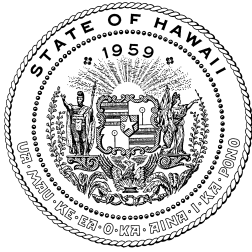


Small Business Regulatory Review Board Meeting

October 16, 2025

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 798-0737

AGENDA

Thursday, October 16, 2025 ★ 10:00 a.m.
No. 1 Capitol District Building
250 South Hotel Street, Conference Room 436
Honolulu, HI 96813

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

A. By attending the in-person meeting at:

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

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

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

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

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

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

DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, October 15, 2025, so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

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

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

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane
Tokioka
DBEDT Director

Dane K. Wicker
*DBEDT Deputy
Director*

Members

Jonathan Shick
*Chairperson
O'ahu*

Sanford Morioka
*Vice Chairperson
O'ahu*

Mary Albitz
*2nd Vice
Chairperson
Maui*

James (Kimo) Lee
Hawai'i

Leelen Park
Hawai'i

Tessa Gomes
O'ahu

Cynthia Hobson
O'ahu

Nikki Ige
Kaua'i

Dr. Jennifer
Salisbury
Maui

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of September 18, 2025 Meeting Minutes

III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Hawaii Administrative Rules (HAR) Title 4 Chapter 159, **Agricultural Enterprise Program Rules**, promulgated by Department of Agriculture and Biosecurity (DAB) – *Discussion Leader – Nicolle Ige*

IV. New Business

- A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 16 Chapter 23, **Motor Vehicle Insurance Law**, promulgated by Department of Commerce and Consumer Affairs – *Discussion Leader – Tessa Gomes*
- B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 18 Chapter 235, **Income Tax Law**, promulgated by Department of Taxation – *Discussion Leader – Nicolle Ige*
- C. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 12 Subtitle 8 Part 11 Chapter 229, **General, Administrative and Legal Provisions**, promulgated by Department of Labor and Industrial Relations – *Discussion Leader – Mary Albitz*

V. Administrative Matters

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)
 - 1. Business Revitalization Taskforce's most recent meeting pursuant to Act 142 (Sessions Law Hawaii (SLH) 2024, Senate Bill 2974 Relating to Economic Development) – Mandates that the Department of Business, Economic Development, and Tourism establish a task force in order to identify methods to improve Hawaii's general economic competitiveness and business climate, including the mitigations of regulatory and tax burdens
 - 2. SPEED (Simplified Permitting for Enhanced Economic Development) Task Force's most recent meeting pursuant to Act 133, SLH 2025 – Establishes the SPEED Task Force to identify actions taken, challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental development permit processes; and appropriates funds
 - 3. Becker Communications Inc., regarding the Board's Small Business Outreach
 - 4. Presentations to Industry Associations
 - 5. Staff's Small Business Outreach

VI. Next Meeting: Thursday, November 20, 2025, at 10:00 a.m., held via Zoom and at 250 South Hotel Street – No. 1 Capitol District Building, Conference Rm 436, Honolulu, HI 96813

VII. Adjournment

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

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

II. Approval of September 18, 2025 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - **DRAFT**

September 18, 2025

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

MEMBERS PRESENT:

- Jonathan Shick, Chair
- Sanford Morioka, Vice Chair
- Mary Albitz, Second Vice Chair
- Nikki Ige
- Dr. Jennifer Salisbury
- Leelen Park
- Tessa Gomes

ABSENT MEMBERS:

- James (Kimo) Lee
- David Sikkink

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL of AUGUST 21, 2025 MINUTES**

Mr. Park motioned to approve the August 21, 2025 meeting minutes, as presented. Second Vice Chair Albitz seconded the motion and the Board members unanimously agreed.

III. Summary from Honorable House Representative Greggor Ilagan of "Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force"

Establishes the SPEED Task Force to identify actions taken, challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate State and intergovernmental development permit processes; and appropriates funds.

Honorable House Representative Greggor Ilagan presented the Board with the purpose of the legislatively-created SPEED task force; his presentation entailed what the public will expect from the SPEED task force. The first task force meeting was held on September 11, 2025 and its mission is to have an integrated statewide permitting format.

There are 20,000 permits issued each year throughout the neighbor islands. To create a statewide process, the first step is to understand what types of permits are processed. Currently, there are 40 different types of permits, along with various approvals and regulatory processes. As such, the following three key areas will be the task force's priority: 1) building permits; 2) historic preservation compliance; and 3) individual wastewater system permits.

The task force's last step is to keep those in mind who use the permitting process: new homeowners, family businesses, and residential and commercial developers. According to UHERO, based on the Washington Index, Hawaii tops out of all the 50 states in the most burdensome housing regulations and permitting processes categories.

In 2022 and 2023, \$258.7 million was the estimated cost in Honolulu for permitting delays. Delays are caused by regulatory complexity, staff shortages, poor communication and political will. Both permit applicants and the government must work together to educate applicants on how to be "permit ready," equip government with digital tools and staff support, and set expectations and benchmarks on both sides.

There are over 30 members on the task force, of which this Board's member Dr. Jennifer Salisbury is one. To find the SPEED task force website, go to Representative Ilagan's government webpage at repilagan@capitol.hawaii.gov, then to stf@capitol.hawaii.gov.

IV. NEW BUSINESS

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 217 Kakaako Mauka Area Rules, promulgated by Hawaii Community Authority (HCDA) / Department of Business, Economic Development, and Tourism (DBEDT)

Discussion leader Ms. Gomes stated that these pre-public hearing rules are the result of the inadvertent changes that have come up after the rules were adopted earlier this year. Mr. Ryan Tam, Director of Planning at HCDA briefly discussed what HCDA's mission is, and that the subject rules focus on the Kakaako area.

The amendments modify provisions of the Kakaako Community Development District Mauka Area Rules to reduce the maximum allowable density in the Central Kakaako Neighborhood Zone from a floor ratio of 3.5 down to 1.5. This modification is intended to help small business industrial users retain eligibility for property tax incentives established by the City and County of Honolulu within transit-oriented development areas.

The amendments would also enable qualifying property owners and businesses in the Central Kakaako Neighborhood District to remain eligible for property tax exemptions under Ordinance 16-21. This change will enable the continuation of a 50% property tax exemption for eligible properties while reducing the overall tax revenues and also enabling industrial business feasibility.

Dr. Salisbury motioned to send the proposed amended rules to public hearing. Ms. Gomes seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Title 8 Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, and Chapter 102, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui, promulgated by the Department of Liquor Control, County of Maui

Discussion leader and Second Vice Chair Albitz explained that this rule proposal is to match exactly what the State's regulations are. Although the negative small business impact results in increasing fines, these fines have already been implemented by the State.

Mr. Layne Silva, Director of County of Maui's Department of Liquor Control, explained that the Hawaii Revised Statutes (HRS) were revised to increase the maximum penalty, increasing the maximum allowable fine to the sum of \$5,000 from \$2,000. Instead of identifying a monetary value in the rules, the rule revision states that the Liquor Commission will comply with the HRS.

Second Vice Chair Albitz motioned to send the proposed amended rules to public hearing. Ms. Ige seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

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

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

Ms. Gomes attended last week's task force's meeting that discussed putting together a business competitive Act and task force proposal. A bill will be created with some lofty goals for Hawaii to become a more "business friendly" state. The next meeting is scheduled for October 23rd.

2. Becker Communications, Inc., regarding the Board's Small Business Outreach

Ms. Ariola stated that at the last meeting with Becker, it was brought to DBEDT's attention that some of its divisions and agencies have experienced "zoom bombings" during online meetings where inappropriate videos, audio and conversations by outside parties are hacking into the system and controlling the meetings. The host no longer has control of the meetings, and are unable to mute or shut down the interference.

Due to these interferences, it was recommended by DBEDT's communication officer to find other options to host the Board's meetings rather than through the normal Zoom platform. Ms. Gomes mentioned that this same occurrence happened during one of the Business Revitalization Task Force's meetings. Subsequently, the agency in charge of this task force, READ, created a Zoom Webinar. In such a situation, no one from the public can converse in the meeting unless given permission.

3. Presentation to Industry Associations

Dr. Salisbury and Second Vice Chair Albitz have a meeting scheduled for September 29th with the County of Mayor's chief of staff to discuss: 1) implementing a meeting for this Board on Maui; 2) making sure that the County knows that Dr. Salisbury is a liaison for this Board along with Ms. Albitz; and 3) reviewing this Board's involvement with the SPEED taskforce.

Dr. Salisbury will create a budget request for her to attend various venues for the Board's outreach efforts, along with SPEED's outreach efforts, and send it to both DBEDT staff, Chair Shick and House Representative Ilagan for review.

4. Staff's Small Business Outreach

Nothing was discussed.

VI. NEXT MEETING – Thursday, October 16, 2025 at 10:00 a.m., via Zoom and in Conference room 436 at No. 1 Capitol District Building, 250 S. Hotel Street, Honolulu, HI 96813.

VII. ADJOURNMENT – Second Vice Chair Albitz motioned to adjourn the meeting and Dr. Salisbury seconded the motion; the meeting adjourned at 11:20 a.m.

III. Old Business

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Title 4 Chapter 159, Agricultural Enterprise Program Rules, promulgated by Department of Agriculture and Biosecurity (DAB) – Exhibit 1

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

Department or Agency: Department of Agriculture and Biosecurity (DAB)

Administrative Rule Title and Chapter: 4-159

Chapter Name: Agricultural Enterprise Program Rules

Contact Person/Title: Kori Koike, Planner

Phone Number: 808-973-9473

E-mail Address: kori.a.koike@hawaii.gov **Date:** September 30, 2025

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

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

☒ Yes ☐ No

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

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

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

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

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

*

*

*

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

DAB posted a public notice for comments on the new set of rules on June 24, 2025 in all major newspaper publications in the State. DAB also published the draft rules on the DAB website.

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

There were no recommendations made by small businesses or small business owners during this public hearing commenting period.

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.

DAB published the public notice on June 24, 2025 in the Star Advertiser, Hawaii Tribune Herald, West Hawaii Today, The Maui News, and the Garden Island newspapers. The public notice and draft rules were also posted on the DAB website from June 24, 2025 and taken down on August 7, 2025.

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

No public comments were provided.

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

No public comments were provided.

4. The number of persons who:
 - (i) Attended the public hearing: 12
 - (ii) Testified at the hearing: 0
 - (iii) Submitted written comments: 0

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

☐ Yes ☒ No

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

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

N/A

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

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

Small Business Regulatory Review Board

MEETING MINUTES

March 20, 2025

- I. **CALL TO ORDER:** Chair Shick called the meeting to order at 10:04 a.m., with a quorum present.

MEMBERS PRESENT:

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

ABSENT MEMBERS:

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

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL of February 20, 2025 MINUTES**

Mr. Ritchie motioned to approve the February 20, 2025 meeting minutes as presented. Mr. Cundiff seconded the motion, Vice Chair Albitz abstained, and the remaining Board members agreed.

III. **OLD BUSINESS**

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

This measure was deferred until the next Board meeting.

IV. **NEW BUSINESS**

- A. Discussion and Action on the Small Business Impact Statement and Proposed New HAR Title 4 Chapter 159, Agricultural Enterprises Lands Program Rules, promulgated by Department of Agriculture (DOA)

Discussion leader Ms. Ige stated that these proposed rules will assist small businesses and agricultural production with state agricultural lands; she introduced Ms. Kori Koike, Planner at DOA's Division of Agricultural Resource Management.

Ms. Koike explained that the newly created rules will allow lessees and tenants to operate broader activities related to agriculture while under the management and control of DOA. This new program provides for a more robust business model that will allow and provide for more sustainable food to Hawaii's communities, as well as support the ability to expand their businesses.

Overall, the Agricultural Enterprises Lands Program rules will be a resource for small businesses as this program will allow processing and other business practices previously restricted on DOA leased lands. In response to Vice Chair Albitz's inquiry, public feedback will be received when the Board of Agriculture reviews these rules. Chair Shick, Mr. Ritchie, and Ms. Ige all commented that these rules will be a benefit and very positive for small businesses due to the increased uses of land and increase support for agriculture business growth.

Ms. Koike explained that part of the application process requires eligibility information, such as proven five years of Hawaii state taxes, as well as a bidding process. Thus, the process will include an oversight for weeding out big businesses coming in and bidding out small, local businesses for fairness to the process. She added that these rules pertain to only lands that DOA manages and have long-time leases on. DOA does not have any oversight of private entities or private landowners.

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

V. ADMINISTRATIVE MATTERS

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

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

Mr. Yamanaka attended the past three meetings of his assigned group; the group reviewed the results of the business survey that was recently emailed to Hawaii businesses. Since only 30 surveys were returned, the group is keeping the survey open longer. Another meeting has yet to be scheduled but the group will plan to meet prior to April 10th, which is when the whole taskforce will be meeting.

Once all the main business concerns have been established, the group will find out from the taskforce what needs to be changed and what solutions might exist.

CHAPTER 4-159 - ADOPTION OF NEW CHAPTER
Standard Format
(9/15/2025)

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

Adoption of Chapter 4-159
Hawaii Administrative Rules

August 29, 2025

SUMMARY

Chapter 4-159, Hawaii Administrative Rules, entitled
"Agricultural Enterprise Program Rules", is adopted.

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

Adoption of Chapter 4-159
Hawaii Administrative Rules

August 29, 2025

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

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

SUBTITLE 8

DIVISION OF AGRICULTURAL RESOURCE MANAGEMENT

CHAPTER 159

AGRICULTURAL ENTERPRISE PROGRAM RULES

Subchapter 1 General Provisions

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

Subchapter 2 Transfer of Agricultural Enterprise
Lands

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

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

Subchapter 3 Policy, Planning, and Development

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

Subchapter 4 Disposition of Agricultural Enterprise Lands

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

Subchapter 5 Management of Agricultural Enterprise Lands

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

§4-159-37 Taxes

§4-159-38 Lease forfeiture

Subchapter 6 Other Provisions

§4-159-39 Severability

SUBCHAPTER 1

GENERAL PROVISIONS

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

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

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

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

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

"Agricultural enterprise" means any business, company, or economic activity with direct and demonstrated ties and relations to any definition of "agricultural or aquacultural" activities defined in

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

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

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

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

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

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

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

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

"Bona fide operator" means a person who:

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

experience, and training as a vocational trainee.

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

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

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

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

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

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

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

"Department" means the department of agriculture and biosecurity.

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

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

"Established date of operation" means the date on which the original agricultural enterprise operation first commenced operation. If the physical facilities of the enterprise operation are subsequently expanded

or new technology adopted, the established date of operation for each change shall be the same as the established date of operation for the original operation, provided that this does not violate existing state law or county ordinances.

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

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

"Farming operation" means:

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

scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

recover moneys loaned or to recover debts otherwise owed the department under chapter 167, HRS.

"Public purpose" as used in this chapter, unless the context clearly indicates otherwise, includes but shall not be limited to all public uses, the straightening of boundaries of public lands, acquisition of access to landlocked public lands, the consolidation of the holdings of public lands, development of houselots, farmlots, and industrial parks.

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

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

"State" means the State of Hawaii.

