASSESSMENT (HILO):

ATTENDANCE

Roughly 40-45 individuals attended the Hawai'i District public hearing in Hilo on 3/7/19. Thirty-four individuals signed in on the DOBOR sign-in sheet.

ORAL TESTIMONY

Thirteen individuals provided oral testimony.

WRITTEN TESTIMONY

Three individuals submitted written testimony at the public hearing.

SUMMARY

Nine individuals opposed the proposed fee increases.

Four individuals provided comments on the proposed rules. Comments included: harbor security concerns; repair and maintenance issues;

KAUAI 3/9/2019 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Roughly 40 to 50 individuals attended the Kaua'i District public hearing on 3/9/2019. Forty-four individuals signed in on the DOBOR sign-in sheet.

ORAL TESTIMONY

Nine individuals provided oral testimony. One individual testified twice to provide follow-up testimony.

WRITTEN TESTIMONY

No written testimony received at the public hearing.

SUMMARY

Nine individuals opposed mooring fee increases in HAR § 13-234-3. Five individuals commented on the electricity fee in HAR § 13-234-10, suggesting setting fees according to metered rates or allowing tenants to opt out if not using electricity supplied by the State. One

individual suggested setting priorities for deferred maintenance projects and privatizing state harbors.

One individual testified in support of the proposed amendments to HAR §§ 13-234-3, 13-234-4, and 13-234-5.

MAILED TESTIMONY (POSTMARKED BY 3/15/2019)

Four individuals submitted hardcopy testimony. Two of these testifiers submitted identical letters that opposed the fee increases, specifically the offshore mooring rate in HAR § 13-234-4. One individual opposed the mooring rate and electricity fee, recommending allowing tenants to opt out of electricity if not using state-supplied electricity. One individual opposed the fee increases and provided comments unrelated to the fee increases, including harbor maintenance and enforcement.

EMAILED TESTIMONY (RECEIVED BY 3/15/2019 11:59 P.M.):

Forty-five individuals emailed their testimony to DOBOR staff. Twenty individuals opposed the proposed rules, specifically the mooring rate increases in HAR §§ 13-234-3 and 13-234-4, and the electricity fee in HAR § 13-234-10. Twenty-five individuals provided comments on the proposed rules. Of the individuals who provided comments, topics covered included: the CBRE proposal that DOBOR used in determining its mooring fee amounts; conditions and maintenance of harbors; and alternatives to fee language and calculations. One of the individuals discussed clarification to language regarding the commercial use permit fees in HAR §§ 13-234-2, 13-234-25, and 13-253-1.2. Two individuals discussed HAR § 13-234-26, Passenger fees, and alternatives to calculating and implementing the proposed fees for HAR § 13-234-26.

**ADDITIONAL PUBLIC INFORMATIONAL MEETINGS ON MOLOKA'I (4/13/19)
LĀNA'I (4/15/19)**

DOBOR held public informational meetings on Moloka'i (4/13/19 from 9:00am to 11:00am) and Lāna'i (4/15/19 from 9:00am to 10:45am) to address questions community members had regarding the proposed amendments. The DOBOR Maui District Manager and Kaunakakai Harbor Agent held the Moloka'i meeting, and thirteen individuals attended. Moloka'i attendees opposed the proposed fee increases, recommended a gradual increase, opposed the increase in stay-aboard fees, and discussed other topics unrelated to the proposed fee increases. The DOBOR Maui District Manager held the Lāna'i meeting, and six individuals attended. Lāna'i attendees opposed the proposed fee increases and discussed topics unrelated to the proposed fee increases.

CONCLUSION

Based on the oral testimony received at the public hearings as well as written (including email) testimony received during this process, DOBOR staff recommends the adoption of the proposed HAR amendment package with changes to HAR §13-234-2, Payment and delinquency, HAR §

13-234-10, Electricity fee, HAR § 13-234-11, Shower fee, HAR § 13-234-25 Fees for commercial use permits, and HAR § 13-253-1.2, No additional fees, as specified below. DOBOR staff also recommends removing proposed amendments to HAR § 13-234-26, Passenger fees, so that staff can work with affected stakeholders and amend HAR § 13-234-26 and return to the Board at a later date.

RECOMMENDATION:

DOBOR requests that the Board:

1. Approve adoption of the amendments to Hawaii Administrative Rules Chapters 13-234 and 13-253, with the following changes:
 - a. Revise the amendments to HAR § 13-234-2, 13-234-25, and 13-253-1.2 to clarify payment deadlines and delinquency provisions for commercial use permit fees;
 - b. Revise the amendments to HAR § 13-234-10 to decrease the electricity fee and provide an exemption from the fee for tenants who do not use state-supplied electricity;
 - c. Revise the amendments to HAR § 13-234-11 to clarify that the shower fee is assessed for access to shower facilities, not use of shower facilities;
 - d. Remove proposed amendments to HAR § 13-234-26; and
2. Approve transmittal of the amendments to the Governor for final approval and filing with the Office of the Lieutenant Governor.

Respectfully Submitted,

EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:

SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment:

- A. Proposed amendments to HAR Chapters 13-234 and 13-253, including DOBOR's recommended revisions



SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2594

MEMORANDUM

David Y. Ige
Governor

Luis P. Salaverria
DBEDT Director

Members

Anthony Borge
Chairperson
O'ahu

Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

Director, DBEDT
Voting Ex Officio

TO: Suzanne D. Case, Chairperson
Department of Land and Natural Resources (DLNR)

FROM: Anthony Borge, Chair
Small Business Regulatory Review Board

DATE: **October 18, 2018**

SUBJECT: Proposed Amendments to Hawaii Administrative Rules Title 13
Subtitle 11 Ocean Recreation and Coastal Areas, Part I Small Boat
Harbors, Chapter 234 Fees and Charges, and Part III Ocean Waters,
Navigable Streams and Beaches, Chapter 253, Catamaran
Registration Certificate, Other Registration, and Commercial Use
Permit Fees

The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes.

Please be advised that at the SBRRB's October 17, 2018 board meeting, the members reviewed the above-captioned proposed amended administrative rules prior to the public hearing, and heard from Mr. Edward Underwood, Administrator at DLNR's Division of Boating and Ocean Recreation (DOBOR).

Upon discussion and review, the SBRRB unanimously agreed that the proposed amendments proceed to public hearing.

The SBRRB members thank you for keeping them apprised of the regulatory activity at DOBOR.

c: Governor David Y. Ige
Todd Tashima, Legal Research Specialist, DOBOR, DLNR
Edward Underwood, Administrator, DOBOR, DLNR
Meghan Statts, O'ahu District Manager, DOBOR, DLNR
Todd Tashima, Legal Research Specialist, DOBOR, DLNR
Mary Albitz, SBRRB Discussion Leader

Regarding the bidding process, Mr. Rapozo explained that once the rules are heard at the public hearing, and then adopted, applications for food trucks will proceed with another public hearing that will entail a competitive bid process with the highest bids winning out; items to be served in the food trucks are also part of the vetting and bidding process.

Some of the existing business owners do not want these trucks in their area. However, the public process is still necessary to vet the opinions of the businesses and community. Although Mr. Rapozo was not aware of the percentage of current food truck owners that were not in compliance with the current rules and regulations, a monthly oversight of the permits is performed.

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

B. Discussion and Action on Proposed Amendments to HAR Title 13 Subtitle 11 Ocean Recreation and Coastal Areas, as follows, promulgated by Department of Land and Natural Resources (DLNR)

1. Part I Small Boat Harbors – Chapter 234 Fees and Charges
2. Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253 Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees

Mr. Ed Underwood, Administrator at DLNR's DOBOR (Division of Boating and Ocean Recreation) explained that the proposed rules have not been amended since 1994. They will have a definite impact on small business, particularly commercial watersport and commercial ocean tour companies, due to the increase in mooring fees. The increases are intended to align DOBOR's small boat harbors and other boating facilities with current market rates. Because DOBOR has not raised its fees in several years, it is currently not maximizing the revenue-generating potential of its small boat harbors and facilities

Specific examples of the fee increases include the following: commercial use permit fee will increase from the greater of \$200 per month or 3% of gross receipts to the greater of \$300 per month or 3% of gross receipts (increase of the minimum fee amount by \$100). The passenger fee will increase as follows: \$.030 per passenger embarking or disembarking for passenger vessels engaging only in interisland commerce to \$3.00 per passenger embarking or disembarking per day for the Lahaina small boat harbor (increase of \$2.70 applied to Lahaina small boat harbor only and per passenger day).

Also, \$1.00 per passenger per day embarking or disembarking for passenger vessels engaging in international or interstate commerce will increase to \$2.00 per passenger for small boat harbors other than Lahaina small boat harbors. In addition, commercial ramp use fees will increase from the greater of \$75 per month, or 2% of gross receipts, to the greater of \$300 per month or 3% of gross receipts.

Regarding outreach, Mr. Underwood stated that the proposed rules were uploaded onto DLNR's website over a year ago, over 10,000 mailings were sent out to all the tenants, and everyone who receives a permit was informed. Due to these notifications, approximately 35 comments were received by DOBOR with the biggest concern being the electric fee increase

by the boat owners, which is expected to increase to \$50 - \$150 per month. There was also concern over the anchorage fee charge; however, after DOBOR performed an analysis, the fee was lowered from \$1,000 to \$115 per day.

Chair Borge stated that it was his understanding that all the fees collected go back to restoration and upkeep of the small boat harbors. Mr. Underwood concurred, stating there is about a \$2 million loss incurred at the boat harbors which is subsidized by all the other land-based fees that are raised. Increased revenue at maximum moorage for Ala Wai Boat Harbor, for example, is expected to bring in an additional \$1 million per year. It was noted that DOBOR not only maintains the small boat harbors, it is tasked with managing all the launch ramps in the state, regulates all the state's commercial activity, is responsible for vessel registration and many others.

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

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 235 Income Tax Law, as follows, promulgated by Department of Taxation (DoTax)

1. Section 235-98 Returns; form, verification and authentication, time of filing

Mr. Jacob Herlitz, Administrative Rules Specialist, explained that the proposed rule changes allow for automatic extensions to file income tax returns. Under the current rule an automatic six-month extension is granted to individuals, but a company must fill out a separate request for an extension.

Thus, the rules will allow that every tax return will get the same automatic six-month extension whether the taxpayer is an individual or a company; fees are not part of the proposal.

2. Section 235-1.14 (d) "Substantial gainful business or occupation", defined

Mr. Herlitz explained that this proposal will benefit blind, deaf or totally disabled persons. The amendments will prevent taxpayers, with substantially large gross business income, from taking large business deductions to reduce annual net income below \$30,000, and receive income and general excise tax benefits designed for persons and businesses incapable of generating substantial income due to disability.

Further, any small business wholly-owned by a disabled person, or persons, with gross earnings of \$60,000 or greater but with net earnings below \$30,000, may be affected by the proposal as the owner(s) of such a business would not qualify as totally or permanently disabled. In addition, a business would be ineligible for the general excise tax exemptions and reduced rates for businesses wholly owned by blind, deaf, or totally disable persons while an individual will be eligible for income tax benefits on his or her individual income tax returns.

Second Vice Chair Yamanaka made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

RECEIVED

By JetaimeA at 1:18 pm, Apr 25, 2019

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapters 13-234 and
13-253

Hawaii Administrative Rules

[Date of adoption by agency]

1. Chapter 13-234, Hawaii Administrative Rules,
is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT FACILITIES AND PROVISIONS GENERALLY
APPLICABLE TO ALL STATE NAVIGABLE WATERS

CHAPTER 234

FEES AND CHARGES

Historical note

\$13-234-1	General statement
\$13-234-2	Payment [7] <u>and</u> delinquency [and liens]
\$13-234-3	Mooring rates
\$13-234-4	Mooring rates for offshore mooring and anchoring
\$13-234-5	Mooring fees for vessels assigned temporary moorings or occupying moorings without permission

§13-234-6 Fees for vessel absent for more than
fourteen days
 §13-234-7 Mooring fee for vessels owned by
nonresident
 §13-234-8 Stay aboard or principal habitation fee
 §13-234-9 Stay-aboard or principal habitation fee
for offshore mooring or anchoring
 §13-234-10 Electricity fee
 §13-234-11 Shower fee
 §13-234-12 Dry storage
 §13-234-13 Gear locker fee
 §13-234-14 Mooring fees - facilities constructed by
others
 §13-234-15 Waiver or return of fees
 §13-234-16 Permit processing fees
 §13-234-17 Fees for vessels moored at yacht club
berths and other areas covered by
specific agreements
 §13-234-18 Excessive water usage fee
 §13-234-19 [~~Parking fees -- reserved stall~~] Repealed
 §13-234-20 Salvage fee
 §13-234-21 Principal habitation application fee
 §13-234-22 Exemption from fee differential
 §13-234-23 Application fee for moorage
 §13-234-24 Fee for residency status appeal; refund
if status determination reversed
 §13-234-25 Fees for commercial [~~vessels using state
boating facilities, Kaneohe Bay ocean
waters, and beaches of the State~~] use
permits
 §13-234-26 Passenger fees
 §13-234-27 [~~Fees for copies of rules~~] Repealed
 §13-234-28 Negotiable instruments; service charge
 §13-234-29 Marine inspection fee
 §13-234-30 Application fee for approved marine
surveyor
 §13-234-31 Fees for commercial use of boat launching
ramps and other boating facilities
 §13-234-32 Small boat harbor facility [-] key
deposits
 §13-234-33 Business transfer fee

~~[(3) The mooring fees shall be set by categories, schedule A and schedule B, to be determined by the department, provided that:~~

~~(A) Schedule A shall include existing mooring holders with an annual increase toward schedule B rates of twenty per cent per year; and~~

~~(B) Schedule B shall apply to all new mooring applicants and transient slips on or after the effective date of these 2010 rule amendments.]~~

(b) Nothing contained in this subchapter shall be construed to limit the authority and power of the department to waive any late fees~~[7]~~ and related interest, or to assess any reasonable fees and charges in addition to those specifically provided in this subchapter for trivial or infrequent uses of state property, facilities, or services~~[7]~~ if fees for the uses are not contained herein~~[7]~~ or as the circumstances may warrant.

(c) The acceptance of payment, or billings therefor, shall not waive the nature of trespass or ratify or permit illegal mooring, docking, storage, or parking. [Eff 2/24/94; am 1/22/10; am and comp

] (Auth: HRS §§200-2, 200-3, 200-4, 200-8, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-8, 200-10)

§13-234-2 Payment~~[7]~~ and delinquency ~~[and liens]~~. (a) Security deposit and method of payment:

(1) Security deposit. A permittee upon being issued a use permit~~[7]~~ shall, in addition to paying fees and charges as they become due, deposit with the State in legal tender or in such other form as may be acceptable to the State, an amount equal to two months' fees and charges at the rate prescribed in the rules in effect on the date of issuance of the permit as security for the faithful performance on the permittee's part of all the terms and conditions, specified therein.

On the effective date of any increase in fees and charges, the permittee shall deposit such additional amount to cover the increase. The State shall refund any excess deposit if the fees and charges are reduced. The deposit will be returned, without interest, to the permittee upon the termination of the permit only if the terms and conditions have been faithfully performed to the satisfaction of the department. In the event the permittee does not so perform, the department may declare the deposit forfeited or apply it as an offset to any amounts owed by the permittee to the State under the use permit, or to any damages or loss caused to the State by the permittee. The exercise of the permittee's option is without prejudice to the right of the State to institute action for debt or damages against the permittee or to take any other or further action against the permittee as may be provided by law or these rules for the enforcement of the rights of the State under the use permit.

- (2) ~~[Advance payment required.]~~ As a prerequisite to the issuance of a use permit the permittee shall make a security deposit pursuant to section 13-234-2, pay the permit processing fee, one month's fees and charges, and any other fees and charges that may be due and payable to the State; provided that if the effective date of the use permit is other than the first day of the month, charges shall be properly prorated for the balance of the month and these prorated charges shall be paid.
- (3) Method of payment of fees and charges. The following fees and charges shall be paid ~~[in advance]~~ without notice or demand on the ~~[first]~~ last day of each and every month during the life of the use permit, except that the amounts due for the first month

shall be paid prior to the issuance of the permit as described in section 13-234-2:

- (A) Mooring;
- (B) Residence;
- (C) Electricity;
- (D) Shower;
- (E) Dry storage;
- (F) Gear locker; and
- (G) ~~[Facilities constructed by others; and~~
- ~~(H)]~~ Rent and other fixed recurring fees and charges.

(b) Permit processing fees are due and payable in advance.

(c) All ~~[other]~~ fees and charges required by this chapter, except for fees and charges pursuant to section 13-234-25, are due and payable on [the first] or before the last day of the month [after] in which they are incurred. Fees and charges assessed pursuant to section 13-234-25 shall be due and payable in accordance with section 13-234-25(f).

(d) Fees and charges for the last month shall be properly prorated. If the termination is at the owner's option, unless a written notice of intent to vacate has been received by the department from the boat owner at least thirty calendar days in advance of the termination date as prescribed in section 13-231-9 the owner shall be liable for the full amount of the monthly fees and charges.

(e) All fees and charges shall become delinquent ~~[thirty]~~ four calendar days after they become due and payable. All delinquent accounts will be referred to the Credit Bureau Services if they remain unpaid ~~[on]~~ twenty-five calendar days from the day the account becomes [delinquent.] delinquent.

(f) ~~[Without prejudice to any other remedy available to the State, interest and, regardless of the amount of the delinquency, a \$25.00 per month service charge shall be assessed on all delinquencies. The interest shall be computed at a rate of one per cent per month, annual percentage rate of twelve per cent, on the the delinquent amount. The interest and service charges shall continue to be assessed until~~

~~the delinquency is paid in full.] For all delinquent payments due to the department, interest shall be charged at the rate of one per cent per month on the unpaid balance, including prior interest charges and delinquent account service charges, beginning on the first day payment is delinquent and continuing monthly thereafter until the amount due is paid.~~

~~Additionally, regardless of the delinquency amount and without prejudice to any other remedy available to the department, a delinquent account service charge of the greater of five per cent of the amount owed or \$100 per month shall be assessed on any delinquency. The interest charge and delinquent account service charge shall continue to be assessed until the delinquency is paid in full.~~

(g) In the event the fees and charges which ~~[shall]~~ have accrued in favor of the department ~~[shall not be]~~ have not been paid as provided in these rules, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain such possession until all charges then ~~[owing]~~ owed and any charges which ~~[shall]~~ thereafter accrue are fully paid. The remedy ~~[thus]~~ provided in this section ~~[is]~~ shall be in addition to and not in lieu of any other remedies which the department may ~~[have]~~ pursue by ~~[virtue of]~~ statute or otherwise. [Eff 2/24/94; am and comp] (Auth HRS §§200-2, 200-3, 200-4, 200-10) (Imp HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-3 Mooring rates. (a) ~~[The mooring fees shall be set by categories, schedule A and schedule B, provided that:~~

- ~~(1) Schedule A shall include existing mooring holders with an annual increase toward schedule B rates of twenty per cent per fiscal year; and~~
- ~~(2) Schedule B shall apply to all new mooring applicants and transient slips on or after~~

~~the effective date of these 2010 rule amendments.]~~

The mooring rate schedule in this subsection [is] shall be per foot of vessel length overall [per month effective upon the applicant's acceptance of the offer of an available berth.] or maximum length of berth or mooring, whichever is greater. All mooring rates shall be determined by a state-licensed appraiser in accordance with section 200-10, Hawaii Revised Statutes. [Mooring rates shall apply to the harbor facilities in the following categories: Category "A," Ala Wai; Category "B," Kechi Lagoon, Honokohau, Maalaea, & Lahaina; Category "C," Haleiwa, Heeia Kea, Waianae, Nawiliwili, Port Allen, Kailua-Kona, Keauhou, and Manele; Category "D," Wailoa, Kikiaola, Kaunakakai, North Kawaihae, and Kukuiaula; Category "E," South Kawaihae, Hana, & Hale O Lono.

~~TYPE OF MOORING AND STATE BOATING FACILITIES~~

~~A = Ala Wai~~

~~B = Kechi Lagoon, Honokohau, Maalaea, & Lahaina~~

~~C = Haleiwa, Heeia Kea, Waianae, Nawiliwili, Port Allen, Kailua-Kona, Keauhou, North Kawaihae & Manele~~

~~D = Wailoa, Kikiaola, Kaunakakai, North Kawaihae, & Kukuiaula~~

~~E = South Kawaihae, Hana, Hale O Lono~~

Schedule A Mooring Rates:					
Category	A	B	C	D	E
Along catwalk:	\$5.67	\$4.32	\$4.05	\$3.78	\$1.62
Bow-stern mooring:	\$4.67	\$3.82	\$3.55	\$3.28	\$1.62
On state buoy, anchor or cable					
Minimum fee per month:	\$56.00	\$47.00	\$41.00	\$39.00	\$21.00
On owner's buoy or anchor:	\$2.97	\$2.48	\$2.16	\$2.00	\$1.62
Minimum fee per month:	\$39.00	\$36.20	\$33.50	\$31.30	\$21.00
In harbor basin:	\$4.32	\$3.68	\$3.24	\$3.00	\$1.62
On state cable, buoy or anchor					

Minimum fee per month:	\$52.00	\$43.00	\$38.00	\$35.00	\$21.00
On owner's buoy or anchor:	\$2.92	\$2.27	\$2.10	\$2.05	\$1.62
Minimum fee per month:	\$35.60	\$27.00	\$25.40	\$23.70	\$21.00
Skiff and dinghy moorings fore and aft, all types:	\$1.95	\$1.84	\$1.68	\$1.57	\$0.55
Minimum fee per month:	\$26.00	23.20	21.35	18.80	\$5.25
Work docks (per foot/vessel length/day):	\$0.60	\$0.55	\$0.43	\$0.38	\$0.32
Minimum fee per month:	\$7.50	\$6.50	\$5.40	\$4.30	\$3.25

[Schedule B Mooring Rates:					
Category	A	B	C	D	E
Along catwalk:	\$9.14	\$7.79	\$7.52	\$7.25	\$5.09
Bow stern mooring:	\$5.12	\$4.17	\$3.87	\$3.58	\$1.75
On state buoy, anchor or cable					
Minimum fee per month:	\$60.00	\$50.00	\$45.00	\$42.00	\$22.00
On owner's buoy or anchor:	\$3.20	\$2.68	\$2.33	\$2.16	\$1.75
Minimum fee per month:	\$42.00	\$39.00	\$36.00	\$33.00	\$22.00
In harbor basin:	\$4.67	\$4.00	\$3.50	\$3.25	\$1.75
On state cable, buoy or anchor					
Minimum fee per month:	\$56.00	\$46.00	\$42.00	\$38.00	\$22.00
On owner's buoy or anchor:	\$3.15	\$2.45	\$2.27	\$2.21	\$1.75
Minimum fee per month:	\$38.50	\$29.00	\$27.00	\$25.00	\$22.00
Skiff and dinghy moorings fore and aft, all types:	\$2.10	\$2.00	\$1.81	\$1.70	\$0.60
Minimum fee per month:	\$28.00	\$25.00	\$23.00	\$20.00	\$5.50
Work docks (per	\$0.65	\$0.60	\$0.46	\$0.41	\$0.35

foot/vessel length/day+ Minimum fee per month+]	\$8.00	\$7.00	\$6.00	\$5.00	\$3.50
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<u>Small Boat Harbor</u>	<u>District</u>	<u>Catwalk (\$/foot)</u>	<u>Tahiti Moor (\$/foot)</u>
Nawiliwili	Kauai	12.00	N/A
Port Allen	Kauai	11.00	N/A
Ala Wai	Oahu	13.00	8.00
Keehi	Oahu	13.00	N/A
Haleiwa	Oahu	10.00	6.00
Heeia Kea	Oahu	10.00	6.00
Waianae	Oahu	11.00	N/A
Manele	Lanai	10.00	N/A
Lahaina	Maui	11.00	7.00
Maalaea	Maui	10.00	6.00
Manele	Maui	10.00	N/A
Kaunakakai	Molokai	9.00	5.00
Honokohau	Hawaii	10.00	6.00
Kailua-Kona	Hawaii	N/A	6.00
Kawaihae, North	Hawaii	N/A	5.00
Kawaihae, South	Hawaii	10.00	6.00
Wailoa	Hawaii	9.00	5.00

(b) The mooring rate schedule in subsection (a) shall apply to single-hulled vessels, except as otherwise provided in this section, or in sections 13-234-5, 13-234-7, and 13-234-25. The fees for a vessel moored in any state small boat harbor not listed in the mooring rate schedule in subsection (a) shall be a flat rate of ten dollars per foot for catwalks and six dollars per foot for tahiti moorings, until such time as an appraisal can be completed.

(c) A multi-hulled vessel shall be charged mooring fees in proportion to berths used in increments of one, one and one-half, or two times the fee prescribed in ~~[subsection (a)]~~ subsection (a) or subsection (b) for a single-hulled vessel of equal length.

(d) ~~[When more than one vessel occupies a single~~

~~berth end to end, the charge shall be computed at the rate provided in subsection (a).~~

~~(c) Except for fees for work docks, which set out the minimum charges per day, the]~~ The amounts set out in the mooring rate schedules in ~~[subsection (a)]~~ subsections (a) through (c) are the minimum charges per month. [Eff 2/24/94; am 12/16/06; am 1/22/10; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-12, 200-22, 200-24)

§13-234-4 Mooring rates for offshore mooring and anchoring. (a) ~~[The following mooring rate schedule set forth in paragraph (1) shall become effective on the first day of the first full month occurring after the effective date of the 2006 amendments to this section and shall be increased twice thereafter, as set forth in (2) and (3) on the first day of the fiscal year(s) in which a CIP bond issue is to be funded for the small boat facilities.]~~ The mooring rate schedule is per foot of vessel length overall or maximum mooring capacity of the mooring system, whichever is greater, per month:

[(1) Offshore mooring and anchoring rates as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section:		
Vessel Length Overall	On State Buoy, Anchor or Cable	On Owner's Own Buoy, or at Anchor
0 -- 30'	\$1.31	\$0.88
31 -- 40'	\$1.44	\$1.00
41 -- 50'	\$1.56	\$1.13
51 -- 60'	\$1.69	\$1.25
61 -- 70'	\$1.81	\$1.38
71 -- 80'	\$1.94	\$1.50
81 -- 90'	\$2.06	\$1.63
over 90'	\$2.19	\$1.75
Minimum monthly fee:	\$31.25	\$20.63

(2) Offshore mooring and anchoring rates that will become effective on the first day of the first financial year, after the rates in paragraph (1) become effective, in which a CIP bond issue is funded for the small boat facilities:		
[Vessel Length Overall	On State Buoy, Anchor or Cable	On Owner's Own Buoy, or at Anchor
0 -- 30'	\$1.41	\$0.95
31 -- 40'	\$1.56	\$1.08
41 -- 50'	\$1.68	\$1.22
51 -- 60'	\$1.83	\$1.35
61 -- 70'	\$1.95	\$1.49
71 -- 80'	\$2.10	\$1.62
81 -- 90'	\$2.22	\$1.76
over 90'	\$2.37	\$1.89
Minimum monthly fee:	\$33.75	\$22.28

(3) Offshore mooring and anchoring rates that will become effective on the first day of the second financial year, after the rates in paragraph (1) become effective, in which a CIP bond issue is funded for the small boat facilities:		
Vessel Length Overall	On State Buoy, Anchor or Cable	On Owner's Own Buoy, or at Anchor
0 -- 30'	\$1.52	\$1.03
31 -- 40'	\$1.68	\$1.17
41 -- 50'	\$1.82	\$1.32
51 -- 60'	\$1.97	\$1.46
61 -- 70'	\$2.11	\$1.61
71 -- 80'	\$2.26	\$1.75
81 -- 90'	\$2.40	\$1.90
over 90'	\$2.56	\$2.04
Minimum monthly fee:]	\$36.45	\$24.06

Offshore mooring and anchoring rates shall be as follows:	
On state Buoy, Anchor, or Cable	On Permittee's Own Buoy or Anchor
\$5.00/foot	\$3.00/foot

(b) The fee for barges, platforms, and commercial vessels having no operating means of propulsion shall be two times the rate listed in subsection (a).

(c) The fee for vessels anchored or moored without a permit issued by the department shall be at the rate as provided in section 13-234-5.

(d) Persons issued a mooring permit under this section shall be entitled to the use of any designated dinghy mooring area at no charge.

(e) The fee for vessels moored offshore within the confines of a state small boat harbor shall be the same as the rate listed in subsection (a). [Eff 2/24/94; am 12/16/06; am and comp]
 (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)
 (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-5 Mooring fees for vessels assigned temporary moorings or occupying moorings without permission. (a) Persons assigned a mooring for a temporary period shall make the security deposit and pay mooring fees as prescribed in this chapter.

(b) ~~[These]~~ Persons assigned a mooring for a period of thirty calendar days or less shall not be required to make the security deposit as provided in section 13-234-2~~[7]~~ but shall be required to pay fees in advance.

(c) The fees prescribed in subsection (d) shall apply for the entire period ~~[the]~~ that a vessel is in ~~[the]~~ a state boating facility.

(d) The mooring fees for a vessel assigned a mooring for thirty calendar days or less shall be as provided in section 13-234-3 or 13-234-4, plus thirty

per cent for each twenty-four [~~hours~~] hour period or any fraction [~~of that time.~~] thereof.

(e) The mooring fees for a vessel moored in a state boating facility without written permission [~~of~~] from the department or in violation of section 13-231-17 shall be as follows:

Length of stay	Fee
(1) 30 days or less	[1-1/2] <u>1.5</u> times the fees stated in subsection (d);
(2) 31-60 days	2 times the fees stated in subsection (d) for the period over 30 days;
(3) More than 60 days	3 times the fees stated in subsection (d) for the period over 60 days.

(f) [~~The fees for a vessel moored in a state boating facility work dock area in violation of this section or section 13-231-17 shall be:~~

Length of stay	Fee
(1) 30 days or less	1-1/2 times the fees stated in subsection (d);
(2) 31-60 days	2 times the fees stated in subsection (d) for the period over 30 days;
(3) More than 60 days	3 times the fees stated in subsection (d) for the period over 60 days.

~~(g)]~~ In addition to any civil remedy or criminal action available to the department, vessels moored without permission shall be liable for the payment of fees chargeable to the moorage. The department's acceptance of [~~the~~] such a payment shall not waive the nature of trespass, or ratify or permit the unlawful or illegal mooring. [Eff 2/24/94; am 12/16/06; am

1/22/10; am and comp] (Auth: HRS
SS200-4, 200-6, 200-10, 200-12, 200-22, 200-24) (Imp:
HRS SS200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-6 Fees for vessel absent for more than fourteen days. Any holder of a use permit who has applied as prescribed in section 13-231-11 to retain the permit to use the assigned berthing space and any other related use permits upon the permittee's return, and whose application has been approved by the department[7] shall continue, during any absence of thirty calendar days or less from the assigned berth, to pay fees for the berthing space and any other use permits designated in the application at the rate established in section 13-234-3 and any other applicable sections of these rules. Where the absence permitted under section 13-231-11 exceeds thirty calendar days, then for the period in excess of thirty calendar days, the mooring fees for the berth retained[7] and the fees prescribed in these rules for any facilities or services actually utilized by the permittee during the permittee's absence[7] shall be due and payable to the department. During such absence, the department may issue a temporary use permit for the use of the berthing space by another vessel and charge mooring fees from the temporary permittee at the rate prescribed in these rules [~~and credit a portion of such fees collected to the account of the permanent permittee amounting to fifty per cent of the regular mooring fee, prorated on a daily basis, for the period that temporary mooring fees are collected for the use of the berth~~]. [Eff 2/24/94; am and comp] (Auth: HRS SS200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS SS200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-7 Mooring fee for vessels owned by nonresident. The mooring fee for vessels assigned a permanent berth in any state small boat harbor and owned by nonresidents[~~7-assigned a permanent berth in~~

~~any state small boat harbor,~~] shall be ten per cent higher than the mooring rate schedule in section 13-234-3~~[(a) and (b)(1)]~~. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-8 Stay-aboard or principal habitation fee. (a) The owner of a vessel moored in a state small boat harbor and authorized to be used as a place of principal habitation~~[7]~~ shall pay, in addition to mooring or any other applicable fee or charge, a principal habitation fee computed according to vessel length ~~[(not vessel length overall) which is:]~~ as follows:

- (1) \$5.25 per foot of vessel length per month if the owner is a state resident; and
- (2) \$7.80 per foot of vessel length per month if the owner is a non-resident;

provided that for any calendar year beginning after January 1, 1987, upon thirty calendar days prior written notice from the department, the principal habitation fees established by this subsection shall be increased based on ~~[this]~~ the increase in the annual cost of living index (~~[U.-S.]~~ U.S. Department of Labor, ~~[U.-S.]~~ U.S. City Average Urban Consumer Price Index for "all items"), but the increase for any calendar year shall not exceed five per cent.

(b) The owner or operator of a transient vessel~~[7]~~ or visiting vessel~~[7]~~ shall pay a stay-aboard fee of ~~[\$2.00]~~ \$10.00 per person staying aboard a vessel, in addition to mooring or any other fees and charges, for each and every night that any person remains on board the vessel while the vessel is moored in a state small boat harbor. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-9 Stay-aboard or principal habitation fee for offshore mooring or anchoring. The owner of a vessel or houseboat moored or anchored outside a small boat harbor and authorized to be used as a principal place of habitation or for staying aboard shall pay, in addition to any other applicable fee or charge, a principal habitation fee, or a stay-aboard fee as appropriate, which shall be ~~[one-half]~~ the same as the rate specified in section ~~[13-234-7.]~~ 13-234-8. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-10 Electricity fee. (a) The monthly fee for the use of electricity when furnished by the State at a small boat harbor shall be as follows:

- (1) When no person lives aboard...~~[\$5.75]~~ \$40.00
- (2) When persons live aboard\$100.00
- (3) Commercial vessels\$40.00
- ~~[(2) When no person lives aboard but electricity is used for refrigeration..... \$11.00]~~
- ~~[(3) When persons live aboard but electricity is not used for cooking or refrigeration.....\$11.00]~~
- ~~[(4) When persons live aboard and use electricity for cooking or refrigeration.....\$25.00]~~

(b) Persons not using electricity furnished by the State at a small boat harbor shall not be assessed an electricity fee; provided that if a person is later found to be using electricity furnished by the State but is not paying the fee required by this section, the person shall be assessed the full monthly fee required by this section. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-11 Shower fee. (a) Showers with hot water, when provided, are ~~[intended primarily]~~ for ~~[the]~~ use ~~[of]~~ by persons having properly permitted

vessels moored in the Ala Wai and Keehi state small boat [harbor.] harbors only. [~~If sufficient shower facilities are available, the department may permit, if reasonable under the circumstances, persons who are authorized to conduct business on small boat harbor premises pursuant to section 13-231-51 to utilize such facilities.~~]

(b) A monthly fee of [~~\$6.00~~] \$15.00 shall be assessed for each [~~such persons using the showers, except those under the age of four and those paying residence service fees. No persons shall utilize the aforementioned shower facilities unless that person has secured a use permit from the department authorizing use of the facilities.~~] person who has been granted access to shower facilities. Shower facility keys shall be connected to mooring permits. Each person having a properly permitted vessel moored in the Ala Wai or Keehi state small boat harbor and authorized by the department to utilize [the] shower facilities, except those under the age of [four,] eighteen, may secure [one shower facility key.] no more than one male shower facility key and one female shower facility key per mooring permit.

(c) [~~The~~] Each person shall deposit the [~~following~~] amount set by section 13-234-32 with the [~~State~~] department prior to receiving [~~the~~] a shower key, as security for the prompt return of the key upon termination of the use permit[+]

- ~~(1) \$20 if the use permit is valid for a period of more than ninety days.~~
- ~~(2) \$30 if the use permit is valid for a period of ninety days or less].~~

This deposit shall be forfeited in the event the permittee does not return the shower key to the department on or before the date of termination of the use permit. [Eff 2/24/94; am and comp

] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

\$13-234-12 Dry storage [and vessel repair]. (a) [~~A person, holding~~] No person shall use any location

on land under the jurisdiction of the division of boating and ocean recreation for dry storage of vessels, vessels upon trailers, empty trailers, or any other equipment or items used in connection with vessels or trailers without written authorization from the department. In order for a person's vessel or trailer, or both, to be eligible for dry storage, the following must be met:

- (1) The person holds a valid use permit allowing [the] that person to moor [a] the vessel in a state small boat harbor[7] ;
- (2) The vessel to be stored is properly registered with the department;
- (3) Any trailer to be stored, whether holding a vessel or not, is properly registered and has a valid safety inspection; and
- (4) The vessel or trailer, or both, to be stored are properly insured, as required by section 13-231-2.

(b) If the requirements of subsection (a) are met, the department may [be authorized by the department] authorize the permittee to use a designated location on land within [such harbor] the harbor for which their use permit applies, subject to the exception in subsection (h), [for a period not to exceed ten days in any calendar year] to refurbish or repair [such] the permittee's vessel [without payment of a dry storage fee; provided that suitable space is available and any such storage will not unduly interfere with maximum and efficient public utilization of a small boat harbor facilities. The] .

(c) If a vessel, trailer, or other items are stored for a period exceeding seven calendar days per calendar year, the permittee shall be required to pay a dry storage fee, as specified in this section. State holidays shall not count towards the seven-day limit on free dry storage.

(d) A permittee whose vessel is utilizing dry storage facilities shall [however,] not be entitled to a reduction in the mooring fees applicable to [the] the permittee's temporarily vacated berth. [Saturdays, Sundays, and state holidays shall be

~~excluded in the computation of the ten days free time.]~~

~~[(b) Vessels, vessels upon trailers, or empty boat trailers may, upon approval of the department be stored on land at a small boat harbor; provided that suitable space is available and such storage will not unduly interfere with maximum and efficient public utilization of small boat harbor facilities. Except as provided in subsection (a),]~~ (e) Subject to any additional fees pursuant to subsection (g), the fee for the storage of vessels [or boat] and trailers on land at a state small boat harbor shall be as follows:

<u>[Ala-Wai and Keehi Boat Harbors</u>	<u>All others]</u>
--	--------------------

- | | |
|--|---|
| (1) Vessels stored on land,
per foot of vessel
length, cradle length,
or trailer length,
whichever is greater,
per month..... | \$3.00;
[paved area \$1.25.....\$1.15
unpaved area \$1.15.....\$1.00] |
| (2) Empty boat trailer per
month[\$20.00.....\$15.00]..... | \$100.00; |
| [(3) Minimum] <u>The minimum monthly charge
for vessel storage shall be \$100. [\$20.00
\$15.00</u> | |

~~(4)]~~ The [charges] charge for [one-half month or less] a storage period of less than sixteen calendar days shall be one-half of the monthly rate, with a minimum monthly charge of \$50.

~~[(c) Boating equipment or other items used in connection with boats moored in small boat harbors, upon approval of the department, may be stored at such harbors if it can be done without unduly interfering with small boat harbor operations. The]~~ (f) Subject to additional fees pursuant to subsection (g), the charges for use of [such] storage [space] for other equipment or items used in connection with vessels or

trailers shall be[+] \$1.50 per month, per square foot. The minimum charge per month shall be \$25. The charge for a storage period of less than sixteen calendar days shall be one half the monthly rate, with a minimum charge of \$12.50.

~~[Ala-Wai and
Keehi Boat
Harbors All others]~~

- ~~[(1) Open storage on paved areas, per square foot per month \$.35 \$.25~~
- ~~[(2) Open storage on unpaved areas, per square foot per month \$.25 \$.15~~
- ~~[(3) The minimum charge per month \$15.00 \$8.00~~
- ~~[(4) For less than one-half month, the charge will be one-half of the above full monthly rate]~~

(g) The fees for any vessels, trailers, or other items stored on land under the jurisdiction of the division of boating and ocean recreation without written permission from the department or contrary to this section shall be as follows:

<u>Duration of time</u>	<u>Fee</u>
<u>(1) 30 days or less</u>	<u>1.5 times the fees stated in subsections (e) and (f);</u>
<u>(2) 31-60 days</u>	<u>2 times the fees stated in subsection (e) and (f) for the period over 30 days;</u>
<u>(3) More than 60 days</u>	<u>3 times the fees stated in subsection (e) and (f) for the period over 60 days.</u>

~~[(d+)]~~ (h) A person who does not hold a valid mooring permit for a particular state small boat harbor may be permitted by the department to use a

designated location on land within that harbor for a period not to exceed ~~[six months]~~ thirty calendar days to repair or refurbish a vessel, ~~[provided that suitable space is available and such storage will not unduly interfere with maximum and efficient public utilization of small boat harbor facilities.]~~ or twelve calendar months if utilizing the location solely for storage. The charge shall be the same as specified in subsection ~~[(e)]~~ (e).

~~[(e)]~~ (i) The department shall not be responsible for any claim for loss or damage by reason of theft, fire, or any other cause in connection with any personal property stored in the designated storage area. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)
(Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-13 Gear locker fee. (a) The charge for the use of a gear ~~[lockers]~~ locker provided by the ~~[State]~~ department shall be[+]

~~(1) Standard wood..\$5.50 per month~~

~~(2) Triangular fiberglass locker\$3.00 per month]~~ \$10.00 per month.

(b) ~~[In the event that]~~ If the department gives written permission [is given by the department] for a boat owner to ~~[provide]~~ construct a personal gear locker pursuant to section 13-232-44, the charge, while the owner's permit remains in effect, shall be ~~[thirty per cent of]~~ the same as the rate established in [subsection (a).] section 13-234-12(f). [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-14 Mooring fees - facilities constructed by others. Where a mooring facility is constructed by others pursuant to section 13-232-43 ~~[the mooring rate shall be thirty per cent of the fee established in section 13-234-3 for a period of time as established by the department which will allow the permittee to~~

~~amortize the capital cost of the improvements.] ,~~
reimbursement of costs may be authorized by the
department pursuant to section 200-19, Hawaii Revised
Statutes. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-19, 200-
22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-19,
200-22, 200-24)

§13-234-15 Waiver or return of fees. (a) The
department reserves the right to waive or reduce any
late fees [or charges] and related interest contained
in this chapter.

(b) Whenever the department, through error,
collects any fee not required to be paid by this
chapter, the fee shall be refunded to the person
paying the fee upon written application made to the
department within thirty calendar days after the date
of the payment. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-
24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-16 Permit processing fees. (a) The
charge for the [processing] issuance, re-issuance, and
revision of a use permit shall be as follows:

- ~~(1) Initial issuance of permanent permit for
docking, mooring, or anchoring a vessel (see
section 13-231-3) -- \$5; initial issuance of
commercial permit -- \$25;~~
- ~~(2) Renewal of permanent permit for docking,
mooring, or anchoring a vessel (see section
13-231-5) -- \$5; renewal of commercial permit
-- \$15;~~
- ~~(3) Revision of permit:
(A) At owner's request -- \$5; or
(B) By department's action (see section 13-
231-7) -- no charge; and~~
- ~~(4) All other use permits listed in section 13-
231-3:
(A) Initial issuance -- \$5;
and~~

~~(B) Renewal of permit — \$3.~~

~~If a permittee utilizing any property or facility fails to renew a use permit on or before the date on which it expires, the applicable renewal fee plus a penalty fee of \$1 per month shall be collected from the permittee for each month or fraction of a month the permittee is late in applying for renewal of a permit and any other penalty fees provided by these rules.]~~

- (1) Issuance and re-issuance of a regular mooring permit as defined in section 13-231-3.....\$10.00;
 - (2) Issuance and re-issuance of a commercial permit.....\$25.00;
 - (3) Issuance and re-issuance of all other permits listed in section 13-231-3...\$10.00;
 - (4) Revision of a use permit at an owner's request.....\$10.00.
- [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-17 Fees for vessels moored at yacht club berths and other areas covered by specific agreements. Owners of vessels moored or anchored in areas or portions of state small boat harbors covered by specific agreements or other arrangements with the State, as in the case of yacht clubs and the like, and who are paying mooring charges to the lessees or other parties of such agreements or arrangements, shall be exempt from the mooring fees set out in section 13-234-3; provided that the owners shall enter into an agreement and obtain use permits as required in section 13-231-3 and all fees and charges other than mooring fees shall be assessed as the same shall properly apply. [Eff 2/24/94; comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-18 Excessive water usage fee. (a) A fee of [~~\$10~~] ten dollars per day for each day or fraction thereof will be charged for excessive use or waste of fresh water[~~, such as the~~] at all state small boat harbor and launch ramp facilities, which includes, but is not limited to, use of water for the prolonged operation of ejectors to pump water out of vessels and permitting hoses to run unattended.