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

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

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

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

power to:

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

- (9) Approve the transfer, assignment, or sublease of a lease or any interest therein, including the transfer of stock of a corporation including a limited liability corporation holding the lease, or the interest in an association or partnership including a limited partnership holding the lease. To the extent the board reserves such a right in the lease, upon the transfer, assignment, or sublease of a lease or any interest therein, the board may establish additional restrictions, terms, or conditions not inconsistent with this chapter to insure and promote the purposes of the demised lands;
 - (10) Waive rental payments due to natural catastrophes and other external factors beyond the lessee's control and determine the period for the waiver;
 - (11) Establish lease rentals as provided in section 4-159-21;
 - (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands; and
 - (13) Do any and all things necessary to carry out its purposes and exercise the powers granted in chapter 141D, HRS, and this chapter.
- (b) Except as provided by law, the board through the chairperson shall:
- (1) Enter into joint venture agreements or development contracts for development and infrastructure improvements of agricultural enterprise lands; or contract for subdivision, and installation of infrastructure improvement as provided for in this chapter;
 - (2) Prevent illegal activities on, unlawful occupation of, or trespassing on public lands;
 - (3) Cause all trespassers and persons unlawfully occupying public lands, and their effects, and all animals trespassing on the lands to

- be removed therefrom and to impound the seized effects and animals according to law;
- (4) Enter on any public land in order to take possession thereof, and to resume possession of any public land in case of surrender, default, forfeiture, or escheat; and
- (5) Recover money due the State for damage done to any public lands by wrongful entry and occupation or by wrongful removal therefrom or destruction of any property or asset.
- (c) The administrator shall have the power to:
 - (1) Fine any person causing an encroachment upon public land as allowed by law and the person shall be liable for administrative costs incurred by the department and for payment of damages;
 - (2) Approve other lands for development pursuant to section 141D-10, HRS, and sections 4-159-14 and 15 and lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 141D-4, HRS;
 - (3) Accept and process applications for leases;
 - (4) Disapprove lease applications when the prospective applicant is unable to meet the requirements of the program or the criteria for the particular disposition;
 - (5) Recommend for board action the disposition of lands to qualified applicants;
 - (6) Collect rents, assessments, and other fees and charges;
 - (7) Recommend for board action cancellation of leases where due notice of breach or default has been provided;
 - (8) Issue non-renewable dispositions granting easements, permits, and rights of entry for a period not in excess for fourteen days for use consistent with the purposes of this chapter;
 - (9) Recommend for board action lease rentals as provided in section 4-159-21;

- (10) Set, charge, and collect interest and a service charge on delinquent payments due on leases, permits, or other accounts. The rate of interest shall not exceed one percent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;
- (11) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (10);
- (12) Maintain an accurate inventory of transferred lands;
- (13) Enforce contracts respecting leases, licenses, permits, or other disposition of public lands;
- (14) Conduct all public auctions and drawings pertaining to the disposition of public lands and other property authorized by the board;
- (15) Keep a record of all official transactions, relating to public lands within the chairperson's jurisdiction and such record shall be a public record;
- (16) Establish, operate, maintain, and improve public lands infrastructure;
- (17) Establish additional criteria for the selection of applicants not inconsistent with those prescribed in this chapter, relating to the intended use of particular land being disposed of, the financial feasibility of lot development, or the terms of the disposition, the criteria to be

- included in the public notice of disposition; and
- (18) Establish conditions of award which shall be met to the satisfaction of the administrator prior to document execution, the conditions to be included in the public notice of disposition. [Eff _____]
 (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §3)

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

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

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

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

(b) Any criminal action against a person for any violation of chapter 141D, HRS, shall not be deemed to

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

(c) A violation of any provision in this chapter shall be cause for the board to cancel the lease and take possession of the land, or take other action as the board, in its sole discretion, deems appropriate; provided that the board shall provide notice to the lessee of the violation in accordance with rules adopted pursuant to section 141D-7, HRS. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

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

§4-159-6 Irrigation projects. In any encumbrance or similar agreement, a condition may be provided requiring the inclusion of the land being disposed in any irrigation project formed or to be formed by the state agency responsible therefor and making the land subject to assessments made or to be

made for such project and constituting such assessments a first lien upon the land which if not paid shall result in the forfeiture of the land subject to notice of default as provided in section 4-159-33. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9; HRS §171-25)

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

- (1) The taking of such materials, not in excess of one gallon per person per day for reasonable, personal, noncommercial use;
- (2) For the replenishment or protection of public areas and adjacent public lands or construction or maintenance of state approved reservoirs, harbors, launching ramps, or drainage channels with a permit authorized under chapter 183C, HRS;
- (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5, HRS; provided that the materials removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
- (4) The cleaning of areas for state or county maintenance purposes including the purposes under section 46-12, HRS; provided that the materials removed shall be placed on adjacent areas unless such placement would result in significant turbidity. [Eff] (Auth: SLH 2022, HRS §141D-7, §7; 171-58.5) (Imp: SLH 2022, HRS §141D-7, §8; HRS §171-58.5)

SUBCHAPTER 2

TRANSFER OF AGRICULTURAL ENTERPRISE LANDS

§4-159-8 Conversion of qualified and encumbered lands. (a) The board may offer to convert existing encumbrances on transferred lands into new long-term leases. These leases include those persons who:

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

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

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

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

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

(b) The board may negotiate and enter into a new lease of no less than fifteen years and not more than

sixty-five years. In issuing the new leases the department shall:

- (1) Require appraisal of the parcel in accordance with section 4-159-21;
- (2) Impose other lease terms, provisions, restrictions, and conditions as provided in this chapter as may be required to protect the State's interests;
- (3) Recover from the new lessees the costs of subdividing the parcel as may be required;
- (4) Require the payment of annual lease rent by appraisal and a premium computed at twenty-five per cent of annual base rent, with the premium to be added to the lease rent for each year of lease equal to the number of years that person occupied the land, but not to exceed seven years. For example, if land is occupied for ten years, the twenty-five per cent premium shall be paid for seven years, the maximum term; and
- (5) The department may negotiate the conversion into the new lease without regard to section 4-159-30. [Eff _____] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §5)

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

- (1) The tenant must hold a current lease or permit for use of lands transferred to the department;
- (2) The holder of an encumbrance shall be satisfactorily performing in full compliance with the terms and conditions of the existing lease, permit, or license;
- (3) The holder of an encumbrance shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county;

- (4) The holder of an encumbrance's agricultural activity, farming operation, or agricultural enterprise operation shall be fully and economically viable as specified in section 4-159-11; and
- (5) The holder, if an agricultural cooperative organized under chapter 421, HRS, or other agricultural associations or partnerships must name a "bona fide" operator. This operator or qualified representative must be at the enterprise during operational hours.

Upon request, the administrator shall evaluate the existing encumbrance to determine whether the enterprise operation and the holder of the encumbrance meets the qualification and eligibility requirements as outlined in section 4-159-11. The department on a case-by-case basis may recommend to the board the option to renegotiate or amend for extension each existing encumbrance. The board may review the recommendation and shall approve a course of action. The encumbrances deemed not qualified shall continue unabated until the encumbrance termination date expires. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

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

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

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

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

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

- (1) The demised premises are developed and utilized according to a plan of utilization and development approved by the department;
- (2) The lessee is otherwise in compliance with lease terms;
- (3) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;
- (4) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (5) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled;
- (6) The rules of the board, setting forth any additional terms and conditions, which shall

ensure and promote the purposes of the demised lands;

- (7) The board may increase the rent and adjust the rental period; and
- (8) Additional restrictions, terms, and conditions to insure and promote the purposes of the demised lands, to the extent the board has reserved this right in the lease. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

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

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

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

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

following requirements:

- (1) Have filed a general excise tax (state) G-49 form for the past seven years either with the state tax department or the Internal Revenue Service showing farming revenues;
- (2) Possess a general excise tax license from the state tax department and has filed tax returns on it;
- (3) Have maintained a viable agricultural enterprise operation;
- (4) Have not filed for bankruptcy during the term of the existing lease or not in default of more than six months rent or cited to be in violation of any lease terms, conditions, or covenants;
- (5) Possess an agricultural enterprise business financial plan, farm business financial plan or conservation plan; or
- (6) If applicable, are an approved co-operator with the state soil and water conservation district program under chapter 180, HRS.

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

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

- (1) No aggregate term period shall be less than fifteen years nor exceed sixty-five years;
- (2) The purpose of the extension shall be for a specific agricultural enterprise operation and may include waste or unusable lands for preservation of the surrounding environment and continuity of farming operations; and

- (3) The lease shall not be in violation of existing lease terms or conditions or be in arrears of rents due at the date of extension. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

SUBCHAPTER 3

POLICY, PLANNING, AND DEVELOPMENT

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

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

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

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

(c) Prior to the development of an agricultural enterprise lands project, and subject to section 141D-10, HRS, the administrator shall prepare or cause to

be prepared plans and specifications as a package for board action, including but not limited to:

- (1) Site selection analysis, including preliminary site inspection and boundary mapping, sufficient to establish the suitability of the land for its intended uses;
- (2) Development plan and preliminary engineering report, including alternative land use plans and infrastructure requirements, configurations, and costs required to service the project area, and schedule of governmental permits and approvals required to implement the project;
- (3) Feasibility analysis, including identification of potential markets, costs and economic returns, and recommended lot sizes;
- (4) Environmental impact statement prepared in accordance with chapter 11-200.1 (department of health);
- (5) Land use district boundary amendment and county plan and zoning amendments as required for the project;
- (6) Survey and cadastral work, including topographic and feature map, profile, and cross section survey, preliminary and final subdivision map, parcel descriptions, and installation of property pins for individual lots;
- (7) Design of project improvements (such as roads and irrigation facilities), including construction drawings and specifications, cost estimates, soils and drainage reports, quantity takeoffs, approval signatures from permitting agencies, and arrangements for utilities installations; and
- (8) Consultation and advice during construction phase, including resolution of problems due to unforeseen conditions, approval of substitutions by the contractor, and as-built drawings. [Eff]

(Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

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

§4-159-15 Development by joint ventures. Any agricultural enterprise lands developed by the department in partnership with a federal agency, county, or a private party shall be subject to a partnership agreement approved by the board of agriculture and biosecurity, which agreement shall provide, at a minimum:

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

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

- (1) Determine:
 - (A) Whether the lands shall be developed by

- disposition or contract;
 - (B) The location, area, and size of the lands to be developed;
 - (C) The use or uses to which the lands shall be put;
 - (D) The estimated period of time to construct and complete the development;
 - (E) Minimum requirements for on-site and off-site improvement, if any; and
 - (F) Such other terms and conditions as shall be deemed necessary by the board;
- (2) Set the minimum or upset rental and additional rental, if any, on the basis of an appraisal report prepared by an appraiser for the board, determining the rental value of the lands for the use or uses for which they are to be developed using generally accepted appraisal methods; the appraised value may be adjusted as provided in section 4-159-21;
- (3) Give notice of the proposed partnership agreement by publication at least once in a newspaper of general circulation in the State. The notice shall invite interested persons to submit applications to be selected as the partner for the project. The notice shall also state in general terms the size, location, the minimum rental and additional rent, if any, of the area to be developed, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which such lands shall be put, the last date on which applications will be received by the department, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the partnership agreement may be secured by

- interested persons;
- (4) Require each interested person to include a financial statement, and performance and experience records in agricultural or related development; provided that the board may also, in its discretion, require the interested person to submit answers, under oath, to questions contained in a questionnaire prepared by the department;
 - (5) Require each interested person to submit a sealed bid, which shall include a development plan in as much detail as possible including but not limited to the following: the interested person's proposal as to how and when the person intends to develop the land in partnership with the board, including any permitted incremental development, the amount of money the person intends to commit to the total project, the method of recovery of the interested person's costs and profits, the amount the person agrees to pay to develop the land, and the income the board will receive from leases;
 - (6) Establish reasonable criteria for the selection of a private party or parties as a partner; and
 - (7) Determine within forty-five days of the last day for filing applications the person or persons who meet the criteria for selection set by the board, and notify all persons who submitted applications of the board's determination within seven days of such determination. Any person may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any person does not notify the board of any objections and the grounds therefore, in writing, within ten days of such notice, the person shall be barred from proceeding to

seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

(b) If only one person meets the criteria for selection as the partner, the board then may enter into a partnership agreement with that person; provided that the terms of the partnership agreement shall not be less than those proposed by the partner in the application. If two or more persons meet the criteria for selection, the board shall consider all of the relevant facts of the partnership agreement, the proposals submitted by each person, the experience and financial capability of each person, and shall within forty-five days from the date of selection of the persons that met the criteria, select the person who submitted the best proposal. The board then may negotiate the details of the partnership agreement; provided that the terms of the agreement shall not be less than those proposed by the partner in the application. [Eff _____] (Auth: HRS §141-1; SLH 2022, HRS §141D-7) (Imp: SLH 2022, HRS §141D-7, §9)

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

- (1) The development and subdivision shall comply with appropriate state and county zoning and subdivision requirements; provided that, pursuant to section 141D-10, HRS, the development and subdivision may be exempt from the requirements;
- (2) The partners shall file with the department a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the partnership agreement;
- (3) The dates on which the partners must submit

- to the board for approval the preliminary plans and final plans and specifications for the total development. No construction shall commence until the board has approved the final plans and specifications, provided that with board approval, construction on an incremental basis may be permitted;
- (4) The date of completion of the total development, including the date of completion of any permitted incremental development;
 - (5) The minimum requirements for off-site and onsite improvements that the partner must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for offsite and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development;
 - (6) A partnership agreement may provide that the board shall issue a lease to the nominees of the partner, including the partner, pursuant to the terms previously negotiated and agreed upon between the partner and the board, including lease rent to the lessee and method of recoupment of expenses by the partner;
 - (7) In the event of a lease, the partner may be permitted, after the partner has completed construction of any required offsite improvement, to assign or sublease with board approval portions of the leased lands in which the construction of any offsite improvement has been completed to an assignee or sublessee who shall assume the obligations of the partner relative to the parcel being assigned or subleased, including the construction of any onsite improvement. The board may permit a partner to share in the lease rent for a fixed

- period in order to recover costs and profit;
- (8) The board may include in any partnership agreement or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in this chapter; and
 - (9) Other terms and conditions set by the board.
[Eff _____] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

SUBCHAPTER 4

DISPOSITION OF AGRICULTURAL ENTERPRISE LANDS

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

- (1) The specific use or uses to which the land is to be employed, provided that the use or uses shall be for agricultural enterprise operations or activities only;
- (2) The improvements required, provided that a minimum reasonable time shall be allowed for the completion of the improvements, and provided further that the board may permit the lessee to offset the cost of any improvements to the leasehold against not more than two years of lease rental. This provision shall not apply to lease conversions as defined in section 4-159-8;
- (3) Restrictions against alienation as set forth in section 4-159-5;
- (4) The rent as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public

hunting areas; reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches; and prevention of nuisance and waste;

- (6) A "bona fide operator" must be named and included in all applications. The "bona fide operator" or qualified representative must be at the enterprise during operational hours; and
- (7) Such other terms and conditions as the board deems necessary to preserve and protect agricultural enterprise lands and to effectuate the purposes of the state constitution and chapter 141D, HRS.
[Eff _____] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

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

- (1) No lease shall be for a term of less than fifteen years nor more than sixty-five years, including any extension granted for mortgage lending or guarantee purposes;
- (2) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or to any person who, during the five years preceding the date of disposition, has had a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof;
- (3) No lease shall be transferred, assigned, or subleased without the prior written approval of that board; any transferee, assignee, or sublessee of an agricultural enterprise land lease shall first qualify as an applicant under this chapter. No lease or any

interest therein, including corporate stock or interest in a partnership or association, shall be transferred or assigned without the consent of the board, except by devise, bequest, or intestate succession.

- (4) With the approval of the board, and subject to the provisions of section 4-159-35, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:
 - (A) The lessee becomes mentally or physically disabled;
 - (B) Extreme economic hardship is demonstrated to the satisfaction of the board; or
 - (C) The assignment is to the corporate successor of the lessee;
- (5) Prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional rental pursuant to the method outlined in section 4-159-21;
- (6) The lessee shall not sublet the whole or any part of the demised premises without the approval of the board; provided that:

- (A) Prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee;
 - (B) In the case where the lessee is required to pay rent based on a percentage of its gross receipts, the rents paid by the sublessee shall be included as part of the lessee's gross receipts; and
 - (C) The board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward; and
- (7) The lease shall be for a specific use or uses, and shall not include wastelands unless it is impractical to provide otherwise. [Eff
] (Auth: SLH 2022, HRS
§141D-7, §7) (Imp: SLH 2022, HRS §141D-7,
§8)

§4-159-20 Additional terms and conditions.

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

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

- (1) A certificate of comprehensive liability insurance to be maintained throughout the term of the lease with coverage in an amount to be determined by the administrator and

approved by the board, subject to periodic review and adjustment at intervals specified in the lease. The certificate of insurance shall name the department as an additional insured and shall require a thirty-day notice to the department of any policy change or cancellation; and

- (2) A performance bond to be maintained throughout the term of the lease in an amount equal to two times the annual base rental; provided that the bond requirement may be waived by the administrator upon evidence that the lessee is substantially in compliance with lease terms and the lessee's lot is substantially developed according to plans approved by the department; provided further that the department may reinstate the waived bond at any time during the term of the lease.

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

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

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

environmental quality control.

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

(g) The administrator or the administrator's authorized representative has the right to inspect, at reasonable hours and without notice, the leased property and the improvements, crops, livestock, equipment, chattels, books, and records of the lessee in connection with the administration of the lease.
[Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

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

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

(b) Drawing or negotiation. The base rental and additional rental lands to be disposed of by drawing or by negotiation shall, except as otherwise provided in this subchapter, be no less than the rental value determined by a disinterested appraiser or appraisers contracted by the administrator, and such appraisal,

and any further appraisal which is made at the request of the lessee and with the approval of the department, shall be reimbursed to the department by the lessee.

(c) Reopening. In the case of reopenings of the rental for a lease, the base rental and additional rental for any ensuing period shall be the rental value at the time of reopening determined in conformance with the uniform standards of professional appraisal practice as adopted by national professional appraisal organizations. At least six months prior to the time of reopening, the rental value of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the administrator, and the lessee shall be promptly notified of the determination; provided that should the lessee disagree with the appraised rental, the lessee may appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the appraised rental shall be determined by arbitration as provided in chapter 658A, HRS. In that case the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department.

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

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

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

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

- (1) An adjustment of the fee simple value determined through appraisal as necessary to maintain equitable fee simple values between, among, or throughout the department's land lease system for lands having the same designated use and which are put out to lease within twelve months of each other;
- (2) An adjustment of the rental value determined through appraisal by factoring in a lot's unproductive acreage, e.g., drainageways, restricted easements, common usage, mixed use, and non-contributory land areas, for those lots for which the specified use is for crops to be grown "in the soil or ground".
- (3) An adjustment of the rental determined through appraisal at the time of reopening or conversion, as the case may be, by:
 - (A) Factoring in the income for a particular lessee using a percentage increase that reflects the increase in the value of the leasehold since commencement of the lease;
 - (B) Using an appropriate index (e.g., consumer price index, producers' price index, etc.) to calculate an escalation of the rental over a specified period of time.

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

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

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

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

- (1) Give notice to eligible applicants in writing pursuant to section 141D-11, HRS, of the department's intention to lease agricultural enterprise lands through negotiation, setting forth the terms, conditions, and restrictions.
- (2) Interested eligible applicants shall apply for a lease by submitting a written application within thirty days from the date of receipt of the notification; provided that the department may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease.
- (3) Determine the applicants who meet the criteria for selection set by sections 4-159-8 or 4-159-18, as applicable, and the department shall notify all applicants of the administrator's determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the administrator of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant

shall be barred from proceeding to seek legal remedy for any alleged failure of the department to follow the conditions and criteria.

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

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

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

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

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

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

- (1) require the appraisal of the parcel using the Uniform Standards of Professional Appraisal Practice to determine the rental amount, including percentage of rent;
- (2) Require a payment of a premium, computed as twenty-five per cent of the annual lease rent; provided that the premium to be added to the annual lease rent for each year of the lease shall be equal to the number of years the lessee has occupied the land; provided that the premium period shall not exceed seven years; and
- (3) recover from the lessee the costs of expenditures required by the department to

convert the parcel into a leasehold. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp:
 SLH 2022, HRS §141D-7, §11)

§4-159-23 Drawing of lot. When the board determines that agricultural enterprise lands are to be leased by drawing, the administrator shall give public notice inviting applications for the drawing as provided in section 4-159-29, with such details concerning the drawing as it deems necessary and desirable. Applications to participate in the drawing shall be filed with the department within two weeks after the last publication date of the notice. Within not more than one hundred twenty days after the closing date for applications, the administrator shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection, and conduct a drawing. The date of the drawing shall be published as set forth in section 4-159-29. All applicants shall be notified of the results of the drawing, and the award of leases shall be made by the board at its next regularly scheduled meeting. The lease shall be issued when conditions of the award of lease are fulfilled. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

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

(b) To be eligible to bid in an auction for an agricultural enterprise lands lease, a bidder shall qualify as a bona fide operator as defined in this

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

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

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

- (1) Group I, all persons given preference pursuant to section 4-159-28; or
- (2) Group II, applicant with "bona fide operator" as defined in this chapter.

(c) The department may determine the order of lot selection as follows:

- (1) Within Group I, by prioritizing in any sequence the different preference categories identified in section 4-159-28.
- (2) Within the Group I preference categories and within Group II, by establishing subgroups of priority based on qualification for agricultural enterprise land lots.

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

§4-159-26 Disposition of abandoned or seized property. The department may sell, donate, or otherwise dispose of property abandoned or seized on public land upon compliance with the requirements of section 171-31.5, HRS. [Eff]

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

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

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

- (1) A resume of the "bona fide" operator, including experience identified by month and year;
- (2) A business plan and financial plan;
- (3) A preliminary plan of utilization and development of the land;
- (4) Certificate of good standing from the Hawaii department of commerce and consumer affairs;
- (5) An affidavit that the applicant is not delinquent in any obligation to the State or any of its political subdivisions; and that the applicant has not had a sale, lease, license, permit or easement covering public land canceled for failure to satisfy any terms or conditions thereof;
- (6) A financial statement, in the format outlined in the application instructions, including a balance sheet current within six months; and
- (7) Copies of state income tax returns for the last five years.

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

- (1) In the case of a corporation, a copy of articles of incorporation reflecting date of filing, purpose of the corporation, and disclosure of all directors and officers; and
- (2) Name and experience of "bona-fide operator."
- (d) Hawaii Business Registration. All applicants shall be a registered business with the Hawaii department of commerce and consumer affairs. The registered business and Certificate of good standing shall be maintained throughout the lease.
- (e) Whenever the board establishes additional criteria for the selection of lessees, pursuant to section 4-159-2(a)(2), in support of qualification, each applicant shall provide documentation to the satisfaction of the administrator. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-28 Preference right. (a) Any person otherwise qualified to take a lot shall have preference in any disposition by drawing of lots if the person has been displaced by reason of any natural disaster as defined in this chapter.

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

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

§4-159-29 Notices. (a) Any disposition of public lands shall require public notices as prescribed in the following paragraphs. In addition to giving public notice, any public notice required under this section shall also be posted on the

Internet in an easily-located manner, or on the department's website.

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

- (1) General information regarding all the parcels or lots offered for lease, such as time and place of disposition, terms and conditions of disposition, qualification of applicants, procedure for filing application, conditions of award, if any and time and place at which more detailed information regarding the lease disposition may be obtained;
- (2) Specific information pertaining to the individual parcels or lots offered for lease such as the parcel or lot number, its description, location and area, minimum, base, or upset rental, basis for additional rent if any, method of payment, purpose for which leased, the term of lease, building requirement, and other such covenants and conditions; and
- (3) The lessee's responsibility for applicable lease disposition costs pursuant to section 4-159-3.

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

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

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

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

Within not more than one hundred twenty days after the closing date for applications, the administrator shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing. The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant in fact qualified. The notice of the drawing shall state the time and place of the drawing. Upon completion of the drawing, the award of leases shall be announced at the next regularly scheduled meeting of the board and the lease issued when conditions of the award are fulfilled.

(e) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once in the land district where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general the terms and conditions that will be negotiable and those terms which shall be predetermined and the last date on which application will be received by the department which date shall not be less than thirty days after the last date of

the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested person. If more than one applicant qualifies then the administrator shall review and may recommend to the board for approval to negotiate the best terms. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

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

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

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

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

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

SUBCHAPTER 5

MANAGEMENT OF AGRICULTURAL ENTERPRISE LANDS

§4-159-32 Consent to mortgage. (a) Whenever under this chapter or under any lease, license, permit, or other instrument issued by the board, consent of the board is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the chairperson of the board may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at the foreclosure to any purchaser, including the mortgagee, provided the purchaser shall be qualified under this chapter to lease, own, or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, Department of Veterans Affairs, the Small Business Administration, the United States Department of Agriculture, or any other federal agency and their respective successors and assigns, or any lending institution authorized to do business in the State or elsewhere in the United States; provided that the consent to mortgage to a nongovernmental holder

shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

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

§4-159-33 Notice of breach or default. Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease or patent heretofore or hereafter issued under this chapter, the administrator shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent issued under this chapter, the written notice shall include a demand to pay the rent within sixty days after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided or within such additional period as the board

may allow for good cause, the board subject to section 4-159-34, may exercise such rights as it may have at law or as set forth in the lease or encumbrance. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §13)

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

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

- (1) Pay to the holder from any moneys at its disposal, which is made available for that purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof the board shall be

- entitled to a conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or
- (2) If the property cannot be reasonably reassigned without loss to the department then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redispense of the affected land to a qualified and responsible applicant free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when it may still resolve the violation created by the breach or default involved.

(b) The proceeds of any redispense under subsection (a)(2) shall be applied: first, to reimburse the department for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the department in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the department upon redispense which exceeds the fair market lease value of the land as previously determined by the department's appraiser; and fourth, to the owner of the privilege, interest, or estate. Nothing contained in this section shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security

interest which shall have vested prior to the effective date of a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

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

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

- (1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately before the cancellation termination, or rejection, with all terms and conditions being the same as in the canceled, terminated or rejected lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before the cancellation, termination, or rejection; provided that a lease that is rejected or deemed rejected under bankruptcy law shall be deemed canceled and terminated for all purposes under state law;

- (2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of paragraph 141D-13(b)(1), HRS acquisition of the lessee's interest pursuant to a judicial or nonjudicial foreclosure sale, or an assignment in lieu of foreclosure:
 - (A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of the lessee's interest; provided that the institutional lender shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and
 - (B) Sections 141D-8(b)(1) and (2), HRS, shall not apply to the lease or the demised land during the time the institutional lender has held the lease; provided that:
 - (i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the board; and
 - (ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, at which time the institutional lender shall either sell or assign the lease and sections 141D-8(b)(1) and (2), HRS, shall apply to the new lease.
- (3) If there is a delinquent loan balance secured by a security interest:
 - (A) The lease shall not be canceled or terminated, except for cancellation by reason of default of the lessee;

- (B) No increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, shall be imposed or become payable;
- (C) No lands shall be withdrawn from the lease, except either by eminent domain proceedings beyond the control of the board or with prior written consent of the institutional lender, which shall not be unreasonably withheld, and
- (4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender have been paid in full.

(d) Ownership of both the lease and the security interest by an institutional lender shall not affect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the lease and security interest with the consent of the board.

(e) The board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

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

- (1) The purchase, assignment, or transfer shall conform with subsection 141D-13(b) (4), HRS; and

- (2) The purchase, assignments, of transfer of the rights shall be reserved for and exercisable only by an institutional lender.

Other purchasers shall not be precluded from acquiring the institutional lender's security interest but shall not have exercisable rights as successor in interest to the original institutional lender. [Eff

] (Auth: SLH 2022, HRS §141D-7, §13) (Imp: SLH 2022, HRS §141D-7, §13)

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

- (1) The board may have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this subsection, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements and "appreciated value" means the replacement cost for developing the leased premises. If the board does not exercise its option, the provisions of section 4-159-19(4) shall apply;
- (2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value;
- (3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a

qualified appraiser whose services shall be contracted for by the administrator; provided that should the lessee disagree with the values, the lessee may appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658A, HRS. In this event, the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department;

- (4) The board may re-purchase the lease and improvements with funds from the special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the board; and
- (4) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the board at the time of the re-purchase.

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

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

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

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

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

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

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

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

(b) The board shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the demised premises by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal the lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that

were legally constructed upon the demised premises by the lessee of the leased land being withdrawn. For tree or orchard crops taken, payment shall be based on the residual value of trees taken and, if there are unharvested crops, the value of such unharvested crops. [Eff _____] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

SUBCHAPTER 6

OTHER PROVISIONS

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

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

Chapter 4-159, Hawaii Administrative Rules, on the
Summary Page dated _____, was adopted on
_____, following public hearings held on
_____, after public notices were given
in the _____ on
_____.

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

Sharon Hurd
Chairperson
Board of Agriculture
and Biosecurity

APPROVED

Josh Green M.D.
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

IV. New Business

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Hawaii Administrative Rules Title 16 Chapter 23, Motor Vehicle Insurance Law, promulgated by Department of Commerce and Consumer Affairs - Exhibit 2

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

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

Administrative Rule Title and Chapter: Title 16, Chapter 23

Chapter Name: Motor Vehicle Insurance Law

Contact Person/Title: Matt Tsujimura, General Counsel

Phone Number: (808)586-3040

E-mail Address: mtsujim@dcca.hawaii.gov **Date:** 08-28-2025

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

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

☐ Yes ☒ No

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

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

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

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

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

*

*

*

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.

Any businesses that provide motor vehicle insurance, or that own and operate motor vehicles.

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

N/A

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

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

Proposed hearings to be scheduled upon passage of bill in 2024 Legislature.

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

N/A

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

No, the proposed amendments align the rules with State law effective 01/01/2026.

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

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

* * *

Small Business Regulatory Review Board / DBEDT

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

This Statement may be found on the SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-23
Hawaii Administrative Rules

MM D, YYYY

1. Chapter 16-23, Hawaii Administrative Rules,
entitled, "Motor Vehicle Insurance Law", is amended
and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 23

MOTOR VEHICLE INSURANCE LAW

Subchapter 1 General Provisions

§16-23-1	Definitions
§16-23-2	Repealed
§16-23-3	Repealed

Subchapter 2 Repealed

§§16-23-4 to 16-23-10.3 Repealed

Subchapter 3 Optional Additional Insurance

§16-23-11	Required optional additional coverage
§16-23-11.1	Naturopathic, acupuncture, and nonmedical remedial care and treatment
§16-23-11.2	Repealed
§16-23-11.3	Repealed
§16-23-11.4	Repealed
§16-23-12	Other optional coverages

Subchapter 4 Rejection, Cancellation, Non-Renewal

§16-23-13	Application for motor vehicle insurance policy, rejection of application, [JUP] <u>Joint Underwriting Plan</u> placement
§16-23-14	Repealed
§16-23-15	Repealed
§16-23-16	Review of failure to offer [JUP] <u>Joint</u> <u>Underwriting Plan</u> placement, cancellation, or refusal to renew

Subchapter 5 Licensing of Insurers

§16-23-17	Repealed
§16-23-18	Repealed
§16-23-19	Licensing of health insurers

Subchapter 6 Requirements for Self-Insurance

§16-23-20	Repealed
§16-23-21	Agreement
§16-23-22	Repealed
§16-23-23	Amount of cash, securities, or bond
§16-23-24	Repealed
§16-23-25	Supplemental bond or excess liability

insurance requirement
§16-23-26 Service of process
§16-23-27 Repealed
§16-23-28 Repealed
§16-23-29 Repealed
§16-23-30 Repealed
§16-23-31 Repealed
§16-23-32 Repealed
§16-23-33 Reporting requirements

Subchapter 7 Repealed

§§16-23-34 to 16-23-55 Repealed

Subchapter 8 Driver Education Fund

§16-23-56 Payment and expenditure

Subchapter 9 Miscellaneous Provisions

§16-23-57 Administrative hearing on denial of
claim
§16-23-58 Notice of claim
§16-23-59 Repealed
§16-23-60 Motor vehicle insurance policy
endorsements

Subchapter 10 Repealed

§§16-23-61 and [~~§~~]16-23-62 Repealed

Subchapter 11 Repealed

§16-23-63 Repealed

Subchapter 12 Statistical and Reporting

Requirements

\$16-23-64	Revision of current statistical plans
\$16-23-65	Quarterly report
\$16-23-66	Annual report
\$16-23-66.5	Repealed

Subchapter 13 The Joint Underwriting Plan

\$16-23-67	General description
\$16-23-68	Membership in [JUP] <u>the Joint Underwriting Plan</u>
\$16-23-69	Repealed
\$16-23-70	Allocation of [JUP] <u>Joint Underwriting Plan</u> costs
\$16-23-71	Selection of servicing entities
\$16-23-72	Classifications eligible for JUP
\$16-23-73	Public assistance benefits recipients
\$16-23-74	Application for [JUP] <u>the Joint Underwriting Plan</u> , placement; reporting disposition
\$16-23-75	Denial of application; appeal
\$16-23-76	Administration by JUP bureau
\$16-23-77	Servicing entities' duties
\$16-23-78	Allowances to servicing entities
\$16-23-79	Commissions
\$16-23-80	[JUP] <u>Joint Underwriting Plan</u> rates
\$16-23-81	[JUP] <u>Joint Underwriting Plan</u> private passenger manual
\$16-23-82	[JUP] <u>Joint Underwriting Plan</u> commercial manual
\$16-23-83	Repealed
\$16-23-84	[JUP] <u>Joint Underwriting Plan</u> assigned claims; application; and assignment of claims
\$16-23-85	Proration of costs and assigned claims paid
\$16-23-86	[JUP] <u>Joint Underwriting Plan</u> membership termination
\$16-23-87	Joint liability for [JUP] <u>Joint Underwriting Plan</u> business

§16-23-88 Auditing of members

Subchapter 14 Repealed

§16-23-89 Repealed

Subchapter 15 Compliance Resolution Fund

§16-23-90 Repealed

§16-23-91 Allocation of cost of motor vehicle
 insurance administration

Subchapter 16 Repealed

§16-23-92 Repealed

Subchapter 17 Fee Schedule and Utilization
Guidelines

§16-23-93 Fee schedules

§16-23-94 Definitions

§16-23-95 Repealed

§16-23-96 Repealed

§16-23-97 Repealed

§16-23-98 Repealed

§16-23-99 Concurrent treatment

§16-23-100 Change in health care or alternative
 care providers

§16-23-101 Repealed

§16-23-102 Repealed

§16-23-103 Rules of decision for allowable fees
 for medical, surgical, and hospital
 services and supplies

§16-23-104 Health care providers

§16-23-105 Repealed

§16-23-106 Physician assistants

§16-23-107 Repealed

§16-23-108 Repealed

§16-23-109	Repealed
§16-23-110	Anesthesia services
§16-23-111	Radiology services
§16-23-112	Repealed
§16-23-113	Hospital services
§16-23-114	Drugs, supplies and materials
§16-23-115	Workers' compensation medical fee schedule
§16-23-116	Repealed

Subchapter 18 Repealed

§§16-23-117 to 16-23-120 Repealed

SUBCHAPTER 1

GENERAL PROVISIONS

§16-23-1 Definitions. Unless the context indicates otherwise, as used in this chapter:

"Chapter 431", and reference to sections therein, refer to the insurance code contained in the Hawaii Revised Statutes (HRS).