(b) Fresh water made available by the department at boating facilities shall only be consumed or used at the state small boat harbor or other boating facility where it is provided or while engaged in an activity on navigable waters from that harbor or boating facility, and such consumption or use must be related to proper activities at small boat harbors and other boating facilities.

(c) Persons violating this section may be subject to penalties under Section 200-25, Hawaii Revised Statutes. [Eff 2/24/94; am and comp

] (Auth: §§200-4, 200-6, 200-10, 200-22, 200-24, 200-25) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24, 200-25)

~~[§13-234-19 Parking fees -- reserved space. -- (a) The fee for parking a vehicle in a space reserved by the department for the exclusive use of any person shall be as follows:~~

~~(1) Reserved parking, covered \$30 per month.~~

~~(2) Reserved parking, uncovered \$20 per month.~~

~~(b) The establishment of reserved parking spaces normally does not permit maximum efficient public utilization of parking facilities. Therefore, parking spaces shall not be designated for the exclusive use of any person, other than when necessary for the parking of government or other official vehicles, unless suitable space is available and such use will not interfere with maximum and efficient public utilization of small boat harbor facilities. Any reserved spaces established shall be assigned on a "first-come, first-served" priority system. The following shall be eligible for assignment to any~~

~~reserved parking space that is established for use by the public:~~

- ~~(1) A person holding a valid use permit authorizing the person to moor that person's vessel at the small boat harbor, the vessel owner, co-owner, and master; and~~
- ~~(2) An owner or employee of a business or organization operating under the provisions of a lease or other agreement authorizing the owner or employee or the business or organization to engage in a business or commercial activity at the small boat harbor.~~

~~(c) No person shall park a vehicle in a reserved parking space so designated by a posted sign unless authorized by the department.] [Eff 2/24/94; R~~

~~] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)~~

§13-234-20 Salvage fee. The owner of a vessel in danger that is saved, rescued, or secured pursuant to section 13-231-19 shall be charged a fee for services and materials based on prevailing commercial rates plus ten per cent. [Eff 2/24/94; comp

] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-21 Principal habitation application fee. Prior to filing or renewing an application for the issuance of a principal habitation permit ~~[as provided in]~~ pursuant to section 13-231-27(a)(2), ~~[the]~~ an applicant shall pay to the department ~~[an]~~ a non-refundable application fee of ~~[\$15. The fee is not refundable.]~~ fifteen dollars. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-22 Exemption from fee differential. Nonresident members of the United States Armed Forces on active duty who are stationed in Hawaii, or on order to be stationed in Hawaii and their dependents ~~[are exempted]~~ shall be exempt from payment of the nonresident fee differential prescribed in this subchapter during the period ~~[they are]~~ that the Armed Forces member is on active duty and stationed in Hawaii [if they] ; provided that they submit relevant proof to the department [as may be necessary to the determination of such status as prescribed in section 13-230-16.] of such status. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-23 Application fee for moorage. If all suitable berths in a small boat harbor have been allocated to others, a person may apply, subject to the payment of application fees, for a future vacancy or to move in the future to another berth in the same harbor~~[, as prescribed in section 13-231-5]~~. In small boat harbors where categories of berths have been established ~~[pursuant to section 13-231-5 only a single application fee or fee for renewal of an existing application shall be levied if any applicant applies for or renews applications for more than one category of berth, provided that all applications were submitted on the same date.]~~ , if any applicant applies for or renews applications for more than one category of berth, a separate application fee or fee for renewal of an existing application shall be charged for each additional category.

- (1) The application fee or fee for renewal of an existing application for a regular mooring permit shall be ~~[\$15]~~ fifteen dollars for any person who is a Hawaii resident and ~~[\$100]~~ one hundred dollars for all other persons.
- (2) The application fee or fee for renewal of an existing application for a temporary mooring

permit or an application to transfer in the future to another berth with the same characteristics in the same harbor shall be [~~\$5-~~] fifteen dollars.

- (3) No application for moorage, renewal of such application, or for berth transfer shall be accepted until the applicant has paid the prescribed fee. The fee is not refundable[~~7 provided the application for moorage fee paid, less a \$5 service charge, shall be returned to an applicant~~] if the department rejects the applicant's application or a renewal thereof pursuant to section 13-231-82. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-24 Fee for residency status appeal; refund if status determination reversed. The fee for filing an appeal concerning classification as a nonresident as [~~provided~~] defined in section [~~13-230-2~~] 13-230-8 shall be [~~\$15-~~] fifteen dollars. No petition shall be accepted until the prescribed fee has been paid. This fee shall be promptly refunded if, as a result of the appeal, the department reverses its original determination that the petitioner was a nonresident. In addition, in such instances any nonresident fee and charge differential paid by the petitioner shall be promptly refunded for the appropriate period. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-25 Fees for [~~commercial vessels using state boating facilities, Kaneohe Bay ocean waters, and beaches of the State~~] commercial use permits. (a) [~~Notwithstanding the provisions of section 13-234-3, the~~] The following fees and charges shall be assessed

for services provided by the department relating to commercial use of ~~[mooring in or using]~~ state boating facilities, ~~[Kaneohe Bay ocean waters, and beaches of the State]~~ waters of the State, and navigable streams:

- (1) The fee per month per vessel for a permittee with a commercial ~~[activity]~~ use permit and regular mooring permit who moors in and uses a small boat harbor or any of the facilities in the harbor shall be the greater of two times the mooring fees as provided in section 13-234-3 or three per cent of the monthly gross receipts. In addition to the mooring fee as provided in this section and section 13-234-3, the permittee shall also pay fees and charges in the amounts prescribed in these rules for any other facilities and services utilized in the small boat harbor.
- (2) The fee per month for a permittee with a commercial ~~[activity]~~ use permit for a boat ramp, wharf, or other state boating facility, except a state small boat harbor, or a catamaran registration certificate shall be the greater of ~~[\$200]~~ three hundred dollars per month or three per cent of the monthly gross receipts~~[, as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section]~~. The single fee assessed for the use of a state boat ramp shall entitle the permittee to use any other state boat ramp on the same island without an additional charge, except for those boat ramps listed in section 13-231-67. The department shall provide, upon issuance of a commercial ~~[activity]~~ use permit for a state boat ramp, a set of trailer decals that shall be displayed on each side of the forward end of the trailer tongue.
- (3) For permittees with a commercial ~~[activity]~~ use permit only, the fee per month~~[, for the~~

~~use of a state boating facility, Kaneohe Bay ocean waters or beaches of the State, shall be the greater of \$200 or three per cent of the monthly gross receipts as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section.~~

~~(4) The report of gross receipts shall be received by the department not later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Unless otherwise provided by statutes, failure to submit the report of gross receipts as required for a period in excess of sixty days shall be cause for automatic revocation of the commercial activity permit.] shall be the same as prescribed in section 13-234-25(a)(2).~~

[+5+] (4) For permittees who have been issued a valid commercial [activity] use permit for the use of more than one small boat harbor, the permittee shall designate the state small boat harbor of principal use, and the percentage of monthly gross receipts described in this section shall be paid to that account. The fees for commercial [activity] use permits issued for the other state small boat harbors shall be the minimum amount specified in paragraph (2) or paragraph (1) of this subsection for those permittees with state small boat harbor mooring permits.

[+6+] (5) For permittees issued a temporary mooring permit and a commercial [activity] use permit, the fee per month shall be the greater of the temporary mooring fees required by section 13-234-5 or three per cent of the monthly gross receipts ~~[as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section.~~

~~(7) For the purpose of this section, until the first day of the first full month occurring after the effective date of the 2006 amendments to this section, the fees existing prior to the effective date shall remain in full force and effect].~~

(b) When ~~[the]~~ a commercial ~~[activity]~~ use permit is issued, the department shall also provide a set of commercial trailer decals for commercial trailered vessels~~[, at no charge, which]~~ that shall be displayed on each side of the forward end of the trailer tongue. The fee for each commercial trailer decal shall be as prescribed in section 13-234-34.

(c) Vessels that moor at a state boating facility and which are used by a commercial ~~[activity]~~ use permittee for shuttle operations ~~[transporting]~~ to transport passengers to and from the commercial ~~[activity]~~ use permittee's primary operating vessel ~~[and vessels]~~ or which are under contracts to perform shuttle operations for passenger cruises~~[, which moor at a state boating facility,]~~ shall be required to have a designated state boating facility of principal use, and the fee charged under this section shall be paid to the principal use account.

(d) The department may conduct a financial audit of the records of any commercial ~~[activity]~~ use permit account to determine the accuracy of reported gross receipts, or to inspect any other financial information, [to and] including Gross Excise Tax records directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, not less than thirty calendar days prior to the audit.

(e) The department may, by lease, permit, or mooring permit, in accordance with ~~[state statutes]~~ Hawaii Revised Statutes, grant the use or possession of state boating facilities. The leases and permits shall provide for payments of rental, fees and charges, and other conditions in accordance with ~~[law,]~~ applicable statutes and administrative rules, in lieu of and notwithstanding the provisions for fees specified in ~~[these rules.]~~ this chapter.

(f) Fees and charges for commercial use of state boating facilities, waters of the State, and navigable streams shall be due and payable no later than the end of the month following the month in which the fees and charges are incurred. No commercial use permit shall be reissued unless the permittee meets the minimum gross receipts requirements required by section 13-231-61. A report of gross receipts shall be received by the department not later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Unless otherwise provided by Hawaii Revised Statutes, failure to submit the required report of gross receipts more than sixty calendar days after it becomes due shall constitute grounds for termination of the corresponding commercial use permit. [Eff 2/24/94; am 12/16/06; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24, 200-39)

§13-234-26 Passenger fees. (a) Any passenger or cruise vessel which is used for private gain and does not have a valid mooring permit or commercial permit and which uses state small boat harbors property or facilities shall pay the following fees in addition to any other fees required by this chapter:

- (1) Per passenger (includes in transit)--
embarking to or from shore to
ship.....\$2
- (2) Passengers in transit on a vessel on a
continuous trip whose point of origin and
termination is a state small boat harbor, a
total of disembarking and embarking at each
port per passenger.....\$1.50
- (3) Passengers embarking and disembarking on
occasional and infrequent use on special
charter when approved in advance of voyage
as provided in section 13-231-
57(c)(3).....\$1.50

(b) Any passenger vessel using a dock, pier or wharf in a state small boat harbor for disembarking

and embarking passengers by means of any boat or lighter while moored offshore, shall pay a fee per passenger for disembarking and embarking at each small boat harbor as follows:

- (1) Passenger vessels engaging only in interisland commerce:.....\$.30
- (2) Passenger vessels engaging in international or inter-state commerce:.....\$1.00

Vessels operated by a federal or state agency are exempt from the provisions of this subsection.

(c) A report shall be filed with the department on a form acceptable to the department within thirty days after the date of embarking or disembarking of passengers over state facilities and the charges due shall be remitted along with the report. [Eff 2/24/94; comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

~~§13-234-27 Fees for copies of rules. The fee per copy of these rules shall be \$5. A copy of these rules shall be furnished to any person applying for the same upon payment of the prescribed fee, except no fee shall be charged for copies furnished to federal, state, or local governmental agencies or organizations, or for revisions to these rules. The fee may be waived in other instances at the discretion of the chairperson when a waiver is in the public interest.] [Eff 2/24/94; R] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)~~

§13-234-28 Negotiable instruments; service charge. (a) The service charge for any dishonored check, draft, certificate of deposit, or other negotiable instrument is ~~[\$12]~~ twenty-five dollars.

(b) Payment to and acceptance by the department of the service charge for a check, draft, certificate of deposit, or other negotiable instrument~~{7}~~ shall not be construed as a waiver of any violation of the

Hawaii Penal Code, chapters 701 to ~~[713]~~ 712A, Hawaii Revised Statutes, or of these rules. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-29 Vessel inspection fee. ~~[The fee for]~~ For a vessel inspection performed by the department prior to the issuance or reissuance of a regular mooring permit ~~[shall be \$15. The fee is not refundable.]~~ , there shall be a non-refundable fee of forty dollars for each vessel to be inspected. The inspection shall be valid for two years. A vessel owner shall make an appointment with ~~[the]~~ a harbor agent of the department not less than five working days prior to ~~[having the vessel]~~ the date that the vessel is to be inspected. A fee of ~~[\$10]~~ twenty dollars shall be charged if notice of cancellation by the vessel owner is not given to the harbor agent ~~[not less than two working days]~~ prior to the scheduled inspection. The inspection fee for vessels ~~[exempted]~~ exempt from numbering ~~[in]~~ pursuant to section ~~[13-231-2, Hawaii Administrative Rules,]~~ 13-241-2 and for open skiffs and dinghies less than thirteen feet in length shall be ~~[\$5.]~~ ten dollars. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-30 Application fee for approved marine surveyor. Prior to filing or renewing an application for recognition as an approved marine surveyor by the department as provided in section 13-231-45, the applicant shall pay to the department ~~[an]~~ a non-refundable application fee of ~~[\$15]~~ fifty dollars. ~~[The fee is not refundable.]~~ [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-31 Fee for commercial use of boat launching ramps and other boating facilities. The fee for ~~[the]~~ commercial use of state launching ramps, wharves, or other state boating facilities, except state small boat harbors, shall be ~~[\$75 per month or two per cent of gross receipts, whichever is greater.]~~ the same as prescribed in section 13-234-25(a)(2). The single fee assessed for the use of a state launching ramp shall entitle the permittee to use any other state launching ramp on the same island without additional charge, except for those launching ramps listed in section 13-231-67. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-32 Small boat harbor facility key deposits. (a) Each ~~[person]~~ permittee with a valid regular mooring permit or temporary mooring permit authorized to secure a shower facility key shall deposit ~~[the following amount]~~ fifty dollars with the ~~[State]~~ department as security for prompt return of the key upon termination ~~[of]~~ or expiration of ~~[the]~~ their use permit.

- ~~[(1) \$30 if the use permit is valid for a period of more than thirty days; or
(2) \$50 if the use permit is valid for a period of thirty days or less;]~~

(b) Each person authorized to secure a key for other harbor facilities, such as security gates or restrooms, shall deposit the following ~~[amounts]~~ amount with the department prior to receiving the key:

- ~~(1) [\$10 if the use permit is valid for more than thirty days]~~ Twenty-five dollars for a permittee with a valid regular mooring permit; or
~~(2) [\$25 if the use permit is valid for thirty days or less]~~ One hundred dollars for a permittee with a valid temporary mooring permit.

(c) Payment for fees assessed under this section shall be made only in the form of cash or credit card.

(d) [The key deposit] Payments of key deposits under this section shall be forfeited in the event the permittee does not return the key to the department on or before the termination of [the] permittee's use permit[7] or when the permittee is required to replace a key which has been lost or stolen. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-33 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial use permit sells or transfers ten per cent or more of the stock or interest in the firm, either as a single transaction or an aggregate of several transactions, to any person who is not a stockholder or owner of record, except for transfers between spouses or first generation lineal descendants, on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee based on the passenger-carrying capacity of the vessel, and shall be as follows:

- (1) Vessels used for bare boat (demise) and sailing charters carrying six or less passengers.....~~[\$ 2,500]~~ \$2,500
- (2) Vessels registered by the State or documented by the ~~[U.S.]~~ U.S. Coast Guard to carry six passengers or less, used for charter fishing or other commercial purpose.....~~[\$ 5,000]~~ \$5,000
- (3) Vessels certified by the ~~[U.S.]~~ U.S. Coast Guard to carry seven to twenty-~~[five]~~ four passengers.....\$10,000
- (4) Vessels certified by the ~~[U.S.]~~ U.S. Coast Guard to carry twenty-five to forty-nine passengers.....\$15,000

- (5) Vessels certified by the ~~[U.-S.]~~ U.S. Coast Guard to carry fifty to seventy-four passengers.....\$25,000
- (6) Vessels certified by the ~~[U.-S.]~~ U.S. Coast Guard to carry seventy-five to ninety-nine passengers.....\$40,000
- (7) Vessels certified by the ~~[U.-S.]~~ U.S. Coast Guard to carry one hundred to one hundred forty nine passengers.....\$75,000
- (b) When less than one hundred per cent of the interest in the corporation is transferred, the business transfer fee shall be based upon a like percentage of the business transfer fee provided in subsection (a). [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-34 [User] Fee for [recreational] use of state boat launching ramps. (a) An annual boat ramp decal user fee of ~~[\$40]~~ seventy-five dollars shall be paid by owners of trailered vessels using ~~[state boating]~~ facilities under the jurisdiction of the division of boating and ocean recreation for recreational and fishing purposes to gain access to the waters of the State. This fee is charged for the purpose of defraying costs of maintenance of ~~[the] state boating facilities [and use of fresh water. The \$40 boat ramp decal fee shall become effective on the first day of the first full month occurring after the effective date of the 2006 amendments to this section and shall increase to \$45 effective on the first day of the twelfth calendar month following the effective date of the \$40 fee, and shall again increase to \$50 effective on the first day of the twelfth calendar month following the effective date of the \$45 fee. Until the effective date of the \$40 fee, the fee provided in this section prior to the effective date of the 2006 amendments to this section shall remain in full force and effect].~~

(b) In addition to the vessel registration fee, the annual boat ramp decal fee described in subsection

(a) shall be paid in full at the time of registration or registration renewal.

(c) The department shall provide an ~~[recreational]~~ owner ~~[shall be furnished]~~ with a set of decals for the trailer ~~[by the department]~~ upon payment of ~~[this]~~ the fee required by this section. Current boat ramp decals shall be affixed to each side of the forward end of the trailer tongue whenever the vessel trailer is operated or stored at a state boating facility.

(d) Notwithstanding subsection (c), a boat dealer or manufacturer shall be allowed to place ~~[the]~~ a ramp decal on the dashboard of the vehicle used to transport ~~[the]~~ a demonstration vessel. [Eff 2/24/94; am 12/16/06; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-234-35 Fees for signs and ticket booths.

(a) The fee for commercial signs posted in state small boat harbors shall be ~~[\$1 per square foot per month with a minimum fee of \$5 per month]~~ assessed monthly as follows:

- (1) Five dollars for each sign five square feet in size or smaller; and
- (2) One dollar per square foot for signs larger than five square feet, rounded to the nearest whole number.

(b) The fee for ticket booths in small boat harbors shall be ~~[\$250]~~ two hundred fifty dollars per month. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)
(Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

2. Chapter 13-253, Hawaii Administrative Rules, is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 253

CATAMARAN REGISTRATION CERTIFICATE, OTHER
REGISTRATION, AND COMMERCIAL USE PERMIT FEES

- \$13-253-1 Registration fees for canoes,
surfboards, and water sports equipment
- \$13-253-1.1 Commercial use permit and catamaran
registration certificate fees
- \$13-253-1.2 No additional fees
- \$13-253-1.3 Gross receipts
- \$13-253-2 [~~Permit and registration certificate
fees~~] Repealed
- \$13-253-3 [~~Duplicate permit or certificate fee~~]
Repealed
- \$13-253-4 [~~When fees returnable~~] Repealed
- \$13-253-5 Repealed

Historical note. [~~This chapter is based on
registration and permit fees of the Hawaii Shore
Waters Rules, dated November 6, 1981, and as amended
thereafter, under the jurisdiction of the Department
of Transportation, Harbors Division.~~] The

administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp 9/25/14; am and comp]

§13-253-1 Registration fees for canoes, surfboards, and water sports equipment. The following registration fees shall be paid to the department for the registration of canoes, surfboards, and watersports equipment that are used in a commercial operation:

	<u>Original</u>	<u>Renewals</u>
[Canoes,] <u>All vessels,</u> each vessel	\$5.00	\$3.50
Surfboards, each board	\$1.00	\$1.00
Watersports equipment	\$1.00	\$1.00

The minimum fee for surfboards shall be [~~\$1.~~] one dollar. [Eff 2/24/94; am and comp 9/25/14; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-253-1.1 Commercial use permit and catamaran registration certificate fees. [A] The monthly fee for a commercial use permit or a catamaran registration certificate shall be the [greater of \$200.00 or 3% of the gross receipts per month. The monthly fee shall be payable to the department each month in advance.] same as prescribed in section 13-234-25(a)(2). This fee shall be applicable to all commercial use permits and all catamaran registration certificates for [~~state-ocean waters~~] waters of the State or navigable streams. [Eff and comp 9/25/14; am and comp] (Auth: HRS §§ 200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.2 No additional fees. (a) Fees required to be paid to the department for commercial activities in ~~[state ocean waters,]~~ waters of the State including but not limited to ocean recreation management areas, shall be reported and paid in ~~[the following manner:]~~

- ~~(1)~~ ~~The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form acceptable to the department.]~~ accordance with section 13-234-25(f).
- ~~[(2)]~~ (1) A permittee possessing a harbor commercial use permit and a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, who is paying ~~[3]~~ three per cent of gross receipts per month under the harbor commercial use permit, shall not be required to pay an additional ~~[3]~~ three per cent of gross receipts per month under the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, provided that the payment made to the department is based on the total of gross receipts acquired under the harbor commercial use permit and the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate.
- ~~[(3)]~~ (2) A permittee possessing a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate who is operating from a private or County facility or land and said operation does not involve the use of state fast land or land within a shoreline area, shall be required to pay \$200 per month by the first day of each month under the commercial use permit or registration

certificate, but shall be exempt from paying
[3] three per cent of gross receipts per
month under the commercial use permit or
registration certificate.

(b) Delinquency in the payment of any fees owed
to the department, as specified in chapter 13-234, may
result in revocation of the commercial use permit or
catamaran registration certificate. [Eff and comp
9/25/14; am and comp] (Auth: HRS
§§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS
§§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.3 Gross receipts. [~~(a)~~ "~~Gross
receipts~~" as used in this chapter means all moneys
paid or payable to the account of the commercial use
permittee or catamaran registration certificate
holder, for services rendered, or resulting from
trade, business, commerce, or sales by the vessel or
water sports equipment owner when the services, trade,
business, commerce, or sales has a direct relationship
to the vessel.

~~(b)~~] Each commercial permittee or catamaran
registration certificate holder shall be responsible
for submitting to the department a monthly statement
of its gross receipts. [Eff and comp 9/25/14; am and
comp] (Auth: HRS §§200-2, 200-3, 200-
4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4,
200-22, 200-24)

§13-253-2 Permit and registration certificate
fees. A \$10.00 fee shall be paid to the department
for the issuance or re-issuance of any commercial use
permit or catamaran registration certificate pursuant
to these rules. [Eff 2/24/94; am and comp 9/25/14;
comp] (Auth: HRS §§200-2, 200-4, 200-
9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4,
200-9, 200-10, 200-22, 200-24)

~~[§13-253-3 Duplicate permit or certificate fee.~~

~~A \$10.00 fee shall be paid to the department for a duplicate permit or registration certificate if such is lost or destroyed, provided that the duplicating fee for evidence of registration of surfboards will be \$1 for each board with a minimum of \$1 and \$1 for evidence of registration of canoes.] [Eff 2/24/94; am and comp 9/25/14; R] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)~~

~~[§13-253-4 When fees returnable. Whenever the department, through error, collects any fee not required to be paid by these rules, the fee shall be refunded to the person paying the fee upon application made within a month after the date of the payment.] [Eff 2/24/94; am and comp 9/25/14; R] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)~~

§13-253-5 REPEALED." [Eff 2/24/94; R 9/25/14]

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

4. The amendments to and compilation of chapters 13-234 and 13-253 Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

SUZANNE D. CASE,
Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

IV. Old Business

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Rules and Regulations for Kauai County Code, Section 18-5.3, Revocable Permits to Vend Within County Right-of-Ways, promulgated by Department of Parks and Recreation / County of Kauai

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

August 15, 2018

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Ashleigh Garcia

Office of the Attorney General

Krishna Jayaram

II. **APPROVAL OF JULY 18, 2018 MINUTES**

Ms. Albitz made a motion to accept the July 18, 2018 minutes, as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to Proposed New Rules and Regulations for Kauai County Code Section 18-5.3, Revocable Permits to Vend within County Right-of-Ways, promulgated by Department of Public Works - County of Kauai

Mr. Lyle Tabata, Acting County Engineer at the Department of Public Works, County of Kauai described the history of the promulgation of these rules; he noted that while the County held one informal public hearing, there will be another "official" hearing within the next month or two.

Ms. Jodi Higuchi Sayegusa, Deputy County Attorney, explained the safety challenges arising on the roads of Hanapepe, including a clash of brick and mortar businesses and street vendors. The intent of the amendments is to economically encourage small businesses to participate in island-wide events while protecting public health and safety.

Vice Chair Cundiff commended the Department of Public Works for accommodating the amendments to fit the needs of Kauai residents and the affected small businesses.

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

IV. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 162, Food Safety Certification Costs Grant Program, promulgated by Department of Agriculture (DoAg)

Vice Chair Cundiff explained that the rule amendments are positive for small business and straight-forward whereby a process is created for businesses to apply for grants to help reimburse for costs in order to comply with the food safety laws; Mr. Lydgate concurred.

Vice Chair Cundiff made a motion to move the proposed rules to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 71, Plant and Non-Domestic Animal Quarantine, Non-Domestic Animal Import Rules, promulgated by DoAg

Mr. Jonathan Ho, Acting Manager at DoAg's Plant Quarantine Branch, explained that after the public hearing the initial proposed rules were segregated into two distinct sections. Section A entails the banning of dangerous wild animals; these rules, however, did not receive enough votes at the past Board of Agriculture's meeting to carry on the process. This specific proposal will go back to the Board of Agriculture on the last Tuesday of August 2018 for another vote. Mr. Ho confirmed that an "after public hearing statement" after the Board of Agriculture votes on the proposal will be submitted to this Board that explains specific information and testimonies received at the previously held public hearing.

Section B amendments, covering the tilapia and house cricket rules, which are totally pro-business as the rules allow for commercial use, were passed by the Board of Agriculture. Amendments contain housekeeping updates and allow for these animals to be eligible for commercial use. While at the public hearing the agriculture industry testified in support of these amendments, the department of land and natural resources and other agencies testified with concerns as there was not enough information to determine the full impact on the agriculture or on the animals.

Vice Chair Cundiff made a motion to move the rules onto the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

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

Mr. Ritchie updated the members of the annual small business fair held on Saturday, August 4th at Honolulu Community College; over 200 participants attended with nearly 35 exhibitors. The next fair in 2019 will be held at Windward Community College.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St., 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Email: DBEDT.sbrrb.info@hawaii.gov
Website: dbedt.hawaii.gov/sbrrb

Tel 808 586-2594

MEMORANDUM

David Y. Ige
Governor

Luis P. Salaveria
Director, DBEDT

Members

Anthony Borge
Chair
Oahu

Robert Cundiff
Vice Chair
Oahu

Garth Yamanaka
2nd Vice Chair
Hawaii

Harris Nakamoto
Oahu

Nancy Atmospera-Walch
Oahu

Mary Albitz
Maui

Will Lydgate
Kauai

Director, DBEDT
Voting Ex Officio

TO: Lyle Tabata, Acting County Engineer
Public Works Department - County of Kauai
Jodi A. Higuchi Sayegusa, Deputy County Attorney

FROM: Anthony Borge, Chair
Small Business Regulatory Review Board

DATE: August 16, 2018

SUBJECT: Proposed New Rules and Regulations for Kauai County Code
Section 18-5.3, Revocable Permits to Vend within County Right-of-Ways, Department of Public Works – County of Kauai

The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes, and the Governor's Administrative Directive 18-02.

On behalf of the SBRRB members, I wish to thank you for attending the August 15, 2018 board meeting and presenting the above-captioned proposed new administrative rules. Please be advised that upon discussion and review, the SBRRB unanimously agreed to recommend that the proposed amendments proceed to public hearing.

The SBRRB appreciates very much that the small business stakeholders were involved in the promulgation of the rules prior to the formal public hearing. We also thank you for keeping the SBRRB apprised of the regulatory activity at the County of Kauai's Department of Public Works.

c: William Lydgate, SBRRB Discussion Leader

RECEIVED

By JetaimeA at 12:35 pm, Apr 16, 2019

**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 Finance, Department of Economic Development, and Department of Public Works

Administrative Rule Title and Chapter: County of Kauai Rules and Regulations for Revocable Permits to Vend Within County Rights-of-Ways

Chapter Name: _____

Contact Person/Title: Lyle Tabata, Deputy County Engineer; Lee Steinmetz, Transportation Planner; Jodi Higuichi Sayagusa, Deputy County Attorney

Phone Number: 808-241-4992; 808-241-4930

E-mail Address: ltabata@kauai.gov; lsteinmetz@kauai.gov; jhiguichi@kauai.gov **Date:** 12-19-18

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.)

<https://www.kauai.gov/Finance> AND <https://www.kauai.gov/OED>

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

I. Rule Description: New ☒ Repeal ☐ Amendment ☐ Compilation ☐

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

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

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

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes ☐ No ☒ (If Yes, no need to submit this form.) (e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

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

* * *

I. 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.

Over a three year period, the County went to many community meetings on many occasions including the Kapaa Business Association (twice), Hanapepe Economic Alliance (5 times), Kauai Chamber of Commerce (twice), Lihue Business Association (once), and the Hanapepe Community meetings (3 times). In addition, the County chose to conduct 2 public hearings to make sure we gave ample time for the communities to digest and respond to the proposed rules.

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

The County held two public hearings on the draft rules. The first hearing occurred prior to the County's appearance before the Small Business Regulatory Review Commission. At the first meeting, generally, small business concerns were of two types: 1) various economic associations were concerned with having a process finalized asap to be able to organize and enforce ongoing community events; 2) brick and mortar stores were concerned of having a say to any proposed vending activities in front of their stores. All issues were resolved by the second public hearing.

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

To respond to the concern about mandating that neighboring properties and businesses have a say in any proposed vending activities, we amended the rules to require mandatory notice to property owners within a 25 foot radius of any vending activities. If more than 50% of those property owners oppose the activities, the application will be denied.

4. The number of persons who:

(i) Attended the public hearing: 1 person at second and final meeting

(ii) Testified at the hearing: Judith Page, President of the Hanapepe Economic Alliance

(iii) Submitted written comments (please attach, if applicable):

Please see attached testimony that was provided at the second and final meeting.

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

(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.

The County met with and changed the first draft and resolved all concerns with various individuals before the second and final public hearing.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594

Email: dbedt.sbrb@hawaii.gov

This Statement may be found on the

SBRRB Website at:

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

RECEIVED

By JetaimeA at 12:39 pm, Apr 16, 2019

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

Revocable Permit for Vending Within County Right-of-Ways, Rules and Regulations that will apply to all applications and permits to vend or engage in any commercial activities within the rights of way under the jurisdiction of the County of Kaua'i under Kaua'i County Code §18-5.3, which includes "the entire width from property line to property line, including the berm, swale, or shoulder of a roadway owned and/or under the jurisdiction of the County of Kaua'i except those roadway areas under the jurisdiction of the Department of Parks and Recreation pursuant to Chapter 23, Article 3, Kaua'i County Code 1987, as amended."

RECEIVED

By JetaimeA at 12:40 pm, Apr 16, 2019

From: [Therilynn Martin-Haumea](#)
To: [Jodi Higuchi](#); [Lee Steinmetz](#)
Subject: FW: Revocable permit Administrative Rules and Procedures
Date: Wednesday, November 14, 2018 11:44:01 AM

FYI.

So far this is the only one that I have received.

From: Judith Page <pagejc@hotmail.com>
Sent: Sunday, November 11, 2018 4:58 PM
To: Therilynn Martin-Haumea <tmhaumea@kauai.gov>
Subject: Revocable permit Administrative Rules and Procedures

The Hanapepe Economic Alliance wishes to express its support of the administrative rules and procedures that implement the revocable permit ordinance under consideration. We hope the rules can be adopted at this time and that the County will begin accepting applications in a timely manner.

Sincerely,

Judith Page, President.

COUNTY OF KAUAI
RULES AND REGULATIONS FOR
REVOCABLE PERMITS TO VEND WITHIN
COUNTY RIGHT-OF-WAYS



Adopted: November 15, 2018.

RECEIVED

By JetaimeA at 12:41 pm, Apr 16, 2019

**RULES AND REGULATIONS FOR REVOCABLE PERMITS TO
VEND WITHIN THE COUNTY RIGHT-OF-WAYS**

I. GENERAL PROVISIONS

A. Purpose. Pursuant to authority conferred by Kaua'i County Code §20-5.7, the purpose of these rules and regulations are to implement the revocable permit process for vending within the County's rights of ways.

B. Scope. These rules shall apply to all rights of way under the jurisdiction of the County of Kaua'i as specified under Kaua'i County Code §18-5.3. These rules shall not be interpreted or applied in a manner that violates any Federal, State, or County laws and regulations.

C. Definitions.

1. "Applicant" includes any individual eighteen years of age or older, organization, partnership, firm, association, trust, estate, private corporation, or other legal entity who has made a formal request or application for a permit to engage in commercial activity within County right-of-ways.
2. "Director of Finance" means the Director of Finance or his or her authorized representative or designee.
3. "Vending" involves the advertising and sale of goods, food, beverages, wares, merchandise, or services to the general public.
4. "Vending area" encompasses the area where any vending and any activities associated with the vending is occurring or planned to occur.
5. "Right-of-way" includes the entire width from property line to property line, including the berm, swale or shoulder of a roadway owned and/or under the jurisdiction of the County of Kaua'i except those roadway areas under the jurisdiction of the Department of Parks and Recreation pursuant to Chapter 23, Article 3 of the Kaua'i County Code.

II. APPLICATION FOR PERMIT AND REVIEW PROCESS

A. General Provisions.

1. All vending engaged within any County right-of-way must have a revocable permit pursuant to Kaua'i County Code Chapter 20, Article 5, unless the commercial activities are authorized or controlled by concession, contract or are part of a County-sponsored program, other than that described herein, or are exempt under Kaua'i County Code §23-3.4, as amended.
2. Permit applications shall be obtained from the Office of Economic Development (OED) at 4444 Rice Street, Suite 200, Lihu'e HI 96766.
3. A complete application and all application requirements stated under subsection II.B. of these Rules shall be submitted to OED a minimum of ninety (90) calendar days prior to any proposed vending event. Applications submitted after the ninety (90) calendar day minimum requirement may not be accepted. Applicants are encouraged to submit permit applications more than ninety (90) days prior to any proposed vending event to accommodate agency review, potential bidding procedures, and public outreach.
4. The Director of Finance will make every effort to issue a determination on any complete application a minimum of thirty (30) calendar days prior to any proposed vending event.

B. Application Requirements. The following shall be required to apply for a revocable permit for commercial activities in the County right-of-ways:

1. A non-refundable filing and processing fee in the amount of \$100.
2. A complete application form that contains all the information required by the Director of Finance, which may include, but is not be limited to:
 - i. Experience in managing events of a similar nature.
 - ii. Ability to provide required insurance.
 - iii. Financial and organizational ability to meet permit conditions.
 - iv. Site plan, schematic diagram of the vendor or stand layout, and map.
 - v. Description of the event.
 - vi. Number of vendors or stands.
 - vii. Promotion of Kaua'i Made and Kaua'i Grown products.
3. Applicants shall notify adjacent property business owners within a fifty (50) feet radius from the vending area. Property owners within a fifty (50) feet radius from the vending area shall be afforded a minimum of thirty (30) calendar days to provide comments on the application.

For the purposes of this subsection, if there are multiple owners for any given parcel of real property, notice to one (1) co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. At minimum, the notice shall include the following information:

- i. Date(s) and time(s) of the proposed vending activity and event.
- ii. Description of the proposed vending event and the event's location.
- iii. Number of vendors or stands.
- iv. Site plan and map.

4. Along with the application requirements that are specified in this subsection, applicants shall submit to OED the following:
 - i. An affidavit that confirms the mailing or delivery of the notice to the required property owners.
 - ii. A list of persons to which notices were sent.
 - iii. All comments received as a result of the notices.
 - iv. Applicants' responses to any and all comments received.
 - v. Applicants' plans to adjust the permit application based on the comments received.

Should the applicant fail to comply with the notice requirements specified in this subsection, the application shall be automatically denied.

5. The Director of Finance may require evidence that the applicant conducted additional public outreach, which may include community meeting(s); surveys or other means to gauge community support.

C. Bidding. When bidding is required pursuant to Kaua'i County Code Section 20-5.2, the following shall apply:

1. The bidding shall be subject to procedures specified under HRS Chapter 102.
2. Bid Notice shall include all application submittal requirements and evaluation criteria specified under subsection II.B.

D. Criteria for Application Review. The Director of Finance, County Engineer, Fire Department, Police Department, and the Planning Department will consider the following criteria:

1. Compliance with existing Federal, State, and County Laws, including zoning laws.
2. Community support measured by public outreach.

3. Adequate travel ways for cars and pedestrians.
4. For road closures, adequate safety measures, which may include but not be limited to barriers, signage, detours.
5. Maintenance of Americans with Disability Act (ADA) clearances.
6. Reduction/elimination of safety hazards, such as tripping, sight distance, or other obstructions.
7. Adequacy of facilities, including lighting, wastewater, and solid waste.
8. Whether the person or organization applying for the application has any outstanding bills related to previous permits issued for vending under Kaua'i County Code Chapter 20, Article 5.

E. Denial of Permit. An application for a revocable permit for commercial activities in the County right-of-way may be denied for reasons, which may include, but are not limited to:

1. The application is opposed by more than fifty percent (50%) of the property owners that are required to be notified within a fifty (50) feet radius of the vending area.
2. The Director of Finance determines that the proposed permit action is hazardous condition or causes a public nuisance.
3. A state of emergency, natural or civil disturbances, including but not limited to tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes occur or threaten to occur.
4. Permits for the vending of cars or parking of cars for sale or rent in the public right of way shall be denied.
5. There is already an existing and active permit that covers vending on any portion of the proposed vending area and during the date and time of the proposed vending.
6. There are any deficiencies in the permit application pursuant to section II. of these rules.

III. PERMIT CONDITIONS AND RESTRICTIONS

A. Permit Conditions. Any revocable permit for commercial activities in the County right-of-ways will be subject to conditions, which may include, but are not limited to the following:

1. Permits are non-transferable.
2. Persons or organizations to whom permits are issued are bound by the permit conditions stipulated or attached to the permit.
3. Payment of permit fees that shall reasonably reflect the County's cost of administering the revocable permit, or to meet other conditions as the Director of Finance may deem necessary. All costs associated with the conditions shall be borne by the permittee. Any additional direct costs incurred by the County resulting from the activity shall be reimbursed to the County. A draft estimate of the anticipated costs shall be provided to the permittee prior to the proposed vending event.
4. All payments of fees and charges shall be in cash, personal check, cashier's check, certified check, postal money order, or bank money order.
5. The Director of Finance may impose permit conditions as needed to protect the health, safety, and welfare of the public. Such conditions may include, but are not limited to, the following:
 - i. Hiring of security staff.
 - ii. County enforcement staff support.
 - iii. Provision of portable toilets.
 - iv. Provision of portable lighting.
 - v. Traffic control, including barricades and/or signage.
 - vi. Trash cleanup and pickup.
6. Deposit. The Director of Finance reserves the right to require a deposit in an amount not to exceed one thousand dollars (\$1,000.00). Upon the failure to pay any reimbursement or charge as specified under the rules, the County will use the deposit to compensate the County for any charges it is due. The County will return any deposit amount that remains after all reimbursement or charges due to it are deducted, if any. Should the amount of reimbursement or charge due to the County exceed the amount of the deposit, the County reserves the right to institute legal action for collection. In the event such legal action for collection is instituted, the County shall be reimbursed for all costs of any collection action including reasonable attorneys' fees. In addition to the above,

upon the failure to pay any reimbursement or charge as specified under this Agreement, the Party will be banned from applying for a revocable permit until all reimbursement or charges due to the County are fully paid.

7. Compliance with all Laws. The permittee shall comply with all applicable Federal, State, and County laws, ordinances, and rules and regulations, including, but not limited to all rules and regulations of State of Hawai'i Department of Taxation and Department of Health.
8. No Discrimination. The permittee shall conduct its activities and provide its services in a manner that does not discriminate against any person in violation of Federal, State, or County law. In addition, the permittee shall not discriminate against any employee or applicant for employment in violation of Federal, State, or County law.
9. Indemnification. The permittee will defend, indemnify, and hold harmless County from and against any claims and demands for losses or damages (including claims for property damage, personal injury or wrongful death) arising from or growing out of any act, whether willful or negligence, of the permittee or any person claiming by, through or under permittee in connection with the commercial activities, and permittee will reimburse the County for any damages, losses, costs or expenses, including attorneys' fees, incurred in connection therewith. The permittee shall be fully responsible to compensate County or County's licensees for any damages.
10. Loss or Damage. The permittee assumes all risks of loss or damage to the County's property from any cause, and agrees to return the premises to the County in the same or similar condition that existed prior to the event. Should loss or damage to the County's property be determined by the County within forty eight (48) hours of the event, the permittee shall repair, reimburse or replace the equipment to the satisfaction of the County. If reimbursement is required by the County, the permittee shall make such reimbursement within five (5) calendar days from the County's billing. All determinations made by the County are final.
11. Assumption of Risk. The County shall not be liable or responsible to the permittee for any accidents, injuries, or damages occasioned by any means whatsoever, nor from any damage arising from any acts or neglect of any other party caused by the transportation, set-up, and use of dismantling of the County's property. The permittee's use of the County's property shall be at the risk of permittee only, and permittee shall hold

County harmless from any and all claims arising out of loss or damage to the same, including subrogation claims by permittee's insurance carriers.

12. Release. In consideration of accepting and using the County's property for its event, the permittee, its beneficiaries, heirs, executors, administrators, representatives, successors, and assigns, and any person or entity acting for, under, or through them, hereby releases and forever discharges the County, its officials, employees, representatives and agents, from and on account of any and all claims, actions, causes of action, claims for relief, damages, injuries, losses, punitive or treble damages, liens, debts, costs, interest, attorneys' fees, experts' or consultants' fees, expenses, and other relief, whether in law or in equity, whether known or unknown, suspected or unsuspected, fixed or contingent, past, present, and future, whether sounding in tort, contract, statute or otherwise, resulting from, arising out of, or connected with the event, including but not limited to its transportation, set-up, use of and dismantling of its equipment for the event.
13. No Subleasing. A rental fee may not be charged by the permittee for use of public rights-of-way or facilities covered by the permit.
14. Kaua'i Products. Vending of Kaua'i Grown and Kaua'i Made products is strongly encouraged.

IV. **REVOCATION, MODIFICATION, OR TERMINATION OF PERMIT**

A. **Revocation or Modification.**

1. Notice. The Director of Finance shall provide prompt written notice to the permittee of any action to revoke or modify a permit for the following reasons:
 - i. A permittee violates permit conditions or other provisions of these rules.
 - ii. The circumstances under which the permit was considered have substantially changed as determined by the Director of Finance.
2. Notice Requirements. Written notice of revocation and/or modification, when applicable, shall state the following:
 - i. The date of the Notice of Violation.
 - ii. Permit number, event, location of the event, and the name and address of the person noticed.
 - iii. The nature of the violation.

- iv. Any terms for the revocation or modification, including a description of the items to be done to correct any violation.
- v. The deadline for compliance with the Notice of Violation.
- vi. The penalties that will be imposed if compliance of the Notice of Violation is not met, which may include permit revocation, fine, and liability for any injuries to person or property and to the County resulting from the owner's failure to comply.
- vii. The Notice of Violation may be appealed upon notice within thirty (30) days of service to Director of Finance, and if not appealed, the Notice of Violation shall become final thirty (30) days after the date of service.

3. Automatic Revocation or Modification. Permits may be revoked or modified at any time without prior notice when any of the following occurs:

- i. A state of emergency is declared by the Director or other proper authorities.
- ii. Natural or civil disturbances, including but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations and employee strikes occur or threaten to occur.
- iii. Permit fees and costs, as required, are not paid.