"Commissioner" means the state commissioner of insurance as defined in section 431:2-102, HRS. Pending the appointment of a person to or during any vacancy in that office, it refers to the state director of commerce and consumer affairs.

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

"Motor vehicle insurance law" refers to the motor vehicle insurance law, chapter 431:10C, HRS, and sections therein.

"Prepaid health care plan" means a health care plan approved by the department of labor and industrial relations and meeting the requirements of

chapter 393 and the rules of the department in effect on January 1, 1998, or thereafter.

"Provider" or "health care provider" means any person providing medical or rehabilitative services to a claimant covered by a motor vehicle insurance policy. [Eff 9/1/74; am 9/1/77; am 9/1/78; am 9/1/79; am and ren §16-23-1, 7/7/80; am and comp 9/1/82; am and comp 9/1/85; am 9/1/87; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; am 9/1/91; am and comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §§431:10C-103, 431:10C-304)

§16-23-2 Repealed. [R 1/8/99]

§16-23-3 Repealed. [R 11/11/12]

SUBCHAPTER 2 REPEALED

§16-23-4 Repealed. [R 11/11/12]

§16-23-5 Repealed. [R 11/11/12]

§16-23-6 Repealed. [R 11/11/12]

§16-23-7 Repealed. [R 11/11/12]

§16-23-8 Repealed. [R 11/11/12]

§16-23-9 Repealed. [R 11/11/12]

§16-23-10 Repealed. [R 11/11/12]

§16-23-10.1 Repealed. [R 1/8/99]

§16-23-10.2 Repealed. [R 11/11/12]

§16-23-10.3 Repealed. [R 1/8/99]

SUBCHAPTER 3

OPTIONAL ADDITIONAL INSURANCE

§16-23-11 Required optional additional coverage.

(a) Each insurer shall offer to each policyholder or applicant for a motor vehicle insurance policy the optional coverage as well as the basic motor vehicle insurance coverage, with the applicable premiums therefor, as set forth in Exhibit 1 entitled "Required Optional Additional Coverage[~~7~~]", dated [10/17/12,] 01/01/26, located at the end of this chapter, which is made a part of this section. Nothing in this

subchapter shall limit the use of forms substantially similar to the exhibit.

(b) Every insurer shall fully disclose in writing to each policyholder upon the first renewal after January 1, 1998, or to the applicant, at the issuance or delivery of the policy, the availability of all required and optional coverages and deductibles.

(c) An applicant or policyholder shall in writing decline uninsured motorist coverage and underinsured motorist coverage.

(d) Increased limits for residual bodily injury coverage in the amount of \$300,000 per person with an aggregate limit of \$300,000 per accident and for property damage coverage in the amount of \$50,000 per occurrence shall be available to all motor vehicles required to be insured for those limits by contract or rule of the State of Hawaii or any political subdivision.

(e) Except as provided by section 431:10C-302(a)(9)(D), HRS, the benefits of any optional additional coverages elected by the policyholder are applicable to all eligible insureds. [Eff 9/1/74; am and ren §16-23-11, 7/7/80; am 9/1/81; am and comp 9/1/82; am 9/1/84; am and comp 9/1/85; am 9/1/87; am and comp 9/1/88; am and comp 9/15/89; am and comp 9/1/90; am 9/1/91; am and comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-302) (Imp: HRS §431:10C-302)

§16-23-11.1 Naturopathic, acupuncture, and nonmedical remedial care and treatment. (a) Subject to the exceptions allowed under section 431:10C-302, HRS, an insurer shall make available optional coverage for naturopathic, acupuncture, and nonmedical remedial care and treatment rendered in accordance with the teachings, faith or belief of any group which relies upon spiritual means through prayer for healing. The coverage shall provide for appropriate and reasonable

treatment and expenses necessarily incurred as a result of the accidental harm and shall provide an aggregate total among and between the types of providers of thirty visits at no more than \$75 per visit.

(b) An insurer may make available additional coverages for services provided under subsection (a). These coverages shall be for additional blocks of thirty visits at no more than \$75 a visit.

(c) An insurer may make available at appropriately reduced premium rates, and provide at the option of the named insured, deductible, coinsurance or copayment arrangements for this coverage. [Eff and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-302) (Imp: HRS §§431:10C-301, 431:10C-302)

§16-23-11.2 Repealed. [R 11/11/12]

§16-23-11.3 Repealed. [R 11/11/12]

§16-23-11.4 Repealed. [R 1/8/99]

§16-23-12 Other optional coverages. An insurer may offer other optional terms, conditions, exclusions, deductible clauses, coverages, and benefits ~~[displayed in Exhibit 2]~~ as set forth in Exhibit 2 entitled "Optional Conditions & Limitations", dated 10/17/12, located at the end of this chapter, which is made a part of this section, or upon approval by the commissioner. The commissioner shall not approve the same unless they are consistent with the provisions required of a motor vehicle

insurance policy, are fair and equitable, and limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers. [Eff 9/1/74; am and ren §16-23-12, 7/7/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-302) (Imp: HRS §431:10C-302)

SUBCHAPTER 4

REJECTION, CANCELLATION, NON-RENEWAL

§16-23-13 Application for motor vehicle insurance policy, rejection of application, [JUP] the Joint Underwriting Plan placement. An insurer and its producer shall within fifteen working days of a request for an appointment provide the applicant an application and rate quote for a motor vehicle insurance policy. Failure to service an applicant within the fifteen working day period shall be deemed a rejection. Upon rejection of an application for motor vehicle insurance policy or optional additional insurance by the affirmative act of the insurer or by a failure to service the applicant within fifteen working days, an insurer and its producer shall meet with the applicant within ten working days of the rejection and offer to place the requested insurance coverage with the joint underwriting plan. [Eff 9/1/74; am and ren §16-23-13, 7/7/80; am 9/1/81; comp 9/1/82; am 9/1/84; comp 9/1/85; am 9/1/87; comp 9/1/88; comp 9/15/89; am and comp 9/1/90; am and comp 6/1/93; am 1/30/95; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §§431:10C-106, 431:10C-110)

§16-23-14 Repealed. [R 1/8/99]

§16-23-15 Repealed. [R 1/8/99]

§16-23-16 Review of failure to offer [~~JUP~~] the Joint Underwriting Plan placement, cancellation, or refusal to renew. A person who is not offered a [~~JUP~~] Joint Underwriting Plan placement after that person's application is rejected, or believes that the person's motor vehicle insurance policy has been canceled or refused renewal without legal justification may file an appeal with the commissioner within ten days after the person has been rejected or received notice of cancellation or refusal to renew. The grievance shall be heard and determined in accordance with chapter 91, HRS, and chapter 16-201. [Eff 9/1/74; am and ren §16-23-16, 7/7/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am 1/30/95; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §§431:10C-110 through 431:10C-114)

SUBCHAPTER 5

LICENSING OF INSURERS

§16-23-17 Repealed. [R 6/1/93]

§16-23-18 Repealed. [R 9/1/82]

§16-23-19 Licensing of health insurers. An insurer may be licensed by the commissioner to provide those personal injury protection benefits described in section 431:10C-103.5, HRS, or to provide optional major medical coverages in excess of personal injury protection benefits coverages, or both, if the commissioner finds that the insurer meets the requirements of section 431:10C-119, HRS. In addition, before licensing an insurer to provide the personal injury protection benefits, the commissioner must be satisfied that the insurer has made adequate provision to assure that any person obtaining personal injury protection benefits will simultaneously be obtaining the other coverages required under a motor vehicle insurance policy and will be provided adequate claims processing and payment services.

An insurer licensed hereunder to provide personal injury protection benefits shall also provide those optional major medical coverages which motor vehicle insurers are required to provide under section 431:10C-302, HRS.

A person licensed hereunder to provide personal injury protection benefits or optional major medical coverages shall comply with those provisions in chapter 431:10C, HRS, relating to insurers, such as, but not limited to, those relating to setting of rates and submission of information and reports to the commissioner.

An insurer licensed hereunder shall be assessed its equitable proration of costs and claims paid under the joint underwriting plan (JUP) and the assigned claims program. [Eff 9/1/74; am and ren §16-23-19, 7/7/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-119, 431:10C-214) (Imp: HRS §§431:10C-119, 431:10C-201, 431:10C-202, 431:10C-203, 431:10C-205, 431:10C-209, 431:10C-215, 431:10C-216, 431:10C-302, 431:10C-404, 431:10C-408)

SUBCHAPTER 6

REQUIREMENTS FOR SELF-INSURANCE

§16-23-20 Repealed. [R 11/11/12]

§16-23-21 Agreement. The applicant for a self-insurer shall execute and file with the commissioner an agreement in a form prescribed by the commissioner, that if certified as a self-insurer the applicant will:

- (1) In accordance with and to the extent prescribed in the motor vehicle insurance law as amended from time to time:
 - (A) In case of injury, arising out of a motor vehicle accident, to a person, including, but not limited to, an operator, occupant, or user of the self-insured motor vehicle or any pedestrian who sustains an injury as a result of the operation, maintenance, or use of the vehicle, pay without regard to fault to the health care provider of medical-rehabilitative services an amount equal to the personal injury protection benefits then payable as a result of the injury; and
 - (B) Pay on behalf of the applicant or any operator of the insured motor vehicle using the motor vehicle with the express or implied permission of the named insured, sums which the applicant or the operator may legally be

obligated to pay for injury or death or damage to property of others which arise out of the ownership, operation, maintenance, use, loading or unloading of the self-insured motor vehicle;

- (2) Permit the commissioner or an authorized representative to inspect and copy records and provide them copies of records pertaining to the self-insurer's financial condition, processing and payment of claims, and any other matters pertinent to the administration and enforcement of the motor vehicle insurance law; and
- (3) Comply with all requirements of the motor vehicle insurance law, rules, and directives of the commissioner, including, but not limited to, those relating to processing and payment of claims and payment of assessments and fees. [Eff 9/1/74; am and ren §16-23-21, 7/7/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §§431:10C-119, 431:10C-301, 431:10C-304)

§16-23-22 Repealed. [R 11/11/12]

§16-23-23 Amount of cash, securities, or bond.

The commissioner shall consider the number of vehicles involved, the exposure, the financial condition of the applicant, and other factors appropriate to determining adequacy of security in fixing the amount of the bond or the amount of cash or securities. [Eff 9/1/74; am and ren §16-23-23, 7/7/80; comp 9/1/82; comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; am and comp 6/1/93; comp 1/1/98; comp 1/8/99;

comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-119, 431:10C-214) (Imp: HRS §§431:10C-119, 431:10C-602, 431:10C-603, 431:10C-604)

§16-23-24 Repealed. [R 11/11/12]

§16-23-25 Supplemental bond or excess liability insurance requirement. The commissioner may require any self-insurer to provide a bond or additional bond, cash, and securities or additional securities in a reasonable amount whenever the commissioner finds that the same is necessary or appropriate. The commissioner may also require the self-insurer to provide evidence of excess liability insurance (in excess of the self-insured retention) in a licensed insurer in an amount the commissioner finds appropriate in light of such factors as the exposure, the number of vehicles involved, and the financial condition of the self-insurer. [Eff 9/1/74; am and ren §16-23-25, 7/7/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; comp 6/1/93; comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §§431:10C-119, 431:10C-602, 431:10C-603, 431:10C-604)

§16-23-26 Service of process. A self-insurer shall appoint an agent, who is a natural person, domiciled in the State of Hawaii to accept service of process and legal documents provided that in the event of a conflict between this chapter and any other statute or rule of civil procedure, the statute or rule of civil procedure shall prevail. [Eff 9/1/74; am and ren §16-23-26, 7/7/80; comp 9/1/82; comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; am and comp 6/1/93; comp 1/1/98; comp 1/8/99; comp

11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-119, 431:10C-214) (Imp: HRS §431:10C-119)

§16-23-27 Repealed. [R 11/11/12]

§16-23-28 Repealed. [R 11/11/12]

§16-23-29 Repealed. [R 11/11/12]

§16-23-30 Repealed. [R 11/11/12]

§16-23-31 Repealed. [R 11/11/12]

§16-23-32 Repealed. [R 11/11/12]

§16-23-33 Reporting requirements. A self-insurer shall submit the reports prescribed by subchapter 12 of this chapter. [Eff 9/1/74; am and ren §16-23-33, 7/7/80; am and comp 9/1/82; comp 9/1/85; am 9/1/86; comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §§431:10C-119, 431:10C-215)

SUBCHAPTER 7 REPEALED

§16-23-34 Repealed. [R 9/1/80]

§16-23-35 Repealed. [R 9/1/80]

§16-23-36 Repealed. [R 9/1/80]

§16-23-37 Repealed. [R 9/1/80]

§16-23-38 Repealed. [R 9/1/80]

§16-23-39 Repealed. [R 9/1/80]

§16-23-40 Repealed. [R 9/1/80]

§16-23-41 Repealed. [R 9/1/80]

§16-23-42 Repealed. [R 9/1/80]

§16-23-43 Repealed. [R 9/1/80]

§16-23-44 Repealed. [R 9/1/80]

§16-23-45 Repealed. [R 9/1/80]

§16-23-46 Repealed. [R 9/1/80]

§16-23-47 Repealed. [R 9/1/80]

§16-23-48 Repealed. [R 9/1/80]

§16-23-49 Repealed. [R 9/1/80]

§16-23-50 Repealed. [R 9/1/80]

§16-23-51 Repealed. [R 9/1/80]

§16-23-52 Repealed. [R 9/1/80]

§16-23-53 Repealed. [R 9/1/80]

§16-23-54 Repealed. [R 9/1/80]

§16-23-55 Repealed. [R 9/1/80]

SUBCHAPTER 8

DRIVER EDUCATION FUND

§16-23-56 Payment and expenditure. There is assessed and levied upon each insurer and self-insurer a drivers' education fund underwriters' fee on each motor vehicle insured by each insurer or self-insurer. This fee is set by statute and is due and payable on an annual basis from July 1, 1998 by means and at a time to be determined by the commissioner. Motor vehicles insured under the joint underwriting plan shall be excluded from the drivers' education fund assessment. The commissioner shall deposit the fees into a special drivers' education fund account to be expended for the operation of the drivers' education program provided for in section 286-128, HRS, and the drivers' education program administered by the department of education. [Eff 9/1/74; am 9/1/78; am and ren §16-23-56, 7/7/80; am 9/1/80; am 9/1/81; comp 9/1/82; am 9/1/84; am and comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-115, 431:10C-214) (Imp: HRS §431:10C-115)

SUBCHAPTER 9

MISCELLANEOUS PROVISIONS

§16-23-57 Administrative hearing on denial of claim. If an insurer or self-insurer denies a claim for personal injury protection in whole or in part, it shall mail to the claimant in triplicate a notice of the denial as required by section 431:10C-304(3)(B), HRS. In the case of benefits for services specified in section 431:10C-103.5, HRS, the insurer or self-insurer shall also mail a copy of the denial to the health care provider or alternative health care provider.