B. Non-Use of Permit. Failure to use a permit at the designated time and place shall not result in a refund or credit of fees previously paid, unless otherwise determined by the Director of Finance

V. APPEALS OF PERMIT DECISIONS

A. General Provisions.

1. Appeals. The petition for appeal shall be submitted to the Director of Finance and shall be filed within thirty (30) days of service of the Director's decision to approve, deny, revoke, or modify a permit. The petition shall contain the following:
 - i. The name, address and telephone number of the appellant.
 - ii. The identification of the appellant's proposed event and location.
 - iii. All pertinent facts.
 - iv. The action of the Director of Finance.
 - v. The reasons for the appeal, including a statement as to why the appellant believes that the Director's action was in violation of the applicable law, or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

- vi. Petitions not in conformance with these requirements shall be rejected by the Director of Finance.
- 2. Standing. Only aggrieved parties have standing to appeal an action under these rules.
- 3. Hearings Officer. Upon receipt of the petition for appeal, the Director of Finance shall within a reasonable time thereafter appoint a Hearings Officer who shall not be an employee of the Department of Finance. The Hearings Officer shall afford the petitioner and all other parties an opportunity to be heard. Such hearing shall be conducted in conformity with the applicable provisions established herein for contested case hearings before the Hearings Officer.
 - i. Hearings Officer Action.
 - a. A Hearings Officer appointed by the Director of Finance pursuant to these rules and other applicable law shall render his or her decision within sixty (60) days of the close of the evidentiary portion of the hearing.
 - b. A longer period to render any decision by the Hearings Officer may be permitted by agreement of all parties.
- 4. Definitions.
 - i. "Contested Case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.
 - ii. "Department" means the Department of Finance or its authorized representative.
 - iii. "Director" means the Director of Finance or his or her authorized representative or designee.
 - iv. "Hearing" refers only to such hearing held by the Hearings Officer immediately prior to a judicial review of a Contested Case as provided in HRS Section 91-14.
 - v. "Hearings Officer" means any person or persons designated and authorized by the Director of Finance to conduct a hearing for the purpose of taking testimony and to report his or her findings of facts and conclusions of laws and decision and order.
 - vi. "HRS" means Hawai'i Revised Statutes.
 - vii. "Party" means a Petitioner or Petitioners and the Department or Director.
 - viii. "Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

- ix. "Petitioner" means a person who seeks to appeal a decision of the Director of Finance issued pursuant to his or her authority under the Kaua'i County Code Chapter 20, Article 5.
- x. "Proceeding" means a matter that is submitted to a Hearings Officer designated and authorized by the Director of Finance to conduct a hearing for the purpose of taking testimony and reporting his or her findings of facts and conclusions of laws and decision and order.

B. General Requirements in Proceedings Before the Hearing Officer.

- 1. Who May Appear Before the Hearing Officer. Any party to a proceeding before the Hearings Officer may appear in his or her own behalf or as an authorized representative of a partnership, corporation, trust or association and an officer or employee of a department or agency of the State or a political subdivision may represent that department or agency in any proceeding before the Hearings Officer. If a party is to be represented by an attorney, that attorney who appears before the Hearings Officer shall be in good standing before the Hawai'i Supreme Court. The Hearings Officer may at any time require any person appearing before him/her, in a representative capacity, to show proof of his or her authority and qualification to act in such capacity.
- 2. Code of Ethics. Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the department, by such act represents that he or she is legally authorized to do so and shall comply with the laws of this State and the County of Kaua'i, and the rules and regulations of the department; and further, he or she shall maintain the respect due to the Hearings Officer and shall never deceive or knowingly present any false statements of fact or law to the Hearings Officer.

C. Requirements of Filing of Documents.

- 1. Time and Place. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda and other legal papers required to be filed with the Hearings Officer in any proceeding shall be filed with the Hearings Officer at his or her place of business, and shall be served on all parties to the proceeding. Unless otherwise ordered, the date on which the papers are accepted shall be regarded as the date of filing.

2. Format. All submittals shall be clearly and permanently legible and in such form as may be prescribed by the Hearings Officer. The original shall be signed in ink by each party or his or her counsel and show the address of such person.
3. Copies. Unless otherwise required by these rules or the Hearings Officer, there shall be filed with the Hearings Officer, an original and two copies of each submittal thereof. Additional copies shall be promptly provided if the Hearings Officer so requests.
4. Extensions of Time. Whenever a party is required to file a pleading within the period prescribed or allowed by these rules, by notice given there under or by an order or regulation, the Hearings Officer may (1) for good cause before the expiration of the prescribed period, with or without notice to the parties, extend such period, (2) pursuant to a stipulation between all of the parties, extend such period, and/or (3) permit the act to be done after the expiration of the specified period where the failure to act is clearly shown to be the result of excusable neglect. All requests for continuances, except for stipulations, should be by written motion, unless it is made during the course of a hearing.
5. Amended Pleadings. All pleadings may be amended at any time prior to the hearing. Amendments offered prior to the hearing shall be served on all parties and filed with the Hearings Officer. All parties shall have the opportunity to answer and be heard on amendments filed after the hearing commences, and the Hearings Officer shall decide whether such amendments shall be allowed.

D. Service of Process.

1. By Whom Served. The Hearings Officer shall serve copies of all orders, notices and other papers issued by him or her, together with any other papers that are required by law. All other papers shall be served by the parties filing them.
2. Upon Whom Served. All papers served by either the Hearings Officer or any party shall be filed and served upon all parties through their counsel if they have retained counsel and shall contain a certificate of service attesting to such service. Any counsel entering an appearance subsequent to the initiation of such proceeding shall notify all other counsel of record and all parties not represented by counsel of such fact.

3. Service Upon Parties. The final decision and order, and any other paper required to be served by the Hearings Officer upon a party, shall be served upon such party or his/her counsel of record.
4. Method of Service. Service of papers shall be made personally or, unless otherwise provided by law, by mail to the last known address of the party or his/her counsel of record.
5. When Service is Complete. Service upon parties other than the Hearings Officer shall be regarded as complete upon mailing or upon personal service unless otherwise specifically directed by the Hearings Officer.
6. How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the Hearings Officer.
 - i. Service upon the attorney or upon a party shall be made (a) by delivering a copy to the attorney or party; or (b) by mailing it to the attorney or party at the attorney's or party's last known address; or (c) if no address is known, by leaving it with the clerk of the Director; or (d) if service is to be upon the attorney, by email transmission to the attorney's business email address.
 - ii. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
 - iii. Service by mail is complete upon mailing. Service by email transmission is complete upon receipt of the entire document by the intended recipient and between the hours of 8:00 a.m. and 5:00 p.m. on a week day. Service by email transmission that occurs after 5:00 p.m. shall be deemed to have occurred on the next week day. Email transmission means transmission and receipt of the entire document without error with a cover sheet which states the attorney(s) to whom it is directed, the case name and case number, and the title and number of pages of the document.
 - iv. Service by email transmission shall be confirmed by a certificate of service which declares that service was accomplished by email transmission to a specific phone number, on a specific date, at a specific time.

E. Times.

1. Computation. In computing any period of time prescribed or allowed by these rules, by order of the Hearings Officer, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. As used in this rule, "holiday" includes any day designated as such pursuant to Section 8-1 of the Hawai'i Revised Statutes.
2. Enlargement. When by these rules or by a notice given thereunder or by order of the Hearings Officer an act is required or allowed to be done at or within a specified time, the Hearings Officer for cause shown may at any time in his or her discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

VI. **HEARING PROCEDURES**

A. Hearing Officer.

1. The Hearings Officer shall control the course of the hearing, administer oaths, receive evidence, hold appropriate conferences before or during hearings, rule on all objections or motions, receive offers of proof, fix the time for the filing of submittal, dispose of any other matter that normally and properly arises in the course of a hearing, and take all other actions authorized by law that are deemed necessary to the orderly and just conduct of the hearing.

B. Parties. The Department of Finance and the petitioner shall in every case be parties to such proceedings.

C. Continuance. The Hearings Officer may, for good cause, postpone or continue any hearing from day to day, or to a later date, or to a different place without notice other than the announcement thereof at the hearing.

D. Ex Parte Communication. No person whether or not a party to a hearing before the Hearings Officer shall communicate ex parte regarding any subject matter of the proceeding with the Hearings Officer.

E. Notice of Hearing.

1. The notice of hearing shall be served upon all parties at least fifteen (15) days prior to the hearing date, unless otherwise provided by law.
2. The notice shall contain the appropriate information as required in HRS, 91-9.

F. Waiver of Procedure. Any procedure pursuant to these rules may be modified or waived by stipulation of the parties and informal disposition may be made of any hearing by stipulation, settlement, agreement, consent order, or default.

G. Prehearing Conference. The Hearings Officer may hold a prehearing conference with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed witness testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding.

H. Requests for Transcripts. Unless otherwise provided by law or specifically ordered by the Hearings Officer, it shall not be necessary to transcribe the record unless required for purposes of rehearing or court review. Should a party to a hearing under these rules desire that transcripts be provided when not otherwise required, the party may, prior to commencement of hearing, either; (1) deposit an amount sufficient to cover transcribing and printing costs as prepared by a certified court reporting service; (2) provide a certified court reporting service at the hearing; (3) enter into an agreement with the County that will address the preparation and printing costs of transcripts.

I. Just, Expeditious, and Inexpensive Determination.

1. To avoid unnecessary cumulative evidence, the Presiding Officer may limit the number of witnesses or the time for testimony upon a particular issue.

2. The Presiding Officer shall not order or approve civil style discovery against non-parties; and unless stipulated to by all parties, the hearings officer shall not order or approve civil style discovery between parties. Civil style discovery refers to procedures initiated by parties under judicial rules of civil procedure, specifically including but not limited to, depositions on oral or written questions, written interrogatories, requests for production of documents or things, requests to enter land or other property, physical and mental examinations, and requests for admissions.

J. Stipulation as to Findings of Facts, Conclusions of Law. Nothing in these rules shall prohibit parties from entering into appropriate stipulations as to findings of fact, conclusions of law, and conditions, if any, concerning the subject petition for appeal.

1. A petitioner who desires to enter into a stipulation shall prepare a stipulation as to any and all findings of fact, conclusions of law, and conditions, if any, concerning the subject petition.
2. All parties shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, and conditions and a proposed decision and order, if at all, and shall submit such stipulation to the Hearings Officer seven (7) days prior to the hearing date, unless otherwise permitted by the Hearings Officer.
3. The Hearings Officer may require the parties to submit additional evidence concerning the stipulation and proposed decision and order.
4. The Hearings Officer may approve the proposed decision and order by amending or adopting the proposed decision and order.

K. Order of Hearing Procedure. At the commencement of the hearing, the Hearings Officer may read the notice of hearing and then briefly outline the procedures to be followed, which shall be in the following manner:

1. Presentation of Evidence. The petitioner's presentation shall be first, followed by the Department.
2. Cross-Examination. Each Party shall have the right to conduct such cross-examination of other Parties and their witnesses as may be required for a full and true disclosure of the facts. The order of cross-examination and re-cross shall be determined by the Hearing Officer.

3. Rebuttal Evidence. Each Party shall be afforded the opportunity for rebuttal in the same order as above.
 4. Close Contested Case Hearing. Upon completion of all testimony and evidence submitted by each party and their witnesses, the Hearing Officer shall close the Contested Case portion of the Hearing.
 5. Request to Submit Proposed Findings of Fact, Conclusions of Law, Decision and Order. A party may, after the close of the evidentiary portion of the hearing request the opportunity to submit proposed Findings of Fact, Conclusion of Law, Decision and Order. If such a request is made, the Hearings Officer shall also allow all other parties to submit proposed Findings of Fact, Conclusion of Law, Decision and Order. Should a party not submit a request at such time, the party's right to submit such document shall be deemed waived and the Hearings Officer may commence with appropriate decision-making action. If a request is made, the Hearings Officer may continue the docket and set a timetable for the conduct of the post-hearing proceedings pursuant to these rules.
- L. Co-Counsel. No more than two (2) counsel may appear for any party at any proceeding before the Hearings Officer. Where a party is represented by more than one counsel, only one of the counsel shall be permitted to cross-examine a witness or to state any objections or make closing arguments.
- M. Requests for Subpoenas.
1. Subpoenas of Witnesses. Requests for the issuance of subpoenas requiring the attendance of a witness for the purpose of taking oral testimony before the Hearings Officer shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or the Hearings Officer may request the issuance of a subpoena.
 2. Every subpoena shall state the title of the proceeding for which it is to be issued, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.
 3. Subpoenas Duces Tecum. Requests for the issuance of subpoenas for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.

4. Who May Issue Subpoenas. Subpoenas may only be issued by the Hearings Officer. No subpoena shall be issued unless the party requesting the subpoena has complied with the provisions herein and gives the names and address of the desired witness. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall show at whose instance the subpoena is issued. The parties at whose instance a subpoena is issued shall arrange for service thereof, and shall file a return and an acknowledgment of service thereon.
 5. Fees and Mileage. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in Circuit Courts of the State of Hawai'i and such fees and mileage shall be paid by the party at whose instance the witness appears.
 6. Oath. Witnesses shall be sworn under oath or affirmation prior to testifying.
- N. Consolidation. The Hearings Officer, upon his/her own initiative or upon motion may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if he/she finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.
- O. Substitution of Parties. Upon motion and for good cause shown, the Hearings Officer may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.
- P. Motions.
1. All motions, other than those made during a hearing, shall be made in writing to the Hearing Officer, shall state the relief sought, and shall be accompanied by an affidavit, declaration, and/or memorandum setting forth the grounds upon which they are based.
 2. All motions are non-hearing and shall be decided upon written submission, unless the Hearing Officer elects to set a time for hearing.

3. Unless otherwise specified by the Hearing Officer, a memorandum in opposition or a counter affidavit or declaration may be filed and served on all parties no later than fifteen (15) days after service of the motion.
4. No reply or supplemental memoranda shall be filed unless specifically allowed by the Hearing Officer.
5. The original documents and proof of service shall be filed with Hearing Officer. When service is made by mail, two calendar days shall be added to the periods required in 6.15C.
6. Unless otherwise specified by the Hearing Officer, all pretrial motions shall be filed no later than twenty (20) days prior to the assigned contested case hearing date.

Q. Evidence.

1. Form and Admissibility. The Hearings Officer shall not be bound by the Hawai'i Rules of Evidence relating to the admission or rejection of evidence, but may exercise his/her own discretion in such matter with a view towards insuring that justice is served.
2. Burden of Proof. Except as otherwise provided by law, the party initiating the petition to appeal shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.
3. Exclusion of Irrelevant Material. As a matter of policy, the Hearings Officer shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.
4. Ruling. The Hearings Officer shall rule on the admissibility of all evidence.
5. Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the ground relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.
6. Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which the objection has been sustained.

7. Prepared Testimony. With the approval of the Hearings Officer, a witness may read into the record his/her testimony on direct examination. Before any prepared testimony is read, unless excused by the Hearings Officer, the witness shall deliver copies thereof to the Hearings Officer, and all counsel or parties. If the Hearings Officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without hearing, provided that copies thereof shall have been served upon all parties and the Hearings Officer to permit proper cross examination of the witness on matters contained in said prepared testimony.
8. Documentary Evidence. If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the Hearings Officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.
9. Exhibits.
 - i. Form-Size. Exhibits shall be clearly and permanently legible and in such form as may be prescribed by the Hearings Officer. Exhibits shall be bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.
 - ii. Copies. When exhibits are offered in evidence, and when practicable the original and two (2) copies shall be furnished to the Hearings Officer with a copy to each party to the proceeding, unless such copies have been previously furnished or the Hearings Officer directs otherwise.
10. Official Notice of Facts. Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawai'i. Official notice may also be taken of generally recognized technical or scientific facts within the Department's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

11. Additional Evidence. No supplemental evidence shall be accepted into the record after the evidentiary portion of the hearing is closed unless agreed to by the parties and approved by the Hearings Officer.

R. Post Hearing Procedures.

1. Upon completion of taking of evidence, the Hearings Officer shall issue findings of fact, conclusions of law, and decision and order that states an analysis and reasons therefore, and shall submit the report of the proceeding and the record to the Department.
2. The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, if required, documentary evidence, stipulations, findings of fact, or other documents submitted by the parties, objections to the conduct of the hearing and the report of the Hearings Officer and all other matters placed in evidence.
3. The Hearings Officer shall cause a copy of the report to be served upon all parties to the proceedings.
4. Any party aggrieved by a final decision and order by the Hearings Officer or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under Chapter 91 of the HRS; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

**RULES AND REGULATIONS FOR REVOCABLE PERMITS TO
VEND WITHIN THE COUNTY RIGHT-OF-WAYS**

Pursuant to Hawai'i Revised Statutes §91-3, public hearings were held on July 18, 2018 and November 15, 2018. The "Rules and Regulations for Revocable Permits to Vend Within the County Right-Of-Ways" were adopted by the County of Kaua'i Department of Finance at the public hearing held on November 15, 2018.

The Rules shall become effective ten (10) days upon filing with the County Clerk of the County of Kaua'i.

ADOPTED:



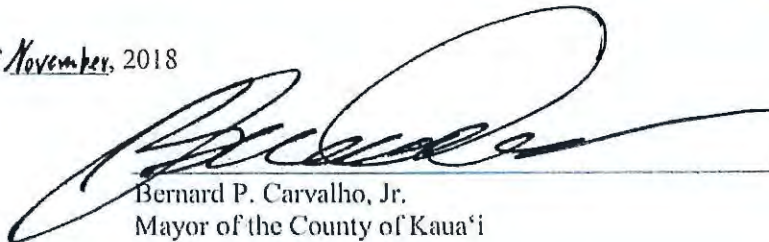
Ken Shimonishi
Director of Finance

APPROVED AS TO FORM AND LEGALITY:



Jodi Higuchi
Deputy County Attorney

APPROVED THIS 21st DAY OF November, 2018



Bernard P. Carvalho, Jr.
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 21st DAY OF November, 2018



Jade K. Fountain-Tanigawa
County Clerk

V. Regulation Review Card

- A. Discussion, Fact Finding and Action on the Request Received through this Board's "Regulation Review Card" for Whether or Not All Bottomfish Restricted Fishing Areas Should be Opened and/or Disestablished under HAR Title 13 Chapter 94, Bottomfish Management, promulgated by DLNR**

Palcovich, Dori

From: Alton Miyasaka <amiyasa7@gmail.com>
Sent: Thursday, May 02, 2019 7:47 AM
To: DBEDT SBRRB
Subject: New submission from Regulation Review Card

Name

Alton Miyasaka

Company Name

Hawaii Fishermen's Alliance for Conservation and Tradition (HFACT)

Email Address

amiyasa7@gmail.com

Phone Number

(808) 236-3713

What is the title of the rule or regulation negatively impacting your business?

Bottomfish Management

Rule or Regulation Number (if known)

Chapter 13-94, Hawaii Administrative Rules

Agency or staff member you worked with on this matter; if applicable. What was the outcome?

Department of Land & Natural Resources (DLNR)
Mr. Bin Li, Administrative Proceedings Office
Mr. Brian Nielson, Administrator, Division of Aquatic Resources,

Department Chairperson unwilling to schedule petition for DLNR Board consideration

File attachments, if applicable

- [ch94.pdf](#)
- [Case-petition-response-2019Mar13.pdf](#)
- [BRFA-Petition-non.pdf](#)
- [Petition-to-the-Small-Business-Regulatory-Review-Board.pdf](#)

RECEIVED

By JetaimeA at 9:00 am, May 02, 2019

Petition to the Small Business Regulatory Review Board

By

Hawaii Fishermen's Alliance for
Conservation and Tradition (HFACT)

And Alton Miyasaka

May 16, 2019

Petition Statements

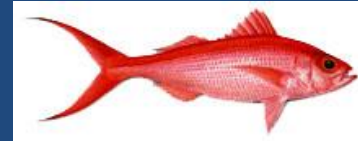
- Recent scientific data indicate that the bottomfish fishery is sustainable
- Bottomfish restricted fishing areas are no longer needed
- Request this Board to Support the Petition to place on the agenda of the Board of Land and Natural Resources (BLNR) a discussion to disestablish all bottomfish restricted fishing areas

Petition Contentions

- The best scientific information available indicates that the fishery is sustainable and that bottomfish restricted fishing areas (BRFA) are no longer needed
- BRFA create needless hardships on commercial bottomfishers
- BRFA remove important fishing grounds
- BRFA increase safety risks by increasing travel time
- BRFA increase fuel and equipment costs
- Lack of enforcement creates conflicts between those who do and do not follow the BRFA restrictions

State Deep-7 Bottomfish Species

- 'Ula'ula koa'e / Onaga



- Ehu



- Opakapaka



- 'Ukikiki / Gindai



- Kalekale



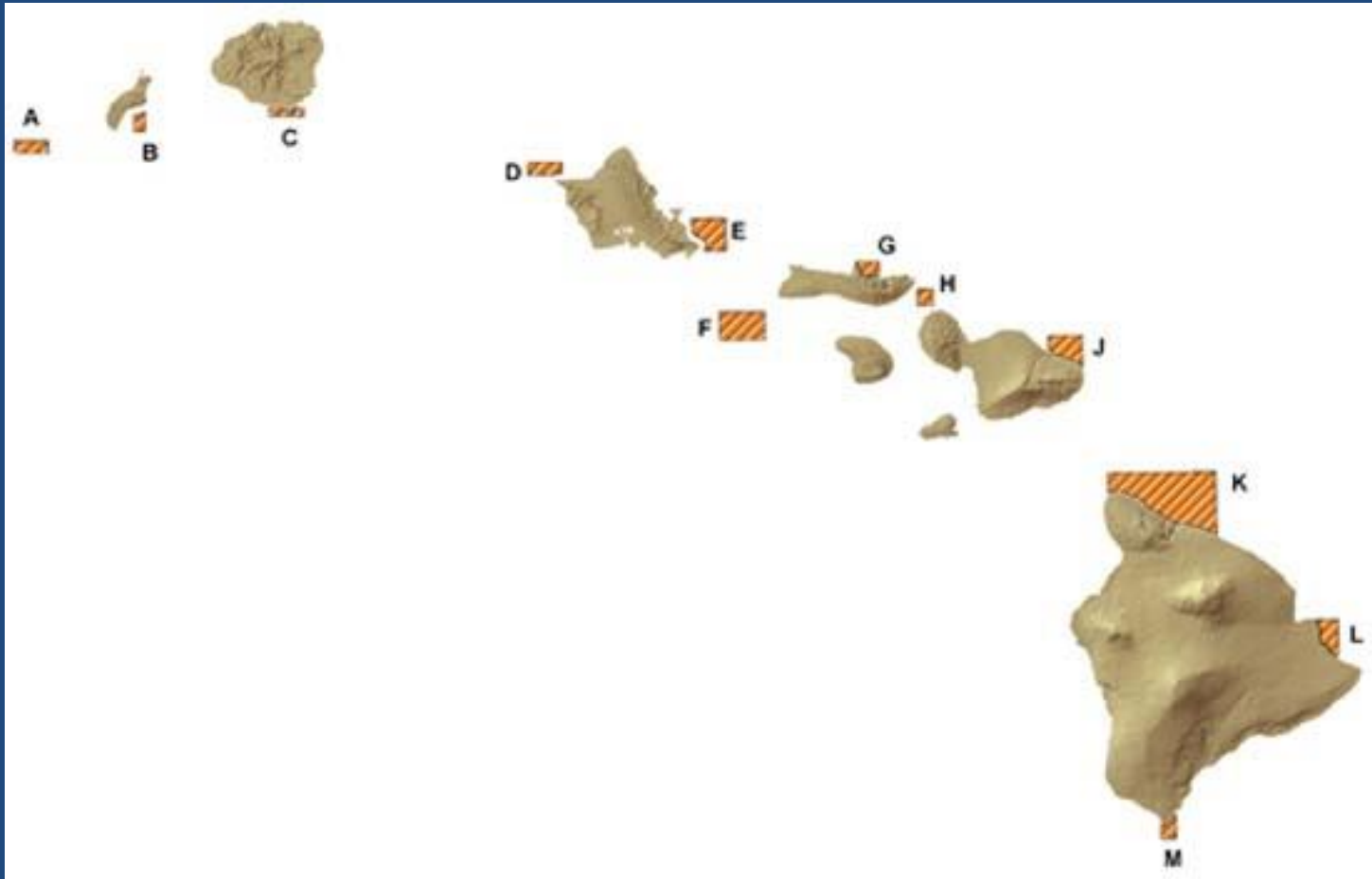
- Hapu'upu'u



- Lehe



Bottomfish Restricted Fishing Areas



Regulations Within Bottomfish Restricted Fishing Areas

- Unlawful to take or possess bottomfish while in a vessel that is drifting or anchored within any bottomfish restricted fishing area (BRFA)
- Established through Hawaii Administrative Rules (HAR) Section 13-94-8
- BRFA are one part of a comprehensive State/Federal fishery management scheme

Other Bottomfishing Regulations

- Unlawful to take bottomfish with any trap, trawl, bottom longline, or net
- Expedited reporting of all bottomfish catches within five days of the trip end supports quota management
- Minimum size for sale of onaga and opakapaka of one pound
- Non-commercial bag limit of five bottomfish per person per day
- Annual vessel registration
- Closed season upon reaching the federal annual quota

Small Business Affected



Why Were BRFA Established?