If the claimant or health care provider desires a review of any action on the claim for benefits, the claimant or health care provider shall file with the commissioner two copies of the notice of denial of the claim, a request for review and a statement in duplicate giving specific reasons for the request within sixty days after the date of denial of the claim.

The commissioner shall forthwith notify the insurer or self-insurer of the request for review, enclosing a copy of the claimant's or health care provider's statement of reasons therefor.

The review hearing shall be held or conducted in the county in which the claimant or health care provider resides; provided, that the commissioner, upon a showing of good cause, may hold the hearing in another county. The hearing may be held by telephone with the consent of the parties. The commissioner may appoint an impartial referee to hear the matter.

The review shall be heard and determined in accordance with the provisions of chapter 91, HRS, and chapter 16-201. The commissioner shall assess the cost of the hearing upon either or both of the parties.

Nothing in this section precludes determination of any dispute relating to a motor vehicle insurance policy by arbitration and judicial review pursuant to chapter 431:10C, HRS. [Eff 9/1/74; am 9/1/79; am and ren §16-23-57, 7/7/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; am 9/1/91; am and comp 6/1/93; am and comp 1/1/98; am

and comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-212, 431:10C-214) (Imp: HRS §§431:10C-212, 431:10C-214)

§16-23-58 Notice of claim. Written notice of claim under a motor vehicle insurance policy and any optional coverage shall be given to the insurer within a reasonable time after the date of the accident on which the claim is based or when the claimant first became aware of the ailment or disability resulting from the accident, subject to the statute of limitations, 431:10C-315, HRS. [Eff 9/1/74; am and ren §16-23-58, 7/7/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §431:10C-214)

§16-23-59 Repealed. [R 11/11/12]

§16-23-60 Motor vehicle insurance policy endorsements. Any policy issued or renewed on or after January 1, 1998, shall provide the coverage required of a motor vehicle insurance policy in accordance with chapter 431, HRS, and administrative rules as amended from time to time. The endorsement as drafted by the insurer shall be subject to approval by the commissioner. The commissioner may require a certification from the insurer that, to the best of the certifier's knowledge and belief, such form meets the requirements of all applicable Hawaii laws and rules.

Subject to section 431:10C-308.5, HRS, the endorsement may provide that a person eligible for personal injury protection benefits shall submit to medical or related examination by health care

providers as often as, the insurer may reasonably require. A person eligible for personal injury protection benefits may be required to submit, at the insurer's expense, to a medical or related examination in a county other than the county in which the subject person resides. [Eff 9/1/74; am and ren §16-23-60, 7/7/80; comp 9/1/82; am 9/1/84; comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §431:10C-214)

SUBCHAPTER 10 REPEALED

§16-23-61 Repealed. [R 9/1/85]

§16-23-62 Repealed. [R 9/1/85]

SUBCHAPTER 11 REPEALED

§16-23-63 Repealed. [R 9/1/86]

SUBCHAPTER 12

STATISTICAL AND REPORTING REQUIREMENTS

§16-23-64 Revision of current statistical plans.

Statistical plans currently utilized for the collection and compilation of experience under motor vehicle insurance policies shall be revised and refiled to meet the following additional requirements of this section:

- (1) Compilations made by statistical agents shall be filed with the commissioner within ninety days of the evaluation date of the data contained therein. Accident year experience shall be evaluated as of March 31, and the statistical agent's compilation filed on or before June 30 of each year. In the event that an individual company does not provide proper input data to its designated statistical agent on a timely basis, the statistical agent shall nevertheless file the compilation of such data as has been properly filed on or before June 30 together with a detailed explanation of the incomplete data and the steps being taken to remedy the incompleteness. Every thirty days thereafter, the statistical agent shall file an updated compilation together with a deficiency report, until a complete compilation has been filed;
- (2) Statistical agents shall make available to the commissioner, at request, compilations for any or all individual companies reporting to them;
- (3) Coverage codes shall provide for separate identification of each mandatory option, as specified in section 16-23-11;
- (4) Type of loss codes shall provide for separate identification of each mandatory option as specified in section 16-23-11;
- (5) Provision shall be made to separately identify benefits paid for chiropractic and acupuncture treatments under personal injury protection benefits;
- (6) The definition of excess loss shall be amended to include provision for claims

where the amount of personal injury protection benefits incurred equals or exceeds \$10,000, less any applicable offset or deductible;

- (7) Experience under each of the various deductibles, co-payments and managed care options for personal injury protection benefits shall be separately coded and compiled;
- (8) Provision shall be made to separately identify the amount of covered loss deductible offsets to bodily injury liability coverage losses; and
- (9) Experience under each of the various deductibles and optional additional coverage for physical damage shall be separately coded and compiled. [Eff 9/1/74; am and ren §16-23-64, 7/7/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §431:14-114)

§16-23-65 Quarterly report. (a) Each insurer shall maintain a quarterly report covering the matters described in this section. Groups of companies shall also maintain quarterly reports on a combined basis. Each insurer and group of companies shall make available and submit quarterly reports to the commissioner at the commissioner's request.

(b) A census of vehicles insured as of the end of each calendar quarter shall be maintained. Within forty-five days of the end of the fourth quarter, the fourth quarter census shall be filed with the commissioner. The census of the vehicles insured shall indicate the following characteristics:

- (1) Territory;
- (2) Private passenger non fleet, motorcycle, or commercial;

- (3) Number in paragraph (2) with optional additional coverage for:
 - (A) Limits of personal injury protection benefits;
 - (B) Limits of bodily injury liability benefits;
 - (C) Alternative providers benefits;
 - (D) Wage loss benefits;
 - (E) Death benefits;
 - (F) Funeral benefits;
 - (G) Comprehensive, fire, and theft; and
 - (H) Collision ~~[-]~~ i
 - (4) Number in paragraph (2) with personal injury protection benefits subject to:
 - (A) Deductibles;
 - (B) Co-payments; or
 - (C) Managed care; and
 - (5) Number of insured vehicles charged a rate for basic coverage above the insurer's basic rate for the use classification, mileage, and territory of the vehicle.
- (c) Experience under Hawaii motor vehicle insurance policies shall be maintained by accident quarter, developed through the end of the quarter of the report:
- (1) Experience shall be filed separately for private passenger non fleet, motorcycles, and commercial;
 - (2) Experience shall be filed separately for personal injury protection, alternative providers, wage loss, death, funeral, bodily injury liability, property damage liability, uninsured motorist, underinsured motorist, and for physical damage; and
 - (3) The following data shall be shown for each classification:
 - ~~[-]~~ (A) Car years: written (except earned commercial)
 - ~~[-]~~ (B) Gross premiums: written earned
 - ~~[-]~~ (C) Number of claims: incurred pending as of report date

[~~-~~](D) Losses & allocated loss adjustment expense:

- (i) Paid on closed claims;
- (ii) Paid on open claims;
- (iii) Reserve for outstanding reported losses; and
- (iv) Reserve for incurred but not reported losses.

(Number of claims, in the case of personal injury protection, alternative providers, wage loss, death, funeral, uninsured motorist, and underinsured motorist benefits means the number of injured persons receiving benefits. Paid losses should be net of any salvage or subrogation received. Reserve for outstanding reported losses is the amount unpaid as of the report date.)

(d) Data relating to number of policies canceled or refused renewals shall be maintained. Within forty-five days of the end of the fourth quarter, the data for the fourth quarter shall be filed with the commissioner. Data shall be maintained and filed relating to number of policies [~~cancelled~~] canceled or refused renewals due to the following:

- (1) Nonpayment of premium;
- (2) License suspended or revoked;
- (3) Policyholder request;
- (4) Policyholder eligibility;
- (5) Notices of non-renewal;
- (6) Notices of conditional renewal;
- (7) Cancellation within sixty days of policy period for paragraphs (1) or (2); and
- (8) Other conditions which shall be described.

(e) Data relating to claims for personal injury protection benefits shall be maintained as follows:

- (1) Number of claims closed without payment;
- (2) Number of claims in suit at end of the quarter;
- (3) Number of claims where suit was instituted during the quarter;
- (4) Number of claims where accrued benefits were unpaid thirty days after reasonable proof

had been received, and the amount of interest penalty paid as a result thereof; and

(5) Number of claims denied during the quarter.

This section of the report shall contain an analysis of the reasons for the resistance to or denial of the claims in paragraphs (2), (3), and (5).

(f) When requested by the commissioner, reports shall be filed in a format prescribed by the commissioner. [Eff 9/1/74; am and ren §16-23-65, 7/7/80; am 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214) (Imp: HRS §431:10C-215)

§16-23-66 Annual report. By April 1 of each year, each insurer shall file an annual report covering the business of the preceding year. The report shall contain a summary of Hawaii motor vehicle insurance experience in a format prescribed by the commissioner. The experience shall be reported for six major classes of motor vehicle insurance:

- (1) Private Passenger Personal Injury Protection;
- (2) Private Passenger Liability;
- (3) Private Passenger Physical Damage;
- (4) Commercial Personal Injury Protection;
- (5) Commercial Liability; and
- (6) Commercial Physical Damage.

This report shall contain a detailed explanation of the methods used to assign expenses and investment income to Hawaii motor vehicle classifications, and those used to develop reserves for losses and loss adjustment expenses. Groups of companies shall also file an annual report on a combined basis. [Eff 9/1/74; am 9/1/76; am 9/1/77; am and ren §16-23-66, 7/7/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; am and comp 9/15/89; comp 9/1/90; am 9/1/91; comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp

11/11/12; comp 7/2/22] (Auth: HRS §431:10C-214)
(Imp: HRS §431:10C-215)

§16-23-66.5 Repealed. [R 1/1/98]

SUBCHAPTER 13

THE JOINT UNDERWRITING PLAN

Historical Note: Subchapter 13 of chapter 16-23 is based substantially upon subchapter 7 of chapter 16-23. [Eff 9/1/74; am 9/1/76; am 9/1/77; am 9/1/78; am 9/1/79; am and ren §16-23-34 to §16-23-55, 7/7/80; R 9/1/80; comp 7/2/22]

§16-23-67 General description. (a) The joint underwriting plan (JUP) is intended to provide motor vehicle insurance and optional additional insurance in a convenient and expeditious manner for those persons, uses, or motor vehicles in certain "high risk" categories with respect to which insurance cannot reasonably be obtained in the market at rates not in excess of JUP rates, or persons who otherwise are in good faith entitled to, but unable to obtain, motor vehicle insurance and optional additional insurance through ordinary methods. Insurers will pool their losses and bona fide expenses under JUP to prevent the imposition of any inordinate burden on any particular insurer.

(b) Another part of the JUP consists of the assignment thereto of claims of victims for whom no policy is applicable, such as the hit-and-run victim who is not covered by a motor vehicle insurance

policy. The losses and expenses under the assigned claims program are pro-rated among and shared by all motor vehicle insurers and self-insurers. [Eff 9/1/80; comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am 1/30/95; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-412)

§16-23-68 Membership in JUP. (a) Each insurer shall be a member of the JUP. As a condition of licensure, it shall:

- (1) Maintain its membership at a minimum fee of \$1,000 per year or part thereof; and
- (2) Accept appointment as a servicing entity if the commissioner finds it necessary in the public interest and that the insurer is capable of performing as a servicing entity.
- (3) This section shall not apply to those insurers writing motor vehicle insurance exclusively under section 431:10C-106, HRS.

(b) The commissioner shall notify the insurer of its membership in the JUP at least thirty days before the extension date of the insurer's membership. If the fee is not paid on or before the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within thirty days after the extension date, the commissioner may revoke the insurer's certificate of authority and reissue the certificate of authority when the penalty and the fee have been paid. [Eff 9/1/80; am and comp 9/1/82; am and comp 9/1/85; am 9/1/87; am and comp 9/1/88; comp 9/15/89; am and comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-69 Repealed. [R 1/8/99]

§16-23-70 Allocation of JUP costs. All costs incurred in the operation of the joint underwriting plan bureau and the operation of the plan, such as administrative, staff, and claims (other than assigned claims) paid, shall be allocated fairly and equitably among the JUP members.

The allocations shall be computed on a "share of the voluntary market" basis.

Allocation of private passenger non-fleet experience will be on the basis of net direct written car years.

Allocation of commercial and all other experience will be on the basis of net direct written premiums.

Member insurers or the statistical agencies designated by them shall report all of the data necessary to comply with the allocation procedures to the commissioner or agent designated by the commissioner. Each insurer shall permit its statistical agent to release such data to the commissioner or agent designated by the commissioner. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-71 Selection of servicing entities. (a) The commissioner shall select certain insurers or persons as servicing entities, who will provide JUP coverage and perform direct insurance operations on behalf of JUP members. A servicing entity shall be one of the following:

- (1) An insurer as described in section 16-23-68, with the abilities to provide services as described in section 16-23-77 [~~7~~] 1; or

- (2) A person as described in section 431:1-212, HRS, authorized to provide services as described in section 16-23-77.
- (b) In making the selection, the commissioner shall consider:
 - (1) Whether the servicing entity is able to process and maintain a high level of service for all risks submitted through agents;
 - (2) Whether the servicing entity has the facilities to provide JUP policyholders and assigned claimants a high level of service;
 - (3) Whether the servicing entity is able to service private passenger or commercial lines and to process fluctuating work volumes and maintain quality of service through peak periods;
 - (4) Whether the servicing entity's claims service is adequate, including an adequately decentralized adjusting staff, a claims examining staff resident in Hawaii, and local authority to settle claims at least up to the statutory basic motor vehicle insurance limits; and
 - (5) Whether the servicing entity is capable of producing accounting and statistical reports and other data as required. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-72 Classifications eligible for [JUP] the Joint Underwriting Plan. (a) In addition to the classifications established in section 431:10C-407, HRS, the [JUP] Joint Underwriting Plan shall provide motor vehicle insurance policies for the following classes of persons, motor vehicles, and uses:

- (1) Motor vehicles owned by licensed drivers, defined as follows:
 - (A) The applicant or any person who resides in the same household as the applicant and customarily operates the automobile or any other person who regularly and frequently operates the motor vehicle to be insured, who:
 - (i) Within thirty-six months prior to the date of the application has been convicted of operating a motor vehicle without motor vehicle insurance;
 - (ii) Within the eighteen months prior to the date of the application, has been convicted of or forfeited bail for two or more moving traffic violations; or
 - (iii) Has been convicted of any felony involving a motor vehicle;
 - (B) The applicant or any operator of an automobile in the same household who customarily operates the automobile or any other operator who customarily operates the automobile has been involved during the thirty-six month period prior to the date of the application in:
 - (i) Two or more accidents involving bodily injury or death if there is one car in the household or an average of more than one such accident for all cars in the household, provided that a loss payment has been made or a loss reserve has been established for such accidents;
 - (ii) Two or more accidents involving damage to any property, including their own, of \$1,000 or more if there is one car in the household, or an average of

- more than one such accident for all cars in the household, provided that loss payments or reserves under the comprehensive physical damage coverage shall not be counted; or
- (iii) A combination of two or more such accidents of the type specified in subparagraph (B) (i) or (ii).