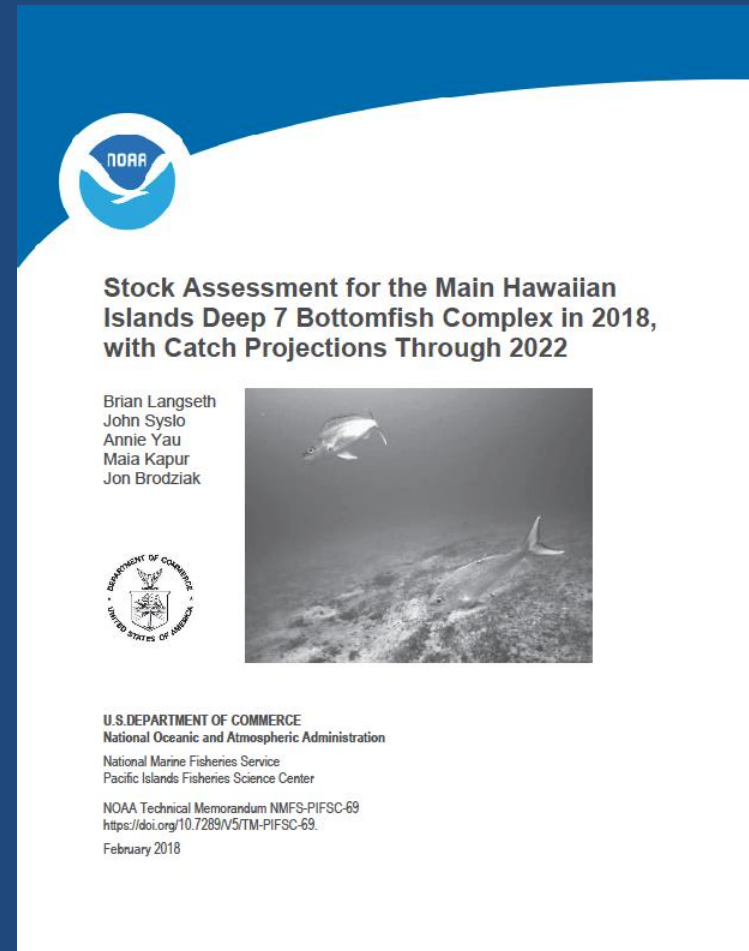
- In 1998, a federal assessment indicated the bottomfish were in a state of overfishing
- State established BRFA to reduce catch, correct overfishing, and prevent federal intervention in State waters
- State and Federal agencies co-manage this fishery

Why Remove BRFA Now?

- Fishery no longer in state of overfishing
- New regulations in place since 1998
- New co-management procedures in place
- Statewide public meetings in 2014 show 70% of fishers want all BRFA removed
- 2018 Stock assessment completed

What Does the Science Say?

- Fishery is sustainable at current catch levels
- Identifies how many pounds of fish may be taken each year
- Identifies the risk of overfishing
- Projects annual catch limits to 2022



How Good Is the Stock Assessment?

- Considered a “benchmark” assessment by the federal Pacific Islands Fisheries Science Center
- Will be the basis for future assessments for this fishery
- Developed through 5 workshops over 15 days with commercial bottomfishers
- Outside review by Center for Independent Experts
- Fisheries managers and bottomfishers accept this for management decisions
- Scientific uncertainty is minimized

Department of Land and Natural Resources

- Land Board meeting of January 11, 2019 discussed and approved removing 4 of 12 BRFA
- Land Board was prevented from discussing possible removal of all BRFA at this meeting
- DLNR Chairperson intercepted Petition to the Board to have a discussion to removal all BRFA
- Chairperson has refused to meet to clarify her response letter

What Happens If All BRFA Are Opened?

- Other fishery regulations remain in effect
- Openings would not change stock assessment
- Managers continue to monitor annual catch
- Fishery is closed if catch limit is reached
- If limit is exceeded, overage is subtracted from following year limit
- BRFA could be immediately re-established if needed

Petition Goals for SBRRB

- That this Board support the disestablishment of all bottomfish restricted fishing areas
- That this Board support the petition to the Board of Land and Natural Resources to have a discussion to disestablish all bottomfish restricted fishing areas
- That this Board send a letter to the Board of Land and Natural Resources conveying such support, if warranted

Thank You
for this
Opportunity

RECEIVED

By JetaimeA at 8:59 am, May 02, 2019

Board of Land and Natural Resources

Pursuant to Sections 13-1-10 and 13-1-27, Hawaii Administrative Rules (HAR), and Section 91-8, Hawaii Revised Statutes (HRS), I am filing this petition to respectfully ask the Board to consider opening all bottomfish restricted fishing areas. Subsection 13-1-27(b), HAR, further requires the petition to contain the following:

- (1) **The name, address, and telephone number of the petitioner;**
 - a. Alton Miyasaka
 - b. Address
 - c. Phone
- (2) **A statement of the nature of the petitioner's interest, including reasons for submission of the petition;**
 - a. I am the retired Acting Commercial Fisheries Program Manager, Division of Aquatic Resources, Department of Land and Natural Resources and have detailed information relating to the Hawaii bottomfish fishery from both the state and federal perspectives
 - b. During the Board of Land and Natural Resources meeting of January 11, 2019, the Board discussed item F-1, REQUEST TO OPEN THE FOLLOWING EXISTING MAIN HAWAIIAN ISLANDS BOTTOMFISH RESTRICTED FISHING AREAS (BRFA): BRFA C (POIPU, KAUAI, BRFA F (PENGUIN BANKS), BRFA J (HANA, MAUI) AND BRFA L (LELEIWI, HAWAII ISLAND), AND REQUEST TO DELEGATE TO THE CHAIRPERSON THE AUTHORITY TO IMPLEMENT THE DECISION.
 - c. The Board decision was to approve staff recommendation and to report back to the Board in 3 years
 - d. The Board was prevented from discussing the option of opening all BRFA due to the restrictive nature of the title of F-1 before it, despite obvious interest of some Board members to have this broader discussion
 - e. I want to provide the Board with the opportunity to discuss whether or not all BRFA should be opened and to provide my comments on some of the Board's questions and comments
- (3) **A designation of the specific provision, rule, or order in question;**
 - a. Hawaii Administrative Rules (HAR), Section 13-94-8, Bottomfish restricted fishing areas
- (4) **A clear and concise statement of the position or contention of the petitioner;**
 - a. It is my contention that given the opportunity and the facts in this matter, the Board would support the opening of all BRFA.
- (5) **A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention;**
 - a. As the BLNR has already held a meeting on the issue of BRFA, I believe the legal authorities to make this decision and to implement this decision has already been established. The authorities to open four BRFA would be the same for opening all BRFA. See below for a discussion of my reasons for this petition.
- (6) **The signature of each petitioner.**

The Board is requested to place on its agenda an item to discuss the opening of all bottomfish restricted fishing areas (BRFA). Should the Board support opening all BRFA, the Board is further requested to direct the Department to immediately implement such actions as necessary.

The Board, at its meeting of January 11, 2019, discussed the option of approving the opening of four of the twelve bottomfish restricted fishing areas (BRFA). The title of Item F-1, provided the Board with the option of approving, or not, the opening of four BRFA. It did not allow the option of opening any other BRFA or all BRFA. Also, in the course of that discussion, certain information were not fully provided for the Board's consideration. The result was a Board decision that the Division of Aquatic Resources report back to the Board in three years, supposedly at the next bottomfish stock assessment update. The Board appears to have misunderstood what the assessment update would include and what results would be reported to the Board at that time. Part of the reason for this petition is to clarify for the Board the fact that the assessment update would have nothing to do with the Board's decision to open four BRFA.

BLNR comments/questions during BLNR meeting of January 11, 2019

- Concerned about the 42% risk of overfishing
- What more information is needed?
- Waiting for next update
- What happens to the SAR in 3 years?
- What happens to the SAR in 5 years?
- Trying to be conservative
- Hilo boat ramp problems due to Pohoiki ramp closure

What is the Stock Assessment (SA)

- The SA has several parts: the data (evaluates whether the data are good enough for management use), the model (the “engine” of the assessment that calculates the stock status, model checking (tests if the model is operating as expected), future catch projections (predicts the overfishing limit for each of the years through 2022), and estimates risk for exceeding the overfishing limit to guide decision makers on possible ACL determinations
- SA essentially provides information on how much fish can be sustainably taken each year
- Data sources: biological, fishery –dependent, fishery-independent
 - Biological data includes growth curves, life span, age at maturity, mortality rates, productivity estimates, and fecundity
 - Fishery-dependent data includes annual catch information as reported by commercial fishers from 1949 to 2016 (4.8 million records over 68 years)
 - Unreported catch estimated slightly larger than reported commercial catch
 - Fishery-independent data includes visual surveys by remote camera and research fishing using stratified random sampling to verify visual survey data
- Assessment model
 - Bayesian state-space production model

- Comparison with single species modeling
- Results include: stock status, catch projections, model checks to determine if the model is operating as expected (retrospective analysis and sensitivity analysis)

What the SA represents

- The 2018 SA represents the most complete and exhaustive review of the Hawaii bottomfish fishery to date and is the best scientific information available
- The PIFSC is a federal agency that provides unbiased scientific information to policy and decision makers; it has no decision making authority on how the information is used
- The SA has undergone independent expert review and found to be credible
- The SA is supported by the bottomfish fishers, the Council, and the NMFS and will be used by the Council and NMFS to inform their management of this fishery into the future
- The Board should also accept the SA as the primary tool to jointly manage this fishery; working from the same information should result in the same conclusions that will support complementary management decisions

High Overfishing Risk

- Maximum allowed under federal law is 50%
- Council has chosen to use a more conservative risk estimate of 40% (the lower the number, the more conservative)
- This 40% risk estimate is the probability of exceeding the overfishing limit during any year
- This risk estimate takes into account and includes scientific and management uncertainties
- The overfishing limit is the point at which the catch begins to negatively impact the sustainability of the stock; the higher the overfishing (in pounds), the sooner the stock reaches an overfished condition
- The overfishing limit is a “yellow light” warning that you need to slow down fishing while the overfished condition is the “red light” to stop fishing
- The annual catch limit (ACL) is set at the 40% risk of the overfishing limit because the goal is to maximize the catch while minimizing the risk of fishing too much. The ACL is the maximum catch limit set for any fishing year but the actual catch has not exceeded the ACL in the last 5 years
- In 2018, the catch was 284,000 pounds; this catch posed a 15% risk of overfishing based on the new ACL of 490,000 pounds (see Table 15, page 72, Stock Assessment report)
- Should an ACL be exceeded in any year, the ACL for the following year will be reduced by the overage
- The risk seems high because the goal is to maximize the catch but this risk is lower than it appears due to the conservative nature of the SA; the management agencies desire to balance the catch against the risk; in reality, the actual annual catch has been low risk, much lower than the 40% risk of overfishing would indicate

- The total pounds in the stock is estimated at more than 15,000,000 pounds; the ACL at 500,000 pounds is less than 3% of the stock biomass; current scientific thinking is that less than 20% take of the stock is sustainable

Board Wants to be Conservative

- The SA is a conservative assessment of the bottomfish stock status
- It takes into account the uncertainties of the commercial catch reports, the unreported commercial catch, the unreported non-commercial catch, and the estimates in the assessment model; it's conservative because of these uncertainties
- The SA includes tests (retrospective, sensitivity, and independent reviews) that evaluate the validity of its calculations
- The Council and NMFS set additional conservative reference points and procedures (ACL, overfishing limits, risk, accountability measures)
- The Board can have confidence that the SA is accurate and represents the best scientific information available on this fishery
- There would be no measurable difference between opening four instead of all BRFA
- The SA essentially treats the BRFA as if they don't exist and are already open

Future Stock Assessment Review Clarification

- NMFS normally schedules periodic updates of its assessments; for example, at 3 years the SA is updated (in 2021) with 3 years of new annual catch data (2018-2020) that will likely inform the future catch projections for the next 5 years (2018-2022) but not change the SA model
- At 5 years after a benchmark, the SA is reviewed to see if any new model information exists that would change the model; if there is no new information, the model remains unchanged
- Every year, the catch is monitored to ensure that the ACL is not exceeded; annual monitoring of the catch will not change the SA
- Opening up BRFA will not change the SA; the BRFA do not exist to the SA
- The Board opened four BRFA and wanted a report back after 3 years; it possibly assumes that there will be an update of the SA at 3 years to monitor the opened BRFA impacts on the stock status; the SA will not be monitoring the BRFA openings
- There is no causal relationship between BRFA and the catch; should the catch increase after the BRFA openings, it should not be assumed the BRFAs *caused* the increase; many factors can affect catch and the extent that BRFA may contribute to a change in catch is unknown
- In my opinion, the 3-year update will not be of much interest to the Board; it is unclear what the Board expects the SA will say in 3 years

- Since the annual catch will be monitored relative to the ACL, a report back to the Board after the end of each fishing year (October/November) would be more helpful than waiting three years for an SA update

Drazen report of BRFA effectiveness

- The Division of Aquatic Resources contracted Dr. Chris Kelley, University of Hawaii at Manoa, Oceanography Department to, among other things, identify bottom habitat types that may be important to bottomfish; Dr. Jeff Drazen continued that work on bottom habitat mapping after Dr. Kelley left the project.
- Drs. Kelley and Drazen are physical oceanographers, chosen primarily for their expertise in habitat mapping; the 2007 revised locations of the BRFA would be based on this mapping data; the bottom camera (botcam) technology was to verify the presence of bottomfish in areas that were identified as potentially important to bottomfish
- While the mapping project provided detailed information on habitat statewide, the botcam studies were limited to four of the twelve BRFA due to limited funding
- Dr. Drazen's studies provided inconclusive results in that some BRFA saw increases in some bottomfish densities while other BRFA did not; it is still unclear why these differences occurred

Hilo boat ramp congestion

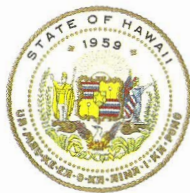
- This is an access issue and not a resource issue
- It appears that the Hilo fishers are experiencing crowded conditions due to the Pohoiki boat ramp closure
- The concerns are that should the Leleiwi BRFA be opened, there will be a rush to the Hilo ramp to fish the BRFA and add to an already crowded situation
- Opening all BRFA might reduce the rush to the Hilo ramp as the Hamakua BRFA K would be open and the Kona fishers would launch from the Mahukona ramp (on the West side) instead

What more information is needed?

- While perfect data are desirable, such data are rarely, if ever, available
- However, decisions need to be made using the best information available at the time
- The SA represents the best information at this point in time and it indicates the fishery is sustainable, even if the annual catch were much larger than it currently is
- If the Board wants to make a decision on opening the BRFA, all the information it needs is already available now
- Provided the ACL is not exceeded, how many BRFA are opened or closed is irrelevant to the SA

- The main question seems to be - Will the BRFA openings jeopardize the stock sustainability? Answer – No, provided the annual catch does not exceed the ACL, (regardless of how many BRFA are opened)
- What is the likelihood of exceeding the ACL if all BRFA are opened? Because the BRFA are not included in the SA, it doesn't matter if none or all of the BRFA are opened. The important trigger is the annual catch, not how many BRFA are opened.
- Factors limiting an extraordinary increase in annual catch; the last time the fishery had catch in excess of 500,000 pounds was over 20 years ago; the professional bottom fishers are gone from the fishery; the Northwestern Hawaiian islands bottomfish fishery is closed due to the Papahānaumokuākea Marine National Monument; the demand for bottomfish is seasonally limited and not expected to change in the foreseeable future; the number of participants in the fishery is declining over time; the fisher expertise to increase the catch is declining
- The fishery is currently operating under a “green” light; should the ACL be exceeded, the light might change to “yellow”; there would still be time to slow down

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 13, 2019

Mr. Alton Miyasaka
45-442 Keikikane Loop
Kaneohe, HI 96744

RECEIVED

By JetaimeA at 8:57 am, May 02, 2019

Dear Mr. Miyasaka,

We acknowledge receipt of the petition you submitted to the Board of Land and Natural Resources (BLNR) regarding the opening of four Bottomfish Restricted Fishing Areas (BRFA), Agenda item F-1, heard at the January 11th, 2019 Board Meeting.

The Board heard extensive testimony at the meeting and had the opportunity to ask questions of DLNR staff, Council staff, and yourself to make an informed decision on the proposed Board submittal. The Department stands by the unanimous Board decision to move ahead with opening the four above stated BRFA and the plan to report back to the Board in three years.

There is no legal process or requirement for a petition to put an item on the BLNR agenda.

Sincerely,

A handwritten signature in blue ink, reading "Suzanne D. Case".

Suzanne D. Case
Chairperson

RECEIVED

By JetaimeA at 8:55 am, May 02, 2019

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 94

BOTTOMFISH MANAGEMENT

- \$13-94-1 Purpose
- \$13-94-2 Definitions
- \$13-94-3 Penalty
- \$13-94-4 Severability
- \$13-94-5 Bottomfish species
- \$13-94-6 Restricted bottomfish fishing gears
- \$13-94-7 Recreational bag limits
- \$13-94-8 Bottomfish restricted fishing areas
- \$13-94-9 Bottomfish fishing vessel identification
number
- \$13-94-10 Control date
- \$13-94-11 Bottomfish fishing seasons, other
restrictions
- \$\$13-94-12 to 13-94-13 (Reserved)
- \$13-94-14 Exceptions

\$13-94-1 Purpose. It is the intention of the department to establish these rules for the conservation and management of bottomfish resources in the main Hawaiian Islands. Scientific studies indicate that certain bottomfish species should be managed and certain areas strictly regulated to conserve existing stocks.

\$13-94-2 Definitions. As used only in this chapter:

"Board" means the board of land and natural resources.

"Bottomfish" means those fish species listed in section 13-94-5 of this chapter.

"Bottomfish limited entry program" means a method of fishery management that limits or controls participation in a fishery, access to a fishery, or generally fishing, for a bottomfish species or a number of bottomfish species. Measures to limit or control participation, access, or fishing could include, but are not limited to, reducing or setting a maximum number of fishers, reducing or setting a maximum number of fishing vessels, restricting fishing gear types, restricting fishing areas, or restricting maximum amount of catch.

"Bottomfish longline" means a type of fishing gear or fishing method used to take bottomfish consisting of a weighted mainline, with attached shorter branchlines with fishing hook or hooks, that is either laid on the ocean bottom or suspended horizontally near the ocean bottom with floats.

"Clearly visible" means to be able to be seen in its entirety from a distance at least 100 feet away, free of any obstacle that may block the field of view from at least 45 degrees above, fore, and aft of the vessel.

"Commercial purposes" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, bartered, landed, or transported for sale anywhere in the State.

"Kona crab net" means a type of fishing gear consisting of a metal frame over which is stretched netting material, and that is deployed on the bottom with the kona crab, as defined in section 13-95-1, being captured by entanglement on the netting material.

"Main Hawaiian islands commercial bottomfish fishery" means the fishing of bottomfish for commercial purpose in the waters of the main Hawaiian islands surrounding, between, and including the islands of Niihau and Kaula to the northwest and the island of Hawaii to the southeast.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

"Non-commercial purposes" means any purpose other than commercial purposes.

"Scoop net" means a type of fishing net consisting of a bag of mesh material kept open with a rigid frame and manipulated by a rigid handle that is designed to be used by a single person unaided by any mechanical device.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, or harvested, shall be construed as fishing.

"Trap" means any of various fishing devices of mesh, perforated, or solid material made into the shape of a box, container, or enclosure, with one or more openings that allow aquatic life to enter into the interior of the box, container, or enclosure, but restrict exit out, thereby capturing the aquatic life within.

"Trawl" means a type of fishing net, usually in the form of an elongated bag, with the mouth kept open by various means that captures aquatic life while being towed or dragged through the water by a vessel.
[Eff 6/1/1998; am 10/18/2010] (Auth: HRS §187A-5)
(Imp: HRS §187A-5)

§13-94-3 Penalty. A person violating this chapter, or the terms and conditions of any license or permit issued as provided by this chapter, shall be punished as provided by law. [Eff 6/1/1998] (Auth: HRS §§187A-5, 187A-13, 188-53, 188-70, 189-4) (Imp: HRS §§187A-5, 187A-13, 188-53, 188-70, 189-4)

§13-94-4 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not

affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 6/1/1998] (Auth: HRS §§187A-5, 1-23) (Imp: HRS §§187A-5, 1-23)

§13-94-5 Bottomfish species. For the purposes of this chapter, the following species are bottomfish:

- (1) `Ula`ula koa`e, ruby or longtail snapper, or onaga (*Etelis coruscans*);
- (2) `Ula`ula or ehu (*Etelis carbunculus*);
- (3) Kalekale (*Pristipomoides sieboldii*);
- (4) `Opakapaka (*Pristipomoides filamentosus*);
- (5) `Ukikiki or gindai (*Pristipomoides zonatus*);
- (6) Hapu`u, hapu`upu`u, or Hawaiian grouper (*Epinephelus quernus*); and
- (7) Lehi or rusty jobfish (*Aphareus rutilans*).
[Eff: 6/1/1998; am 10/18/2010] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-6 Restricted bottomfish fishing gears.

(a) Certain fishing gears shall be prohibited to restrict their use in the taking of bottomfish. Except as may be otherwise authorized by law, it is unlawful for any person to take bottomfish with any trap, trawl, bottomfish longline or net; provided that scoop nets may be used to bring on board a vessel any bottomfish that has already been caught by authorized fishing gear.

(b) Except as may be otherwise authorized by law, it is unlawful for any person, while on board a vessel, to possess both bottomfish and any trap, trawl, bottomfish longline, or net other than scoop net or Kona crab net. [Eff 6/1/1998; 10/18/2010] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-7 Non-commercial bag limits. (a) A limit on the number of bottomfish that may be taken for non-commercial purposes shall be established to conserve bottomfish resources.

(b) Unless otherwise authorized by law, it is unlawful for any person, to take or possess more than a combined total of five bottomfish per day. [Eff

6/1/1998; am 10/18/2010] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-8 Bottomfish restricted fishing areas.

(a) The department will restrict fishing in certain areas to conserve the spawning populations of bottomfish.

(b) To aid enforcement of this section, the department intends to restrict all fishing for and possession of bottomfish within the restricted fishing areas. It is unlawful for any person to take or possess bottomfish while in a vessel that is drifting or anchoring within any bottomfish restricted fishing area, except in times of emergency or as may be otherwise authorized by law.

(c) The department will gather and consider the following information when selecting the bottomfish restricted fishing areas:

- (1) Identify the fishing areas where spawning onaga and ehu are caught;
- (2) Restrict fishing in about twenty percent of the known fishing areas where spawning onaga and ehu are caught;
- (3) Distribute the bottomfish restricted fishing areas in the most effective manner to consider the potential benefits and limit negative impacts on bottomfish fishing opportunities;
- (4) Suggestions from bottomfish fishers statewide; and
- (5) Any other relevant information.

(d) Due to the critical need of some bottomfish species for conservation measures, the department may need to respond quickly to establish or modify bottomfish restricted fishing areas. The bottomfish restricted fishing areas shall be established or amended by formal board action at a publicly noticed meeting. The bottomfish restricted fishing areas are attached at the end of this chapter as Exhibit A, entitled the "Bottomfish Restricted Fishing Areas (BRFA) 12/8/06," or as may be amended by subsequent board action and a copy of the amended Exhibit A shall be filed with the Office of the Lieutenant Governor. [Eff 6/1/1998; am 10/18/2010] (Auth: HRS §§187A-5,

188-53) (Imp: HRS §§187A-5, 188-53)

§13-94-9 Bottomfish fishing vessel identification number. (a) The department may register, and assign a bottomfish fishing vessel identification number to, any vessel used to fish for bottomfish. The purpose of the number is to enable identification of vessels used to fish for bottomfish from a distance while on the open ocean. The bottomfish fishing vessel identification number shall be valid for a one year period from the date registered, and must be annually renewed. It is unlawful for the vessel owner to take bottomfish from a vessel with a vessel identification number that does not have current registration.

(b) It is unlawful for any person to take or possess bottomfish while on a vessel on the water without a bottomfish fishing vessel identification number assigned or approved by the department.

(c) The bottomfish fishing vessel identification number shall consist of the following vessel identification, in front of the letters "BF" added as a suffix:

- (1) A valid Division of Boating and Ocean Recreation vessel registration number issued and displayed pursuant to chapter 13-241;
- (2) A valid National Marine Fisheries Service permit number issued and displayed under the provisions set forth in Fishery Management Plans of the Western Pacific Regional Fishery Management Council pursuant to CFR Part 660 Subparts B through E;
- (3) A valid United States Coast Guard vessel documentation number issued pursuant to 46 CFR 67; or
- (4) Any other such identification approved by the department.

(d) If the vessel identification, listed in subsection (c) above is not required to be displayed, then the vessel identification and the capital letters "BF", shall be displayed and clearly visible on both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless other specified, all characters in the bottomfish vessel

identification number shall be no less than six (6) inches high and three (3) inches wide in black or a contrasting solid color to the background. [Eff 6/1/1998; am 10/18/2010] (Auth: §187A-5) (Imp: §187A-5)

§13-94-10 Control date. (a) There is established a control date to give prior notice of intent to possibly limit participation in the Main Hawaiian Islands commercial bottomfish fishery. Persons who begin fishing in the Main Hawaiian Islands commercial bottomfish fishery on or after the control date will not be assured continued participation if the department establishes a bottomfish limited entry program in the future. The control date will be the original effective date of this chapter.

(b) Nothing in this chapter shall commit the department to establish a bottomfish limited entry program in the future nor does it prevent the department from establishing another control date. [Eff: 6/1/1998] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-11 Bottomfish fishing seasons, other restrictions. (a) There is established an annual bottomfish fishing season for the taking of bottomfish in the main Hawaiian islands to prevent overfishing in this fishery.

(b) The board shall approve a closure of the fishing season for bottomfish in the state marine waters when closure is needed in order to match a federal closed season, or is dictated when a catch limit is reached either by a total fishing quota or by individual quotas, as determined and announced by the National Marine Fisheries Service.

(c) While a bottomfish fishing season is closed, it is unlawful for any person to fish for, possess, or sell bottomfish, or for any dealer to sell bottomfish, except as provided in section 13-94-14.

(d) When a bottomfish fishing season is open, any person may take, possess, and sell bottomfish, subject to the provisions of this chapter, and as may be otherwise provided by law. [Eff 10/18/2010] Auth: HRS §§187A-5, 187A-5.5, 187A-6, 189-6) (Imp: HRS

§§187A-5, 187A-5.5, 187A-6, 189-6)

§13-94-14 Exceptions. (a) Notwithstanding the provisions of subsection 13-94-11(d), while a bottomfish closed fishing season is in effect, a person with a valid federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters, and a valid commercial marine license, may take and possess bottomfish from the above-described area.

(b) Notwithstanding the provisions of subsection 13-94-11(d), while a bottomfish closed fishing season is in effect, a person may sell bottomfish, with:

- (1) A valid federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters, and a valid commercial marine license, provided that the bottomfish were caught from the waters of the above-described area;
- (2) A valid special marine product license under section 13-74-42 and proper receipts as required under section 189-11, HRS, provided that the bottomfish were caught from the waters of the above-described areas or lawfully imported into the State; or
- (3) A valid aquaculture license under section 13-74-43 or valid license to sell reared species under section 13-74-44.

(c) Persons issued a special activity permit pursuant to section 187A-6, HRS, or other exemptions provided by law, may be exempted from the provisions of this chapter. [Eff 10/18/2010] (Auth: HRS §§187A-6, 189-6) (Imp: HRS §§187A-6, 189-6)

Exhibit A			
Bottomfish Restricted Fishing Areas (BRFA) 12/8/06			
Coordinates (endpoints)			
BRFA	Northwest (1)		Northeast (2)
A	21° 44'	N Lat, 160° 39' W Long	21° 44' N Lat, 160° 30' W Long
B	21° 50' 25"	N Lat, 160° 07' 30" W Long	21° 51' 22" N Lat, 160° 04' 30" W Long
C	21° 52' 30"	N Lat, 159° 32' W Long	21° 52' 30" N Lat, 159° 23' W Long
D	21° 39'	N Lat, 158° 24' W Long	21° 39' N Lat, 158° 15' W Long
E	21° 25'	N Lat, 157° 41' W Long	21° 25' N Lat, 157° 32' W Long
F	21° 02'	N Lat, 157° 34' W Long	21° 02' N Lat, 157° 22' W Long
G	21° 14'	N Lat, 156° 58' W Long	21° 14' N Lat, 156° 52' W Long
H	21° 07'	N Lat, 156° 42' W Long	21° 07' N Lat, 156° 38' W Long
J	20° 55'	N Lat, 156° 08' W Long	20° 55' N Lat, 155° 59' W Long
K	20° 21'	N Lat, 155° 53' W Long	20° 21' N Lat, 155° 25' W Long
L	19° 44'	N Lat, 154° 59' 50" W Long	19° 44' N Lat, 154° 54' W Long
M	18° 54' 13"	N Lat, 155° 41' W Long	18° 57' N Lat, 155° 37' W Long
BRFA	Southeast (3)		Southwest (4)
A	21° 41'	N Lat, 160° 30' W Long	21° 41' N Lat, 160° 39' W Long
B	21° 46' 30"	N Lat, 160° 04' 30" W Long	21° 46' 30" N Lat, 160° 07' 30" W Long
C	21° 50' 30"	N Lat, 159° 23' W Long	21° 50' 30" N Lat, 159° 32' W Long
D	21° 36' 18"	N Lat, 158° 15' W Long	21° 36' N Lat, 158° 17' 10" W Long
E	21° 17'	N Lat, 157° 32' W Long	21° 17' N Lat, 157° 37' 47" W Long
F	20° 55'	N Lat, 157° 22' W Long	20° 55' N Lat, 157° 34' W Long
G	21° 10'	N Lat, 156° 52' W Long	21° 13' 08" N Lat, 156° 58' W Long
H	21° 03'	N Lat, 156° 38' W Long	21° 03' N Lat, 156° 42' W Long
J	20° 47'	N Lat, 155° 59' W Long	20° 52' 03" N Lat, 156° 08' W Long
K	20° 05' 30"	N Lat, 155° 25' W Long	20° 16' 03" N Lat, 155° 53' W Long
L	19° 35'	N Lat, 154° 54' W Long	19° 35' N Lat, 154° 55' 02" W Long
M	18° 51'	N Lat, 155° 37' W Long	18° 51' N Lat, 155° 41' W Long
Additional (5)			
D	21° 36'	N Lat, 158° 24' W Long	
E	21° 23' 38"	N Lat, 157° 41' W Long	