Accidents under subparagraph (B) (i), (ii), or (iii) shall not be counted unless it can be clearly demonstrated that the applicant or other operator referred to therein was at fault. Accidents occurring under the following circumstances would tend to demonstrate that the applicant or operator was not at fault:

Automobile was lawfully parked (an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered as the operation of the last operator); or

Applicant or other operator residing in the same household, was reimbursed by, or on behalf of, a person responsible for the accident or has judgment against that person; or

Automobile for the applicant or other operator resident in the same household was struck in the rear by another vehicle, and the operator has not been convicted of a moving traffic violation in connection with the accident; or

Operator of the other automobile involved in the accident was convicted of a moving traffic violation and the named insured or other operator resident in the same household was not convicted of a moving traffic violation in connection therewith; or

Automobile operated by the applicant or other operator resident in the same household was damaged as a result of contact with a hit-and-run driver, if the accident was reported to proper authority within twenty-four hours; or

Accidents involving contact with animals or fowl; or

Accidents involving physical damage, limited to and caused by flying gravel, missiles, or falling objects; and

- (2) All other motor vehicles, not classified under paragraph (1) or section 431:10C-407, HRS, owned by licensed drivers who are unable to obtain motor vehicle insurance policies and optional additional insurance through ordinary methods.

(b) The [~~JUP~~] Joint Underwriting Plan shall also provide required optional additional insurance for the above classes, with the exception of licensed drivers receiving public assistance benefits and unlicensed permanently disabled individuals who own their motor vehicle and receive public assistance benefits.

(c) The [~~JUP~~] Joint Underwriting Plan shall provide a named non-owner policy for any applicant.
[Eff 9/1/80; am and comp 9/1/82; am and comp 9/1/85; comp 9/1/88; comp 9/15/89; am and comp 9/1/90; am 9/1/91; am and comp 6/1/93; am 1/30/95; am 8/12/96; am and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §431:10C-407)

§16-23-73 Public assistance benefits recipients.

(a) The state department of human services (DHS) shall provide a certificate of eligibility for [~~JUP~~] Joint Underwriting Plan coverage to eligible licensed drivers and unlicensed permanently disabled individuals unable to operate their motor vehicle, who are receiving public assistance benefits from the department or from the Supplemental Security Income program under the Social Security Administration and who desire basic motor vehicle insurance policy coverage under JUP; provided such licensed drivers and unlicensed permanently disabled individuals unable to operate their motor vehicle are the sole registered owners of motor vehicles to be insured under the [~~JUP~~] Joint Underwriting Plan. The applicant shall submit the certificate in person or by mail to the servicing entity of the applicant's choice for a motor vehicle insurance policy. Certificates received by the servicing entity within thirty days from the date of certification of eligibility by the state department of human services shall be accepted and treated as if it were payment in full for the requested motor vehicle insurance coverages. The servicing entity shall certify this certificate which will function as a motor vehicle insurance policy and issue the applicant a motor vehicle insurance identification card. The servicing entity shall develop the information necessary to validate the eligibility of the applicant. Only basic motor vehicle insurance policy coverages, as defined in section 431:10C-301(a) and 301(b)(1) and (2), HRS, shall be bound, and the effective date of coverage shall be the same date as the signature date on the certificate by the applicant; however, the effective date shall not precede the time and date of the certification of eligibility by the state department of human services, the date that the servicing entity receives the certificate, or the second day after postmark, whichever is later. In the event that the applicant

fails to date the certificate, the date that the servicing entity receives the certificate or the second day after postmark, whichever is earlier, shall be considered the date the applicant signed the certificate. The servicing entity shall promptly notify the director of human services of public assistance recipients which it insures.

(b) An applicant shall first exhaust all paid coverage under any motor vehicle insurance policy then in force before becoming eligible for JUP coverage.

(c) Upon termination of public assistance benefits, the DHS shall:

- (1) Notify the recipient upon termination of public assistance benefits and instruct the recipient that the recipient must immediately notify the servicing entity of the termination of benefits and obtain timely insurance for the recipient's vehicle;
- (2) Give written notice to the recipient that the recipient's JUP basic motor vehicle insurance policy will terminate thirty days from the date of termination of public assistance benefits. This notice of cancellation shall be considered as proper notification under section 431:10C-112, HRS, and section 16-23-15, providing the recipient with thirty days' notice of cancellation; and
- (3) Notify the servicing entity of the termination of public assistance benefits and the date the termination was effective. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; am 9/1/86; am and comp 9/1/88; am and comp 9/15/89; comp 9/1/90; am 9/1/91; am and comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §431:10C-407)

§16-23-74 Application for [~~JUP~~] the Joint Underwriting Plan, placement; reporting disposition.

A person may apply for coverage under the JUP to any motor vehicle insurance producer who shall inform the applicant whether or not the applicant is eligible for JUP coverage.

Any eligible certified public assistance insured (CPAI) shall apply for motor vehicle insurance coverage directly to the servicing entity of the insured's choice.

If the applicant qualifies for and desires [~~JUP~~] Joint Underwriting Plan coverage, a producer who represents servicing entities in the voluntary market shall use these servicing entities in placing [~~JUP~~] Joint Underwriting Plan applications, giving preference to the applicant's choice. A producer who does not represent any servicing entity in the voluntary market may place the [~~JUP~~] Joint Underwriting Plan insurance with an appropriate servicing entity, giving preference to the applicant's choice. A producer licensed to write motor vehicle insurance shall automatically be licensed and authorized to bind eligible applicants on behalf of the JUP and shall communicate the fact of such binding directly to the affected servicing entity.

A producer shall inform the commissioner in writing of each application for [~~JUP~~] Joint Underwriting Plan coverage received by it, showing the disposition thereof, i.e., whether the application was denied (and the reason therefor) or approved, and if approved, the servicing entity with which the application was placed within two working days after the date of disposition. The commissioner may inquire into the propriety of any disposition and when indicated by the circumstances may, after affording the applicant, insurer, and any other affected persons an opportunity to be heard, take such action as may be appropriate. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §431:10C-407)

§16-23-75 Denial of application; appeal. If an insurer denies an applicant [~~JUP~~] Joint Underwriting Plan coverage under section 16-23-72(a)(1) or (a)(2) or section 431:10C-407, HRS, the insurer, by the next working day, shall mail or deliver to the applicant in triplicate a notice of the denial, of the applicant's right to appeal, and of the appeal procedure. If the applicant desires a review of the denial of the application, the applicant shall file with the commissioner two copies of the notice of denial, a request for review, and a statement in duplicate giving the applicant's reasons for the request within seven calendar days after the date of denial of the application.

The commissioner shall forthwith notify the insurer of the request for review, enclosing a copy of the statement of reasons therefor.

The appeal shall be heard and determined in accordance with the provisions of chapter 91, HRS, and chapter 16-201. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am 1/30/95; am and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §431:10C-402)

§16-23-76 Administration by [~~JUP~~] the Joint Underwriting Plan bureau. If the commissioner determines that the method of assignment of JUP applicants described herein is not operating in an effective and fair manner, the commissioner may have the [~~JUP~~] Joint Underwriting Plan bureau directly receive, assign, and supervise the servicing of all applications for [~~JUP~~] Joint Underwriting Plan coverage. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; comp 1/1/98; comp 1/8/99; comp 11/11/12; comp

7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406)
(Imp: HRS §431:10C-402)

§16-23-77 Servicing entities' duties. A servicing entity shall:

- (1) Accomplish confirmation of rating criteria, such as an applicant's or policyholder's driving record;
- (2) Issue, sell, solicit, or negotiate insurance policies and endorsements approved by the commissioner, and certify the eligibility certificates within fifteen working days after receipt of an application for JUP coverage;
- (3) Effectively and efficiently perform all necessary accounting and statistical procedures set forth in the [~~JUP~~] Joint Underwriting Plan manual;
- (4) Collect the necessary data to disburse commission payments to producers and be able to store the data and transmit it to the Internal Revenue Service annually; and
- (5) Account to the commissioner as required, and take such action as the commissioner may properly require. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; comp 1/1/98; comp 1/8/99; am and comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-78 Allowances to servicing entities. Servicing entities shall be reimbursed for their servicing expenses. The commissioner shall establish the fees for reimbursement of the servicing entity's administrative and loss adjustment expenses associated with its handling of certified public assistance

insured and non-certified public assistance insured business on new business after June 2022, after consultation with the [~~JUP~~] Joint Underwriting Plan board of governors. The fee schedule approved by the commissioner will define any direct reimbursement of operating costs to the servicing entity for both administrative and claims handling responsibilities. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; comp 1/1/98; comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-79 Commissions. A servicing entity shall pay a producer commission for business written pursuant to the [~~JUP~~] Joint Underwriting Plan.

The rate of commission payable by the servicing entity for business written pursuant to the JUP shall be paid at market rates as presented by the JUP board of governors and approved by the Commissioner.

No commission shall be paid for certified public assistance insured business.

All risks transferred from one servicing entity to another under the JUP or reinstated policies are to be considered renewal business. [Eff 9/1/80; am and comp 9/1/82; am and comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; am 1/30/95; am and comp 1/1/98; am and comp 1/8/99; am and comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-80 JUP rates. The commissioner shall establish rating rules, refinement of classifications, rates, rating plans, territories, and policy forms for use under the [~~JUP~~] Joint Underwriting Plan after consultation with the [~~JUP~~] Joint Underwriting Plan board of governors and in accordance with the

requirements and standards prescribed in sections 431:10C-409 through 431:10C-412, HRS. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-409 through 431:10C-412)

§16-23-81 [JUP] Joint Underwriting Plan private passenger manual. The private passenger manual of the Hawaii joint underwriting plan [~~HJUP~~] and any amendments approved by the commissioner, published by the Automobile Insurance Plans Service Office (Rhode Island), is adopted as the private passenger automobile manual of the [~~HJUP~~] Hawaii joint underwriting plan. Copies of the HJUP private passenger automobile manual are available at the Automobile Insurance Plans Service Office (Rhode Island), and are available for inspection at the insurance division, department of commerce and consumer affairs. The private passenger manual may be combined with the commercial manual to produce one manual. [Eff 9/1/80; am 9/1/81; am and comp 9/1/82; am 9/1/83; am 9/1/84; am and comp 9/1/85; am 9/1/86; am 9/1/87; am and comp 9/1/88; am and comp 9/15/89; am and comp 9/1/90; am 9/1/91; am and comp 6/1/93; am 1/30/95; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-409 through 431:10C-412)

§16-23-82 [JUP] The Joint Underwriting Plan commercial manual. The commercial automobile manual of the Hawaii joint underwriting plan [~~HJUP~~] and any amendments approved by the commissioner, published by the Automobile Insurance Plans Service Office (Rhode Island), is adopted as the commercial automobile manual of the [~~HJUP~~] Hawaii joint underwriting plan.

Copies of the [~~HJUP~~] Hawaii joint underwriting plan commercial automobile manual are available at the Automobile Insurance Plans Service Office (Rhode Island), and are available for inspection at the insurance division, department of commerce and consumer affairs. The commercial manual may be combined with the private passenger manual to produce one manual. [Eff 9/1/80; am 9/1/81; am and comp 9/1/82; am 9/1/83; am 9/1/84; am and comp 9/1/85; am 9/1/86; am 9/1/87; am and comp 9/1/88; am and comp 9/15/89; am and comp 9/1/90; am 9/1/91; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-409 through 431:10C-412)

§16-23-83 Repealed. [R 1/8/99]

§16-23-84 [~~JUP~~] Joint Underwriting Plan assigned claims; application; and assignment of claims. The claimant shall apply to the [~~JUP~~] Joint Underwriting Plan bureau, which shall promptly assign the claim to an appropriate servicing entity and notify the claimant thereof. The assignment shall be made so as to minimize inconvenience to the claimant. The claimant and the assignee carrier shall have rights and obligations as set forth in part II of chapter 431:10C, HRS. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; am and comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; comp 1/1/98; am and comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404, 431:10C-408)

§16-23-85 Proration of costs and assigned claims paid. The commissioner shall annually prorate among

and assess all insurers and self-insurers all costs and claims paid under the assigned claims program.

Proration shall be based upon a pro rata distribution for each premium dollar actually or theoretically received. A self-insurer shall be assessed that prorated amount based upon the total premium cost for the coverage and vehicles stated in its certificate of self-insurance, as if the self-insurer had sold such coverage at JUP premium rates. [Eff 9/1/80; comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §431:10C-408)

§16-23-86 [JUP] Joint Underwriting Plan membership termination. A member may terminate membership in the [JUP] Joint Underwriting Plan upon termination of its licensure to transact motor vehicle insurance business in this State. With respect to all policies in effect on the effective date of a member's termination, the liability of the terminating member shall cease on the anniversary date of each policy during the succeeding year. Termination of membership shall not discharge or otherwise affect liabilities incurred prior to the expiration of these policies and the member shall continue to pay assessments until its proportionate share established by its writings prior to discontinuance of business has been determined. However, if the motor vehicle liability, personal injury protection, or physical damage business of an insurer discontinuing the writing of motor vehicle liability, personal injury protection, or physical damage insurance in this State has been purchased by, transferred to, or reinsured by another insurer, the latter shall pay the assessments of the former until the proportionate share of the former as established by its writings prior to such transfer has been paid.

In the event that an insurer is merged with another insurer or there is a consolidation of insurers, the continuing insurer shall pay the

assessments of the insurer merged or consolidated. Groups of insurers under the same ownership and management shall be treated as a single insurer under these provisions. Groups of insurers under either the same ownership or management, but not both, may elect to be treated separately. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-87 Joint liability for [JUP] Joint Underwriting Plan business. In the event of the failure of any member, through insolvency or otherwise, to pay promptly its portion of any loss or expense, after the [JUP] Joint Underwriting Plan has made written demand upon it to pay the loss or expense, the commissioner shall take appropriate action. If the loss or expense remains unpaid beyond a reasonable period, all of the other motor vehicle insurance insurers, upon notification by the commissioner shall promptly pay their respective pro rata shares, based upon the predetermined participation ratios. Members which have made contributions shall have the right to recovery thereafter against the member in default, provided, that the commissioner may enter into an agreement with the member in default, or with its legal representative, upon an amount which shall constitute a full settlement of all of the obligations of the member to the remaining members. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-401 through 431:10C-404)

§16-23-88 Auditing of members. The commissioner may audit the records of any member relating to the JUP and may prescribe policies, and the keeping of records, books of account, documents, and related material that the commissioner deems necessary to carry out [~~JUP~~] Joint Underwriting Plan functions. This material shall be provided by the members in the form and with the frequency required by the commissioner. [Eff 9/1/80; am and comp 9/1/82; comp 9/1/85; comp 9/1/88; comp 9/15/89; comp 9/1/90; am and comp 6/1/93; comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:10C-214, 431:10C-406) (Imp: HRS §§431:10C-215, 431:10C-401 through 431:10C-404)

SUBCHAPTER 14 REPEALED

§16-23-89 Repealed. [R 1/1/98]

SUBCHAPTER 15

COMPLIANCE RESOLUTION FUND

§16-23-90 Repealed. [R 11/11/12]

§16-23-91 Allocation of cost of motor vehicle insurance administration. (a) Each insurer authorized to transact motor vehicle insurance in this State shall be assessed by the commissioner an amount computed on the basis of the motor vehicle insurance premiums written in this State by the insurer during

the previous calendar year. Each self-insurer shall be assessed based upon the total premium cost for the coverage and vehicles stated in its certificate of self-insurance as if the self-insurer had sold the coverage at the premium rates applicable under the Hawaii Joint Underwriting Plan. Annually, on April 1 of each year, the commissioner shall determine the amounts due based on the amount needed for that year to administer the commissioner's obligations under article 10C of chapter 431, HRS. The commissioner shall give written notice to each insurer authorized to write motor vehicle insurance in this State and each self-insurer. The amounts required by this subsection shall be due on September 1 of each year.

(b) The commissioner may pay out of the compliance resolution fund moneys to cover the cost of administering article 10C of chapter 431, HRS. [Eff 12/28/92; comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; am and comp 7/2/22] (Auth: HRS §§431:2-202, 431:10C-214) (Imp: HRS § 431:2-215)

SUBCHAPTER 16 REPEALED

§16-23-92 Repealed. [R 1/1/98]

SUBCHAPTER 17

FEE SCHEDULE AND UTILIZATION GUIDELINES

§16-23-93 Fee schedules. Subject to the time limitations set forth in section 431:10C-315, HRS, this subchapter shall apply to treatment occurring after May 31, 1993. Charges and treatment rendered

for emergency services during the initial seventy-two hours following the motor vehicle accident resulting in injury shall not be subject to this subchapter; provided, however, that charges for emergency treatment shall not exceed the health care or alternative care provider's usual and customary fee and shall be appropriate, reasonable, and necessarily incurred. Charges for treatment of a primarily palliative nature shall be subject to the requirements of this subchapter in the same manner as any other treatment. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214) (Imp: HRS §431:10C-308.5)

§16-23-94 Definitions. As used in this subchapter:

"Claimant" means a person entitled to the benefits described in section 431:10C-103.5, HRS, under a motor vehicle insurance policy.

"Emergency treatment" or "emergency services" means treatment or services which are performed within the initial seventy-two hours following the motor vehicle accident because the condition is life threatening or could cause serious harm.

"Physician" includes a doctor of medicine, a dentist, a chiropractor, an osteopath, a psychologist, an optometrist, and a podiatrist.

"Specialist" means a physician or surgeon who holds a certificate as a diplomate issued by a specialty board approved by the American Medical Association or the American Dental Association. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-95 Repealed. [R 11/11/12]

§16-23-96 Repealed. [R 11/11/12]

§16-23-97 Repealed. [R 11/11/12]

§16-23-98 Repealed. [R 1/1/98]

§16-23-99 Concurrent treatment. (a) Concurrent treatment by more than one health care or alternative care provider may be allowed if the attending health care provider determines the claimant's injury involves more than one body system, and requires multidiscipline care, or is so severe or complex that services of more than one health care or alternative care provider are required.

(b) Whenever a request for concurrent treatment is submitted, the insurer shall respond within five working days after postmark of such request, giving authorization or stating in writing the reason for refusal to each attending health care provider and the claimant. Any such refusal shall be filed concurrently with the commissioner. Failure by the insurer to respond within five working days after postmark of the request shall constitute approval of the request. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-100 Change in health care or alternative care providers. The application of the frequency of treatment guidelines set forth in this subchapter shall not be affected when the claimant changes the

health care or alternative care provider. If a claimant receives treatments in excess of those specified in the guidelines, regardless of whether the treatments are performed by one health care or alternative care provider or by more than one health care or alternative care provider, the excess treatments may be subject to prior authorization. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-101 Repealed. [R 11/11/12]

§16-23-102 Repealed. [R 11/11/12]

§16-23-103 Rules of decision for allowable fees for medical, surgical, and hospital services and supplies. (a) When all the required care for a case reasonably falls within the range of qualifications of one health care provider, no other health care provider may claim a fee, except for consultation service or for surgical assistance. For groups of health care providers or hospitals with satellite clinics, when service is rendered by a group member of the same specialty, the group shall submit bills as though one health care provider had cared for the claimant.

(b) Medical, surgical, or hospital care of an unusual type or unlisted fee may occur which represents a type of service over and beyond listed procedures. Appropriate fees may be allowed if the treatment was reasonable, appropriate, and necessary.

(c) Medical conditions or symptoms which are pre-existing and are not aggravated or affected by and do not result from the injury covered by motor vehicle

insurance benefits shall not be compensable. Palliative treatment of these unrelated conditions shall be allowed, provided that these conditions directly retard, prevent, or endanger the surgical care or recovery from the injury covered by motor vehicle insurance benefits. In addition, pre-existing conditions which did not require treatment before the motor vehicle accident resulting in accidental harm but which do require treatment as a result of the accident shall be compensable. Pre-existing conditions which required treatment at the time of the accident and which are aggravated or affected so as to require additional treatment shall be compensable to the extent of the additional treatment.

(d) Certain of the procedures listed in medical fee schedules are commonly carried out as an integral part of a total service and do not warrant a separate charge. When such a procedure is carried out as a separate procedure, not immediately related to other services, the indicated fee is applicable.

(e) Minimal dressings, counseling incidental to treatment, etc., are covered by the office visit fee. Necessary drugs, supplies, and materials provided by the health care provider may be charged for separately in accordance with section 16-23-114.

(f) Fees including office visits shall not be paid for more than one visit per day by the same health care provider of service regardless of the number of injuries or conditions treated. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-104 Health care providers. (a)

Frequency and extent of treatment shall not be more than the nature of the injury and the process of recovery requires. Authorization is not required for the initial fifteen treatments of the injury during the first sixty calendar days, except for

naturopathic, chiropractic and acupuncture treatments which are governed by section 431:10C-103.6, HRS.

(b) A bill for no more than four hours for psychometric, projective, and other psychological testing and the resultant reports shall not be subject to prior authorization.

(c) Conservative care extending beyond one hundred twenty calendar days from the date of first treatment may be subject to prior authorization.

(d) (1) If the injury is the result of an accident on or after January 1, 1998, chiropractic and acupuncture visits shall be limited to the number of and costs for treatments in section 431:10C-103.6, HRS.

(2) A "visit" shall include all examinations or chiropractic manipulative treatments involving one or more regions, spinal, and authorized physiotherapy modalities and procedures or acupuncture treatments provided on the same date.

(3) The Hawaii state chiropractic guidelines are those guidelines in effect on January 25, 1997 (light green cover).

(4) Payments to a chiropractor or an acupuncturist for visits shall conform to paragraph (1) and shall not be reduced or revised by an insurer or its agent(s).

(5) Chiropractic treatments shall not exceed the scope of practice permitted by chapters 431 and 442, HRS.

(e) If the injury is the result of an accident occurring on or after January 1, 1998, for physical medicine and rehabilitation, treatments may include up to four procedures, up to four modalities, or a combination of up to four procedures and modalities, and the visit shall not exceed sixty minutes per injury. When treating more than one injury, treatments may include up to six procedures, up to six modalities, or a combination of up to six procedures and modalities, and the entire visit shall not exceed ninety minutes.

(f) If the injury is the result of an accident occurring on or after January 1, 1998, an insurer or its agent(s) shall not reduce payments to health care providers under this section through the withholding of moneys for the payments of taxes. This subsection shall not exempt an insurer or its agent from complying with the Internal Revenue Code. [Eff and comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; am and comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5, ~~[431:10C-B]~~431:10C-103.6) (Imp: HRS §§431:10C-308.5, ~~[431:10C-B]~~431:10C-103.6)

§16-23-105 Repealed. [R 11/11/12]

§16-23-106 Physician assistants. Attending health care providers may prescribe treatment in their discipline to be carried out by persons certified or licensed to provide the service. Fees for services provided by certified or licensed physician assistants under Hawaii law shall be sixty per cent of the fees authorized by section 16-23-115. Fees for services provided by assistants not certified or licensed shall be fifty per cent of the fees authorized by section 16-23-115. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-107 Repealed. [R 11/11/12]

§16-23-108 Repealed. [R 11/11/12]

§16-23-109 Repealed. [R 11/11/12]

§16-23-110 Anesthesia services. (a) A base unit is listed for all procedures in the medical fee schedule in accordance with section 16-23-115. This includes the base unit of all anesthesia services except the value of the actual time spent administering the anesthesia or in unusual detention with the patient.

(b) As allowed under Medicare, the anesthesia charges are equal to the sum of the base and time units for the service multiplied by a geographical adjusted anesthesia-specific conversion factor.

(c) The total value for anesthesia services includes pre- and post-operative visits, the administration of the anesthetic, and the administration of fluids and blood incident to the anesthesia or surgery.

(d) The time units are computed by dividing the total anesthesia time by fifteen minutes.

(e) Calculated values for anesthesia services shall be used when the anesthesia is administered by an appropriately licensed health care provider and a fee shall be paid only for the individual anesthetic service.

(f) If the general or regional anesthetic is administered by the attending health care provider, the value shall be fifty per cent of the calculated value.

(g) A separate charge may be made for necessary drugs and materials provided by the health care provider or anesthetist in accordance with section 16-23-114.

(h) When unusual detention with the claimant is essential for the safety and welfare of the claimant, the necessary time will be valued on the same basis as indicated for anesthesia time.

(i) No additional fee shall be allowed for local infiltration or digital block anesthesia administered by the operating physician.

(j) When either a hypothermia or a pump oxygenator, or both, are employed in conjunction with an anesthetic, the anesthetic "basic" value will be equal to that of procedure code 00560.

(k) Where anesthesia is administered for dental services, if the above rules are not applicable, a fee equal to that of the procedure code 00122 for inhalation anesthesia and equal to that of procedure code 00102 by an intravenous route will be allowed. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-111 Radiology services. (a) Taking of anterior-posterior (A-P), lateral, and oblique x-rays shall be discretionary for one hundred-twenty days following the initial treatment and may be allowed without authorization. Prior authorization from the insurer shall be obtained for x-rays subsequent to the initial one hundred-twenty days of treatment.

(b) Diagnostic tests and x-rays shall be taken, reported, and marked for identification and orientation in accordance with the accepted standard of radiologic practice. X-rays shall be taken on machines with a current certification by the department of health.

(c) Where contrast x-ray examinations are performed, fees shall include the usual contrast media. When special trays or materials are provided by the health care provider, rather than by the hospital, an additional charge is warranted.

(d) Injection procedures, including major surgery, for the purpose of performing needed radiological studies, are covered in the section on surgery. The fee shall be paid to the health care provider actually performing the service.

(e) Fees shall include both the technical and professional components. In the absence of any prior agreement between a radiologist and a hospital or other facility furnishing technical radiology services, the professional component shall be thirty-five per cent of the scheduled radiology fee. The technical (-TC) and professional (-26) components may be billed separately using the appropriate modifiers as indicated by Medicare. Billings for x-rays are not reimbursable without a report of the findings.

(f) Radiotherapy includes the use of x-ray and other high energy modalities (betatron, linear accelerator, etc.), radium cobalt, and other radioactive substances. Fees for therapy include follow-up care, and concomitant office visits, but not concomitant surgical, radiological, or laboratory procedures. [Eff and comp 6/1/93; am 1/30/95; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-112 Repealed. [R 1/1/98]

§16-23-113 Hospital services. (a) Subject to the terms of the motor vehicle insurance policy, when hospitalization is required for further treatment of a claimant, that claimant shall have a free choice of a licensed hospital in the county where the injury occurred or in the county where the claimant resides. If the claimant is in critical condition or unable to express a choice, then the attending health care provider may designate the hospital to which the claimant will be taken.

(b) Hospital charges shall be limited to ward rates or the lowest prevailing rate at the hospital where the claimant is confined, except if the nature of the injury requires private care, intensive care, or isolation, as determined by the attending health

care provider, in which case the prevailing private rates may be charged.

(c) When a claimant is treated in the emergency facility of a hospital, the allowable hospital charge for the use of the emergency room shall be the established emergency room charge for that particular hospital.

(d) All hospital charges shall be itemized when a bill is submitted. [Eff and comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-114 Drugs, supplies and materials. (a)

All charges for prescribed drugs, supplies, or materials for the use of the claimant shall be separately listed and certified by the health care provider, or a duly authorized representative that the charges for the drugs, supplies, or materials were required or prescribed for the injury covered by motor vehicle insurance benefits.

(b) Dietary supplements such as minerals and vitamins shall not be reimbursable unless a specific compensable dietary deficiency has been clinically established in the claimant as a result of the injury covered by motor vehicle insurance benefits.

(c) Payment for covered prescription drugs and supplies shall be made at the average wholesale price plus forty per cent of the average wholesale price when sold by a health care provider, hospital, pharmacy, or alternative health care provider of service. Billings for prescriptive drugs shall include the national drug code number listed in the current American Druggist Red Book followed by the average wholesale price listed at time of purchase by the health care provider of service. Approved generics shall be substituted for brand name pharmaceuticals unless the prescribing health care provider certifies no substitution is permitted because the claimant's condition will not tolerate a

generic preparation. [Eff and comp 6/1/93; am and comp 1/1/98; comp 1/8/99; comp 11/11/12; comp 7/2/22]
(Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5)
(Imp: HRS §431:10C-308.5)

§16-23-115 Workers' compensation medical fee schedule. (a) Charges for medical services shall not exceed one hundred ten per cent of participating fees prescribed in the Medicare Resource Based Relative Value Scale System applicable to Hawaii (Medicare Fee Schedule) or Exhibit A at the end of Title 12, Chapter 15, entitled "Workers' Compensation Supplemental Medical Fee Schedule" (Exhibit A). The Medicare Fee Schedule and Exhibit A, together herein referred to as the "medical fee schedule[~~7~~]", is made a part of this chapter and shall be used to determine the maximum allowable fees using the procedure codes and unit values established by the department of labor and industrial relations pursuant to section 386-21, HRS. Any subsequent amendment by the department of labor and industrial relations to the Medicare fee schedule and Exhibit A, shall be incorporated into this chapter by reference.

(b) If the maximum allowable fees for medical services are listed in both the Medicare Fee Schedule and Exhibit A, charges shall not exceed the maximum allowable fees allowed under Exhibit A.

(c) For the purposes of this section "private patient" means a patient not covered by insurance. If the charges are not listed in the medical fee schedule or in Exhibit A, the health care provider shall charge a fee not to exceed eighty per cent of the health care or alternative care provider's usual and customary fee for the same service rendered to a private patient. Upon request by the insurer, a health care or alternative care provider shall submit a statement itemizing the lowest fee charged for the same health care, services, and supplies furnished to any private patient during a one-year period preceding the date of the particular charge. Requests shall be submitted in

writing within twenty calendar days of receipt of a charge allegedly in excess of the allowable amount. The health care or alternative care provider shall reply in writing within ten calendar days of receipt of the request. Failure to comply with the request of the insurer shall be reason for the insurer to deny payment.

(d) Fees listed in the Medicare Fee Schedule shall be subject to the current Medicare Fee Schedule correct coding initiative ("CCI") and follow-up rules. The Health Care Financial Administration Common Procedure Coding System alphabet codes adopted by Medicare shall not be allowed unless specifically adopted by the director of labor. [Eff and comp 6/1/93; am and comp 1/1/98; am and comp 1/8/99; comp 11/11/12; comp 7/2/22] (Auth: HRS §§431:2-201, 431:10C-214, 431:10C-308.5) (Imp: HRS §431:10C-308.5)

§16-23-116 Repealed. [R 11/11/12]

SUBCHAPTER 18 REPEALED

§16-23-117 Repealed. [R 11/11/12]

§16-23-117.5 Repealed. [R 11/11/12]

§16-23-118 Repealed. [R 11/11/12]

§16-23-119 Repealed. [R 11/11/12]

§16-23-120 Repealed." [R 11/11/12]

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

3. Additions to update source notes and other notes to reflect amendments to sections are not bracketed, struck through, or underscored.

4. These amendments to and compilation of chapter 16-23, 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 MM D, YYYY, and filed with the Office of the Lieutenant Governor.

NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

ANDREW I. KIM
Deputy Attorney General

EXHIBIT #2
OPTIONAL CONDITIONS & LIMITATIONS

Personal Injury Protection (PIP)

Benefits Limits

(per person)
\$ 10,000
Insurers may offer higher limits

PIP Deductibles

\$ 100
\$ 300
\$ 500
\$ 1,000

Property Damage Liability Limits

(per accident)
\$ 20,000 (basic)
\$ 30,000
\$ 50,000 *

Bodily Injury Liability Limits

(per person/per accident)
\$ 40,000/80,000 (basic)
\$ 50,000/100,000
\$ 100,000/300,000
\$ 300,000/300,000 *

**Uninsured Motorist Limits
non-stacked and stacked**

(per person/per accident)
\$ 40,000/80,000 (basic offer)
\$ 50,000/100,000
\$ 100,000/300,000
\$ 300,000/300,000 *

**Underinsured Motorist Limits
non-stacked and stacked**

(per person/per accident)
\$ 20,000/40,000 (basic offer)
\$ 50,000/100,000
\$ 100,000/300,000
\$ 300,000/300,000 *

Collision Deductibles

\$ 50
\$ 100
\$ 250
\$ 500
\$ 1,000
\$ 1,500
\$ 2,000

Comprehensive Deductibles

\$ 50
\$ 100
\$ 250
\$ 500
\$ 1,000
\$ 1,500
\$ 2,000

Death Benefits **

\$ 25,000
\$ 50,000
\$ 75,000
\$ 100,000

Funeral Expenses **

\$ 2,000

Wage Loss Benefits **

(maximum per month/per accident per person)
\$ 500/3,000
\$ 1,000/6,000
\$ 1,500/9,000
\$ 2,000/12,000

Alternative Provider Services Limits **

(aggregate maximum 30 visits)
Chiropractic Treatment
Maximum: \$100 per visit
Naturopathic Treatment
Maximum: \$75 per visit
Acupuncture Treatment
Maximum: see workers' compensation
supplemental medical fee schedule

* where required by law

** not applicable to commercial policy

EXHIBIT #2
OPTIONAL CONDITIONS & LIMITATIONS

PIP Benefits Limits (aggregate per person) \$20,000 \$30,000 \$50,000 PIP Co-Payments 10% 20% 30% PIP through Managed Care Health Maintenance Organization; or Preferred Provider Organization Managed Care Deductibles \$100 \$300 \$500 \$1,000 Managed Care Co-Payments 10% 20% 30% Or no more than \$10.00	Additional Chiropractic Maximum: \$75 per visit Maximum: 30 visits Preferred Repair Provider No less than two
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III. New Business

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Hawaii Administrative Rules Title 18 Chapter 235, Income Tax Law, promulgated by Department of Taxation - Exhibit 3

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

Date: 9/24/2025

Department or Agency: Department of Taxation

Administrative Rule Title and Chapter: 18-235

Chapter Name: Income Tax Law

Contact Person/Title: Clinton Piper, Administrative Rules Specialist

E-mail: clinton.g.piper@hawaii.gov Phone: 587-1784

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

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

☐ Yes ☒ No

If "Yes," provide details: _____

I. Rule Description:

☒ New ☐ Repeal ☐ Amendment ☐ Compilation

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

☒ Yes ☐ No

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

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

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

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
The proposed rules set forth the manner that certain entities can elect Pass Through Entity (PTE) taxation, thus allowing taxpayers to deduct a larger portion of Hawaii state income taxes paid on their federal income tax returns. The rules include quarterly estimated tax payments, a deadline for final payment of tax, and filing requirements. Failure to meet filing requirements would prevent PTE election.
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.
None foreseen.