Exhibit A: Bottomfish Restricted Fishing Areas (BRFAs) 4-8-2010

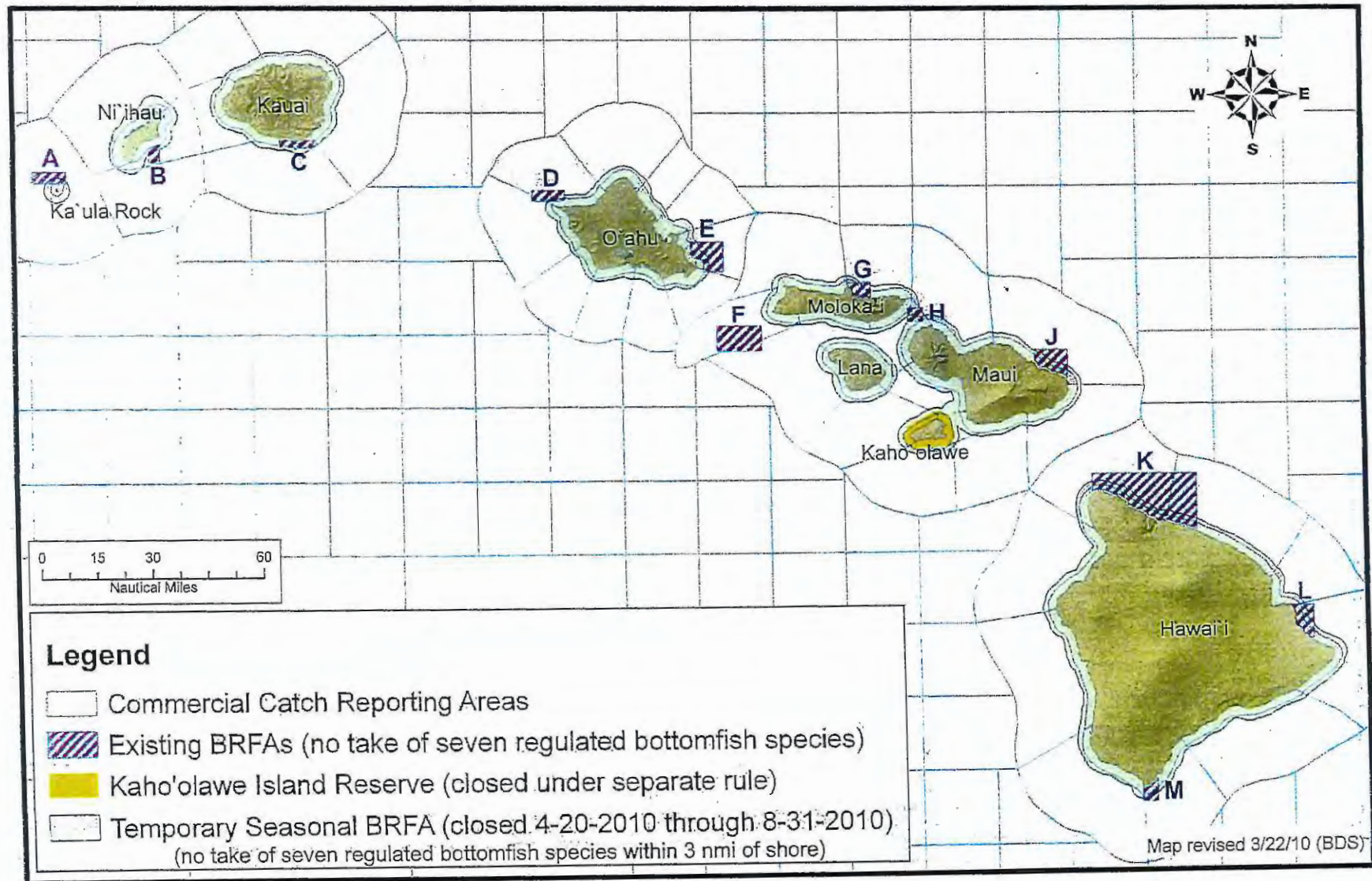


Exhibit A2: Kauai County BRFAs 4-8-2010

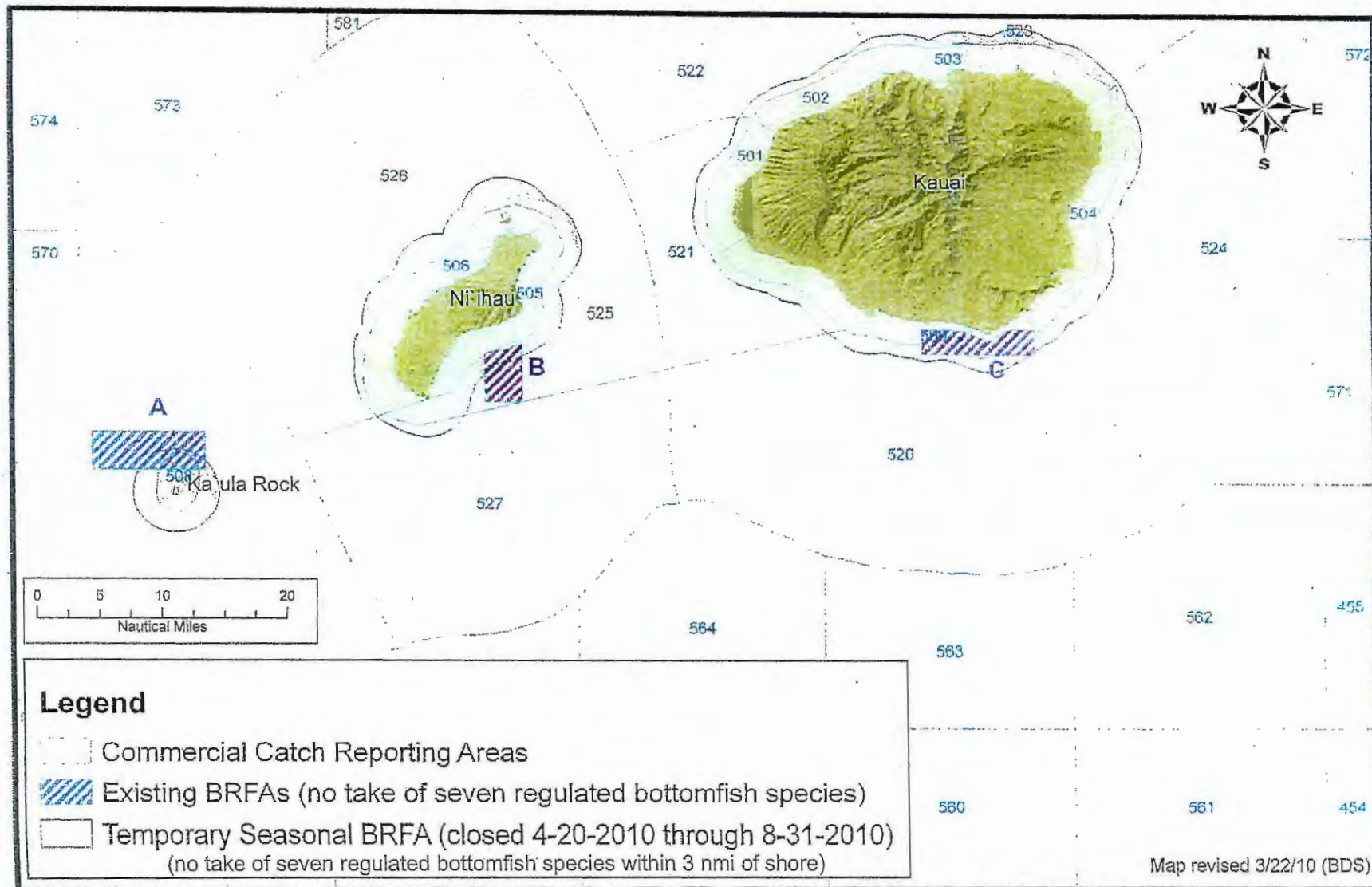


Exhibit A3: Honolulu City & County BRFAs 4-8-2010

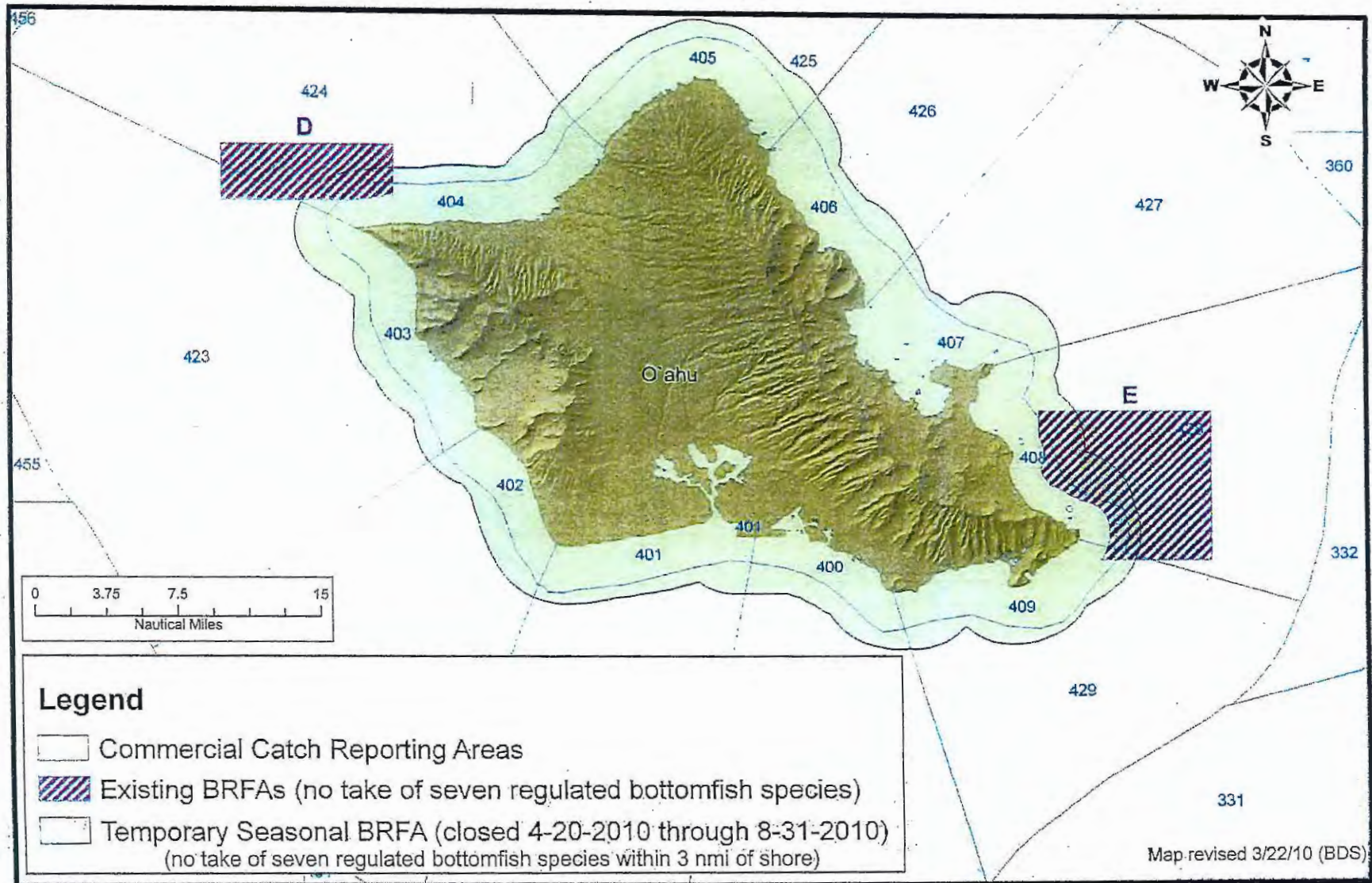


Exhibit A4: Maui County BRFAs 4-8-2010

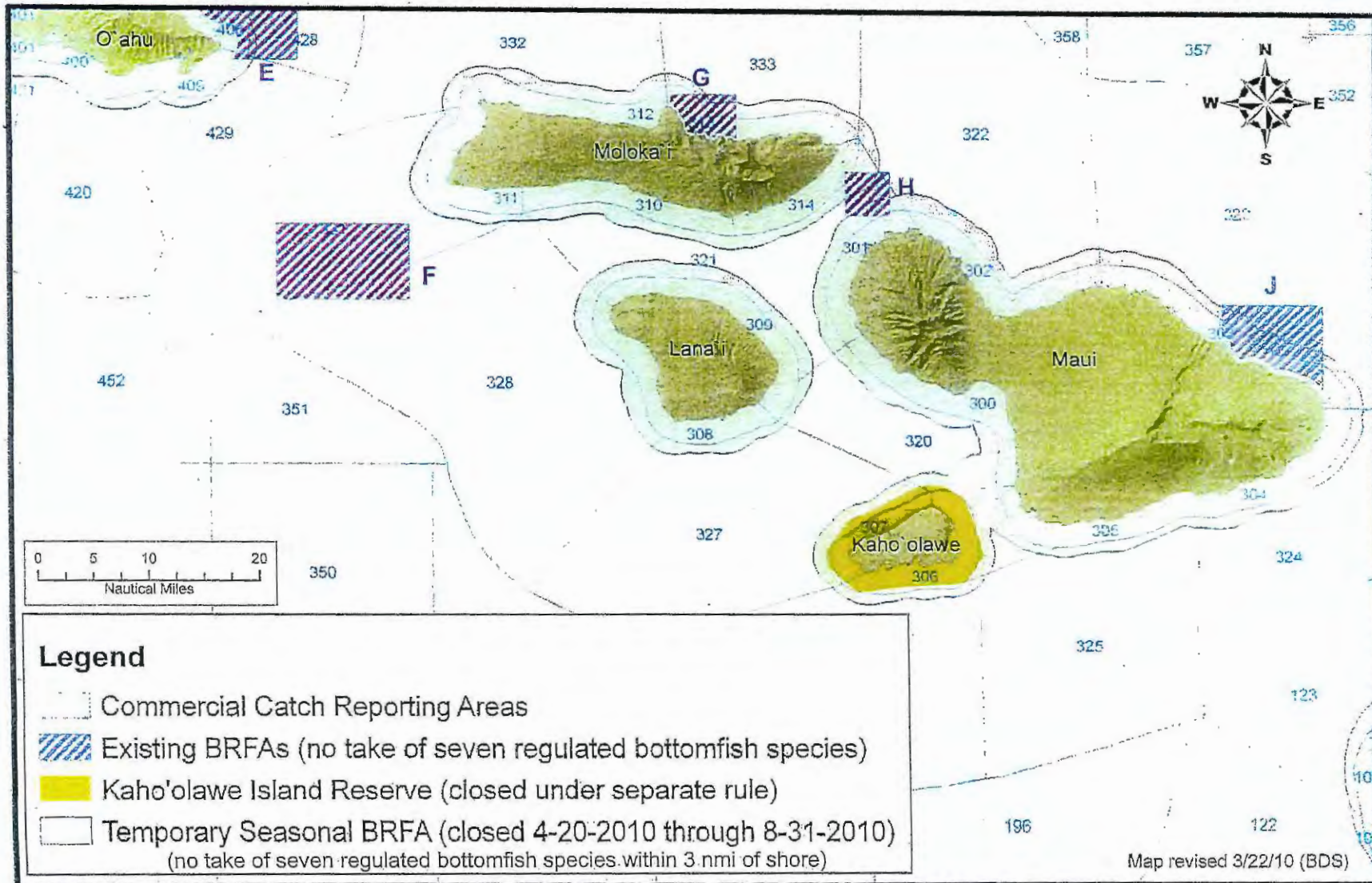
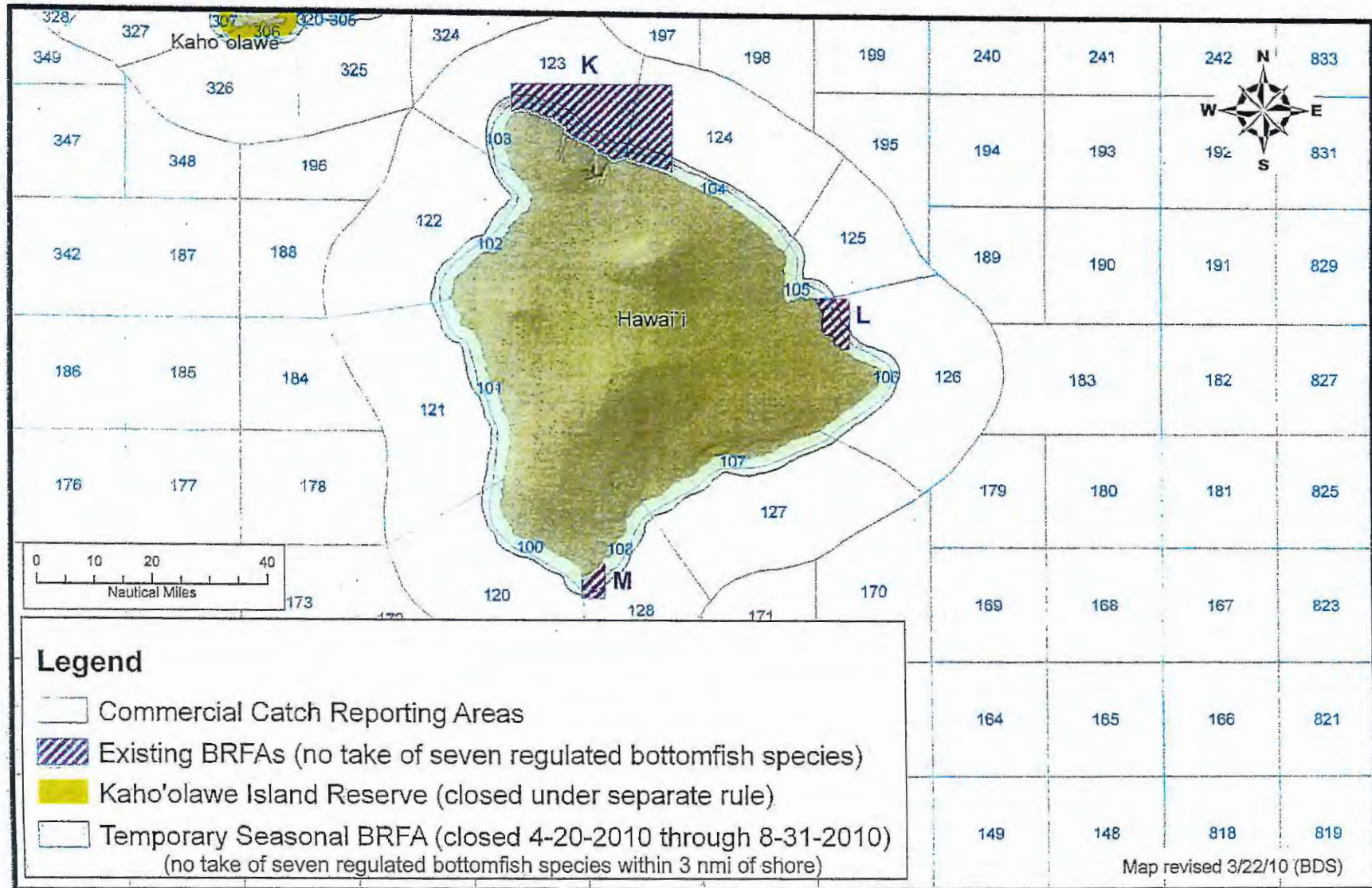


Exhibit A5: Hawai'i County BRFAs 4-8-2010



VI. Legislative Matters

A.Update on Senate Bill 1348 SD1 HD1 CD1 Relating to the Small Business Regulatory Review Board

SB1348 SD1 HD1 CD1

Measure Title: RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.
Report Title: Small Business Regulatory Review Board; Powers
Description: Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small businesses. (CD1)
Companion:
Package: None
Current Referral: EDB, JUD, FIN
Introducer(s): K. RHOADS, Wakai

<u>Sort by Date</u>	<u>Status Text</u>
1/24/2019	S Introduced.
1/24/2019	S Passed First Reading.
1/28/2019	S Referred to EET, JDC.
1/31/2019	S The committee(s) on EET has scheduled a public hearing on 02-04-19 3:00PM in conference room 414.
2/4/2019	S The committee(s) on EET recommend(s) that the measure be PASSED, UNAMENDED. The votes in EET were as follows: 4 Aye(s): Senator(s) Wakai, Taniguchi, Inouye, J.Keohokalole; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Fevella.
2/15/2019	S Reported from EET (Stand. Com. Rep. No. 421) with recommendation of passage on Second Reading and referral to JDC.
2/15/2019	S Report adopted; Passed Second Reading and referred to JDC.
2/21/2019	S The committee(s) on JDC will hold a public decision making on 02-26-19 9:00AM in conference room 016.
2/26/2019	S The committee(s) on JDC recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDC were as follows: 4 Aye(s): Senator(s) K. Rhoads, Wakai, Gabbard, Kim; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Fevella.
3/1/2019	S Reported from JDC (Stand. Com. Rep. No. 1015) with recommendation of passage on Third Reading, as amended (SD 1).
3/1/2019	S 48 Hrs. Notice 03-05-19.
3/5/2019	S Report adopted; Passed Third Reading, as amended (SD 1). Ayes, 24; Aye(s) with reservations: none . Noes, 0 (none). Excused, 1 (Senator(s) Harimoto). Transmitted to House.
3/5/2019	H Received from Senate (Sen. Com. No. 456) in amended form (SD 1).
3/7/2019	H Pass First Reading
3/7/2019	H Referred to EDB, JUD, referral sheet 27
3/7/2019	H Bill scheduled to be heard by EDB on Wednesday, 03-13-19 10:00AM in House conference room 309.
3/13/2019	H The committee(s) on EDB recommend(s) that the measure be deferred until 03-15-19 11:30am.
3/14/2019	H Bill scheduled for decision making on Friday, 03-15-19 11:30AM in conference room 309.
3/15/2019	H The committee(s) on EDB recommend(s) that the measure be deferred until 03-20-19 11:30am.
3/15/2019	H Bill scheduled for decision making on Wednesday, 03-20-19 11:30AM in conference room 309.
3/20/2019	H The committees on EDB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 8 Ayes: Representative(s) McKelvey, Kitagawa, Eli, Ichiyama, Johanson, Quinlan, Yamashita, Matsumoto; Ayes with reservations: none; Noes: none; and Excused: none.
3/22/2019	H Reported from EDB (Stand. Com. Rep. No. 1609) as amended in HD 1, recommending passage on Second Reading and referral to JUD.

3/22/2019	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JUD with none voting aye with reservations; none voting no (0) and Representative(s) Quinlan, Yamane excused (2).
3/27/2019	H	Bill scheduled to be heard by JUD on Friday, 03-29-19 2:05PM in House conference room 325.
3/29/2019	H	This measure has been deleted from the meeting scheduled on Friday 03-29-19 2:05PM in conference room 325.
4/1/2019	H	Re-referred to EDB, FIN, referral sheet 45
4/2/2019	H	Bill scheduled to be heard by FIN on Wednesday, 04-03-19 2:30PM in House conference room 308.
4/3/2019	H	The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 13 Ayes: Representative(s) Luke, Cullen, Eli, Gates, Hashimoto, Kitagawa, B. Kobayashi, Matayoshi, Nakamura, Todd, Wildberger, Yamashita, McDermott; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Holt, Nishimoto.
4/5/2019	H	Reported from FIN (Stand. Com. Rep. No. 2151), recommending passage on Third Reading.
4/9/2019	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and none excused (0). Transmitted to Senate.
4/11/2019	S	Received from House (Hse. Com. No. 787).
4/11/2019	S	Senate disagrees with House amendments.
4/11/2019	H	Received notice of disagreement (Sen. Com. No. 893).
4/12/2019	S	Senate Conferees Appointed: Wakai Chair; K. Rhoads, Taniguchi Co-Chairs; Fevella.
4/12/2019	H	Received notice of Senate conferees (Sen. Com. No. 899).
4/22/2019	H	Re-referred to EDB, JUD, FIN, referral sheet 56
4/22/2019	H	House Conferees Appointed: McKelvey, C. Lee, Kitagawa Co-Chairs; Matsumoto.
4/23/2019	S	Received notice of appointment of House conferees (Hse. Com. No. 826).
4/23/2019	S	Conference committee meeting scheduled for 04-24-19 12:49PM in conference room 224.
4/24/2019	S	Conference committee meeting to reconvene on 04-25-19 12:49PM in conference room 224.
4/25/2019	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 3 Aye(s): Senator(s) Wakai, K. Rhoads, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Taniguchi.
4/25/2019	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 4 Ayes: Representative(s) McKelvey, C. Lee, Kitagawa, Matsumoto; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
4/26/2019	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 105).
4/26/2019	S	48 Hrs. Notice (as amended CD 1) 04-30-19.
4/26/2019	H	Reported from Conference Committee (Conf Com. Rep. No. 105) as amended in (CD 1).
4/26/2019	H	Forty-eight (48) hours notice Tuesday, 04-30-19.
4/30/2019	S	Passed Final Reading, as amended (CD 1). Ayes, 25; Aye(s) with reservations: none . 0 No (es): none. 0 Excused: none.
4/30/2019	H	Passed Final Reading as amended in CD 1 with none voting aye with reservations; none voting no (0) and none excused (0).
5/1/2019	H	Received notice of Final Reading (Sen. Com. No. 968).
5/2/2019	S	Received notice of passage on Final Reading in House (Hse. Com. No. 883).
5/6/2019	S	Enrolled to Governor.

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

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

SB1348 SD1 HD1 CD1

THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

S.B. NO.

1348
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

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

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

"(a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule proposed, amended, or adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county [~~ordinances,~~] rules, the board may make recommendations to the county council or the mayor for appropriate

action."

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

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

Report Title:

Small Business Regulatory Review Board; Powers

Description:

Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small businesses. (CD1)

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

VII. 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), as follows:**
 - 1. Meetings with Board Members and State Department Directors**
 - 2. Hawaii Small Business Fair at Leeward Community Conference on May 4, 2019**
 - 3. Maui Small Business Conference at Maui Arts & Cultural Center on May 8 and 9, 2019**
 - 4. Review of "Discussion Leader Assignments" for State and County Agencies' Administrative Rule Review**

DISCUSSION LEADER ASSIGNMENTS

(SBRRB / SBRRB / Members / 2019 / DiscussionLeaderAssignments 2019)

1. Office of the Governor <http://governor.hawaii.gov>

Address: Governor David Y. Ige
Executive Chambers
State Capitol
Honolulu, HI 96813

Phone: (808) 586-0034
Fax: (808) 586-0006

Discussion Leader: Tony Borge
Back-up Discussion Leader: Robert Cundiff

2. Office of the Lieutenant Governor <http://ltgov.hawaii.gov>

Address: Lieutenant Governor Josh Green
State Capitol, Fifth Floor
Honolulu, HI 96813

Phone: **Oahu/** (808) 586-0255
Maui/ 984-2400 ext. 60255
Hawaii/ 974-4000 ext. 60255
Kauai/ 274-3141 ext. 60255
Molokai/Lanai/ 1(800) 468-4644 ext. 60255
Fax: (808) 586-0231

Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: N/A

3. Department of Accounting & General Services <http://ags.hawaii.gov>

Address: Curt T. Otaguro, Comptroller
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 586-0400
Fax: (808) 586-0775
Email: dags@hawaii.gov

Discussion Leader: Mark Ritchie
Back-up Discussion Leader: Tony Borge

4. Department of Agriculture <http://hdoa.hawaii.gov>

Address: Phyllis Shimabukuro-Geiser,
Acting Chairperson
Board of Agriculture
1428 South King Street

Honolulu, HI 96814
Phone: (808) 973-9550
Fax: (808) 973-9613
Email: hdoa.info@hawaii.gov

Discussion Leader: Will Lydgate
Back-up Discussion Leader: Robert Cundiff

5. Department of the Attorney General <http://ag.hawaii.gov>

Address: Clare Connors, Attorney General
Hale Auhau
425 Queen Street
Honolulu, HI 96813

Phone: (808) 586-1282
Fax: (808) 586-1239

Discussion Leader: Tony Borge
Back-up Discussion Leader: Robert Cundiff

6. Department of Budget & Finance <http://budget.hawaii.gov>

Address: Robert Yu, Acting Director Phone: (808) 586-1518
P.O. Box 150 Fax: (808) 586-1976
Honolulu, HI 96810 Email: HI.BudgetandFinance@hawaii.gov

Discussion Leader: Nancy Atmospera-Walch

Back-up Discussion Leader: Mark Ritchie

7. Public Utilities Commission <http://puc.hawaii.gov>

Address: Leo R. Asuncion, Jr., Chair Phone: (808) 586-2020
Kekuanaoa Building Fax: (808) 586-2066
465 South King Street, Room 103 Email: puc@hawaii.gov
Honolulu, HI 96813

Discussion Leader: Mark Ritchie

Back-up Discussion Leader: N/A

8. Department of Business, Eco Dev. & Tourism <http://dbedt.hawaii.gov>

Address: Michael McCartney, Director Phone: (808) 586-2355
P.O. Box 2359 Fax: (808) 586-2377
Honolulu, HI 96804 Email: dbedt.director@hawaii.gov

Discussion Leader: Robert Cundiff

Back-up Discussion Leader: Will Lydgate

9. Department of Commerce & Consumer Affairs <http://cca.hawaii.gov>

Address: Catherine P. Awakuni Colón, Director Phone: (808) 586-2850
335 Merchant Street Fax: (808) 586-2856
Honolulu, HI 96813 Email: dcca@dcca.hawaii.gov

Discussion Leader: Mark Ritchie

Back-up Discussion Leader: Mary Albitz

10. Department of Defense <http://dod.hawaii.gov>

Address: Major General Arthur “Joe” Logan Phone: (808) 733-4246
Office of the Adjutant General Fax: (808) 733-4499
3949 Diamond Head Road
Honolulu, HI 96816

Discussion Leader: Nancy Atmospera-Walch

Back-up Discussion Leader: N/A

11. Department of Education..... <http://hawaiipublicschools.org>

Address: Christina Kishimoto, Superintendent
1390 Miller Street
Honolulu, HI 96813

Phone: (808) 586-3230
Fax: (808) 586-3314
Email: doe_info@hawaiidoe.org

Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: Harris Nakamoto

12. Department of Hawaiian Home Lands..... <http://dhhl.hawaii.gov>

Address: TBD, Chairperson
P.O. Box 1879
Honolulu, HI 96805

Phone: (808) 620-9501
Fax: (808) 620-9529
Email: dhhl.hawaii@gmail.com

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Garth Yamanaka

13. Department of Health..... <http://health.hawaii.gov>

Address: Bruce Anderson, Ph.D., Director
1250 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 586-4410
Fax: (808) 586-4368
Email: webmail@doh.hawaii.gov

Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Nancy Atmospera-Walch

14. Department of Human Resources Development..... <http://hrd.hawaii.gov>

Address: Ryker Wada, Director
235 South Beretania Street, Suite 1400
Honolulu, HI 96813

Phone: (808) 587-1100
Fax: (808) 587-1106
Email: dhrd@hawaii.gov

Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Mary Albitz

15. Department of Human Services..... <http://humanservices.hawaii.gov>

Address: Pankaj Bhanot, Director
P.O. Box 339
Honolulu, HI 96809-0339

Phone: (808) 586-4993
Fax: (808) 586-4890
Email: dhs@dhs.hawaii.gov

Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Nancy Atmospera-Walch

16. Department of Labor & Industrial Relations..... <http://labor.hawaii.gov>

Address: Scott T. Murakami, Director
830 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 586-8844
Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

Discussion Leader: Mary Albitz
Back-up Discussion Leader: Harris Nakamoto

- 17. Department of Land and Natural Resources.....** <http://dlnr.hawaii.gov>
 Address: Suzanne Case, Chairperson Phone: (808) 587-0401
 Kalanimoku Building Fax: (808) 587-0390
 1151 Punchbowl Street E-mail: dlnr@hawaii.gov
 Honolulu, HI 96813
Discussion Leader: Mary Albitz
Back-up Discussion Leader: Will Lydgate
- 18. Department of Public Safety.....** <http://dps.hawaii.gov>
 Address: Nolan Espinda, Director Phone: (808) 587-1288
 919 Ala Moana Boulevard, 4th Floor Fax: (808) 587-1282
 Honolulu, HI 96814 Email: psd.office.of.the.director@hawaii.gov
Discussion Leader: Robert Cundiff
Back-up Discussion Leader: N/A
- 19. Department of Taxation.....** <http://tax.Hawaii.gov>
 Address: Linda Chu Takayama, Director Phone: (808) 587-1540
 P.O. Box 259 Fax: (808) 587-1560
 Honolulu, HI 96809-0259 Email: Tax.Directors.Office@hawaii.gov
Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: Will Lydgate
- 20. Department of Transportation.....** <http://hidot.hawaii.gov>
 Address: Jade Butay, Director Phone: (808) 587-2150
 Aliiimoku Building Fax: (808) 587-2167
 869 Punchbowl Street, Room 509
 Honolulu, HI 96813
Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: N/A
- 21. University of Hawaii.....** <http://www.hawaii.edu>
 Address: **TBD**, President Phone: (808) 956-9704
 Bachman Hall, Room 202 Email: david@hawaii.edu
 2444 Dole Street
 Honolulu, HI 96822
 Address: Lee Putnam, Chair, Board of Regents Phone: (808) 956-8213
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 Honolulu, HI 96822
Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: Mary Albitz