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.
Not applicable.
 - b. Amount of the proposed fee or fine and the percentage increase.
Not applicable.
 - c. Reason for the new or increased fee or fine.
Not applicable.
 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
Not applicable.
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.
Not applicable. The proposed rules deal with the manner of filing if an entity wishes to elect PTE taxation. The election is not mandatory. Late payment of the estimated quarterly payments would result in penalties.

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

The rules reflect the Department's attempt to simplify reporting and payment requirements while also maintaining adequate protections against fraud and abuse.

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

The burden of the rules was balanced against the need to ensure tax revenues were received timely and able to be tracked between entities and constituent members who would ultimately be entitled to the credit.

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

The proposed rules largely address manner and method of filing, however, some flexibility was introduced in the estimation of the PTE tax for purposes of the quarterly payment and whether a prior years liability could serve as the basis of the estimate led to the estimation safe harbor in proposed rule §18-235-51.5-04(c).

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

Small businesses were not directly consulted, however feedback and questions obtained after the temporary rules were promulgated 2/16/24 were discussed in drafting the current 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.

Yes, feedback and questions regarding how to estimate the PTE tax for purposes of the quarterly payment and whether a prior years liability could serve as the basis of the estimate led to the estimation safe harbor of proposed rule §18-235-51.5-04(c).

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.

Not applicable.

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.

* * *

DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,
Hawaii Administrative Rules

_____, 2025

1. Section 18-235-201-01, Hawaii Administrative Rules, is repealed.

~~["§18-235-201-01 Pass-through entity election.~~
~~(a) An election for pass-through entity taxation must be made on or before the due date prescribed for the filing of the schedule for the taxable year as provided in section 18-235-201-05, including any extensions thereof.~~
~~(b) Failure to timely make an election on the form prescribed by the director shall constitute a waiver of the election of pass-through entity taxation for the taxable year."] [Eff 1/2/2025; R~~
~~(Auth: HRS §§231-10.7; §235-51.5) (Imp: HRS §235-51.5)~~

Historical note: §18-235-201-01 is based substantially upon §18-235-200-01. [Eff 2/16/24; R 1/2/2025]

2. Section 18-235-201-02, Hawaii Administrative Rules, is repealed.

~~["§18-235-201-02 Electronic filing. (a) All returns, schedules, statements, and other documents required to be filed under chapter 235, HRS, and chapter 18-235, HAR, shall be filed electronically by an electing pass-through entity for the taxable year in which an election for pass-through entity taxation is made.~~
~~(b) The date of filing shall be the date the return, schedule, statement, or other document is~~

~~successfully transmitted to the department in the form and manner prescribed by the director.~~

~~(c) Failure by an electing pass-through entity to electronically file as required in this section shall result in the cancellation of the election of pass-through entity taxation for the taxable year.~~

~~(d) The director may exempt any electing pass-through entity from the requirements in this section."~~

[Eff 1/2/2025; R] (Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS §235-51.5)

Historical note: §18-235-201-02 is based substantially upon §18-235-200-02. [Eff 2/16/24; R 1/2/2025]

3. Section 18-235-201-03, Hawaii Administrative Rules, is repealed.

~~["§18-235-201-03 Electronic funds transfer. (a) All payments required to be remitted by an electing pass-through entity under chapter 235, HRS, and chapter 18-235, HAR, shall be made by electronic funds transfer for the taxable year in which an election for pass-through entity taxation is made.~~

~~(b) The date of payment shall be the date the funds are deposited with the State.~~

~~(c) Failure by an electing pass-through entity to submit payment by electronic funds transfer as required in this section shall result in the cancellation of the election of pass-through entity taxation for the taxable year.~~

~~(d) The director may exempt any electing pass-through entity from the requirements in this section."~~

[Eff 1/2/2025; R] (Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS §235-51.5)

Historical note: §18-235-201-03 is based substantially upon §18-235-200-03. [Eff 2/16/24; R 1/2/2025]

4. Chapter 18-235-201-04, Hawaii Administrative Rules, is repealed.

~~["§18-235-201-04 — Estimated pass-through entity tax payments. (a) For tax year 2024, each electing pass-through entity shall transmit payment of the estimated tax for the current taxable year as follows:~~

- ~~(1) One half of the estimated tax shall be paid on or before the twentieth day of the ninth month of the taxable year; and~~
- ~~(2) One half of the estimated tax shall be paid on or before the twentieth day of the first month following the close of the taxable year.~~

~~(b) For tax years beginning after December 31, 2024, each electing pass-through entity shall transmit payment of the estimated tax for the current taxable year as follows:~~

- ~~(1) One quarter of the estimated tax shall be paid on or before the twentieth day of the fourth month of the taxable year;~~
- ~~(2) One quarter of the estimated tax shall be paid on or before the twentieth day of the sixth month of the taxable year;~~
- ~~(3) One quarter of the estimated tax shall be paid on or before the twentieth day of the ninth month of the taxable year; and~~
- ~~(4) One quarter of the estimated tax shall be paid on or before the twentieth day of the first month following the close of the taxable year.~~

~~(c) For purposes of this section, "estimated tax for the current taxable year" means the lesser of:~~

- ~~(1) 100 per cent of the tax shown on the return for the taxable year or, if no return is filed, 100 per cent of the tax for the taxable year; or~~
- ~~(2) 100 per cent of the tax shown on the return for the preceding taxable year;~~

~~provided that subsection (c) (2) shall not apply if the preceding taxable year was not a taxable year of 12 months or an election for pass-through entity taxation was not made for the preceding taxable year.~~

~~(d) The penalties provided in section 235-97(f), HRS, shall apply to any underpayment of estimated tax~~

~~provided in this section."~~] [Eff 1/2/2025; R
] (Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS §235-
51.5)

Historical note: §18-235-201-04 is based substantially
upon §18-235-200-04. [Eff 2/16/24; R 1/2/2025]

5. Section 18-235-201-05, Hawaii Administrative
Rules, is repealed.

~~["§18-235-201-05 — Pass-through entity tax
payment; schedule of pass-through entity tax paid.
(a) — Each electing pass-through entity shall file with
the department a schedule detailing each member's share
of the pass-through entity tax paid, on a form
prescribed by the director, on or before the twentieth
day of the fourth month following the close of the
taxable year. The schedule shall be accompanied by
payment of the balance of the tax for the taxable
year.~~

~~(b) — Each electing pass-through entity shall be
granted an automatic six-month extension for the
filing of the schedule; provided the conditions in
section 18-235-98, including payment of the properly
estimated tax liability on or before the due date
prescribed for the filing of the schedule in
subsection (a), are met.~~

~~(c) — Amendments to the schedule shall not be
allowed after the due date prescribed in this section,
including any extensions thereof.~~

~~(d) — The department may, in its discretion,
cancel the election for pass-through entity taxation
if an electing pass-through entity fails to file the
schedule within the time provided for in this section.~~

~~Example 1:~~

~~Partnership1, a calendar-year taxpayer,
pays the properly estimated tax liability on
April 20 following the close of the tax
year. On October 20, Partnership1 makes an
election for pass-through entity taxation~~

~~and files the required schedule. On November 1, Partnership1 discovers that there were additional distributive shares of income owed to its members for which it failed to report and pay PTE tax. Partnership1 will not owe additional pass-through entity tax on the additional distributive shares of income and may not amend the schedule of pass-through entity tax to report the additional distributive shares of income. Partnership1 must, however, report the additional distributive shares of income on its income tax return."]~~
[Eff 1/2/2025; R] (Auth: HRS
§§231-10.7; 235-51.5) (Imp: HRS §235-51.5)

Historical note: §18-235-201-05 is based substantially upon §18-235-200-05. [Eff 2/16/24; R 1/2/2025]

6. Section 18-235-201-06, Hawaii Administrative Rules, is repealed.

~~["**§18-235-201-06 Refund of pass-through entity tax.** Any claim for refund of the pass-through entity tax shall be filed by the electing pass-through entity, on a form prescribed by the director, on or before the due date prescribed for the filing of the schedule of pass-through entity tax provided in section 18-235-201-05, including any extensions thereof; provided that if the amount of pass-through entity tax paid by an electing pass-through entity exceeds the amount claimed on the schedule required to be filed under section 18-235-201-05, any claim for refund of the overpayment shall be filed within the time prescribed by section 235-111, HRS.~~

Example 1:

~~Partnership1, a calendar year taxpayer, pays \$25,000, the properly estimated tax liability, on April 20 following the close of the tax year. On October 20,~~

~~Partnership1 makes an election for pass-through entity taxation and files the required schedule, which details each member's share of the \$25,000 pass-through entity tax paid. On November 1, Partnership1 attempts to amend the schedule to decrease the amount of pass-through entity tax from \$25,000 to \$20,000 and requests a \$5,000 refund. Partnership1 may not amend the schedule and may not receive the \$5,000 refund, as the amended schedule and refund claim were not timely filed by October 20.~~

~~Example 2:~~

~~Partnership2, a calendar-year taxpayer, pays \$30,000, the properly estimated tax liability, on April 20 following the close of the tax year. On October 20, Partnership2 makes an election for pass-through entity taxation and files the required schedule. The schedule details each member's share of \$25,000 of the pass-through entity tax paid. On November 1, Partnership2 requests a refund of \$5,000 for the overpayment of pass-through entity tax paid. Partnership2 may receive a refund of \$5,000 because the refund claim was timely filed within the time prescribed by section 235-111, HRS.~~

~~Example 3:~~

~~Partnership3, a calendar-year taxpayer, makes estimated tax payments throughout the year and pays the properly estimated tax liability on April 20 following the close of the tax year. Partnership3 does not make an election for pass-through entity taxation. On November 1, Partnership3 requests a refund of the estimated tax payments made. Because~~

~~Partnership3 did not make an election for pass-through entity taxation, section 18-235-201-06, HAR, does not apply. Partnership3 may receive a refund of the estimated tax payments made, provided the request is made within the time prescribed by section 235-111, HRS." [Eff 1/2/2025; R] (Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS §235-51.5)~~

Historical note: §18-235-201-06 is based substantially upon §18-235-200-06. [Eff 2/16/24; R 1/2/2025]

7. Section 18-235-201-07, Hawaii Administrative Rules, is repealed.

~~[**"§18-235-201-07 Pass-through entity tax credit; allowed.** (a) Each member of an electing pass-through entity whose distributive share or guaranteed payment of Hawaii taxable income is subject to the pass-through entity tax may claim a nonrefundable income tax credit equal to the member's share of pass-through entity taxes paid. For the purposes of this subsection, the amount of pass-through entity taxes paid does not include any amounts paid as penalties or interest.~~

~~(b) No credit may be claimed by any indirect member of an electing pass-through entity unless the direct member of the electing pass-through entity, of which the indirect member is a member, files a schedule detailing each member's share of the pass-through entity tax paid, on a form prescribed by the director, on or before the due date prescribed for the filing of the direct member's return under chapter 235, HRS, including any extensions.~~

~~(c) This section shall apply to taxable years beginning after December 31, 2022, but shall not apply to taxable years beginning after December 31, 2023.~~

Example 1:

~~For tax year 2023, PTE1, a pass-through entity whose members include Individual A, PTE2, and PTE3, makes an election for pass-through entity taxation, timely files the required schedule, and timely pays the pass-through entity tax. PTE2, a pass-through entity whose members include Individual B and Individual C, does not elect pass-through entity taxation and does not file a schedule detailing each member's share of the pass-through entity tax paid. PTE3, a pass-through entity whose members include Individual D and Individual E, does not elect pass-through entity taxation, but timely files a schedule detailing each member's share of the pass-through entity tax paid. Individual A may claim a credit for pass-through entity taxes paid by PTE1. Individual B and Individual C may not claim a credit for pass-through entity taxes paid by PTE1 because PTE2 did not file the required schedule. Individual D and Individual E may claim a credit for pass-through entity taxes paid by PTE1 because PTE3 filed the required schedule." [Eff 1/2/2025; R~~
(Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS § 235-51.5; Act 50, SLH 2024)

Historical note: §18-235-201-07 is based substantially upon §18-235-200-07. [Eff 2/16/24; R 1/2/2025]

8. Section 18-235-201-07.01, Hawaii Administrative Rules, is repealed.

~~["§18-235-201-07.01 Pass-through entity tax credit; allowed. (a) Each qualified member of an electing pass-through entity may claim a nonrefundable income tax credit equal to the qualified member's share of pass-through entity taxes paid. For the purposes of this subsection, the amount of pass-through entity taxes paid does not include any amounts paid as~~

~~penalties or interest.~~

~~(b) No credit may be claimed by a beneficiary of a trust or estate that is a qualified member of an electing pass-through entity unless the trust or estate files a schedule detailing each beneficiary's share of the pass-through entity tax paid, on a form prescribed by the director, on or before the due date prescribed for the filing of the trust's or estate's return under chapter 235, HRS, including any extensions.~~

~~(c) This section shall apply to taxable years beginning after December 31, 2023." [Eff 1/2/2025; R] (Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS § 235-51.5; Act 50, SLH 2024)~~

Historical note: §18-235-201-07.01 is based substantially upon §18-235-200-07. [Eff 2/16/24; R 1/2/2025]

9. Section 18-235-201-08, Hawaii Administrative Rules, is repealed.

~~**"§18-235-201-08 Credit for substantially similar taxes paid to another state or to the District of Columbia.** A taxpayer claiming the credit for the pro rata share of taxes paid to another state or to the District of Columbia on income of any partnership or S corporation of which the taxpayer is a member shall attach to the taxpayer's income tax return for the taxable year a copy of the pass-through entity's tax return filed in the other state or District of Columbia and all available schedules showing the taxpayer's share of taxes paid."~~ [Eff 1/2/2025; R] (Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS § 235-51.5)

Historical note: §18-235-201-08 is based substantially upon §18-235-200-08. [Eff 2/16/24; R 1/2/2025]

10. Section 18-235-201-09, Hawaii Administrative Rules, is repealed.

~~["§18-235-201-09 Income tax credits; ordering of credit claims. In the offsetting of a taxpayer's income tax liability, tax credits shall be applied in the following order:~~

- ~~(1) Tax credits that may be refunded or paid to a taxpayer who has no income tax liability;~~
- ~~(2) Nonrefundable tax credits that may not be carried forward; and~~
- ~~(3) Nonrefundable tax credits that may be used as a credit against taxes in subsequent years until exhausted."] [Eff 1/2/2025; R] (Auth: HRS §§231-10.7; 235-51.5) (Imp: HRS §235-91.5)~~

Historical note: §18-235-201-09 is based substantially upon §18-235-200-09. [Eff 2/16/24; R 1/2/2025]

11. Chapter 18-235, Hawaii Administrative Rules, is amended by adding a new section 18-235-51.5-01 to read as follows:

"§18-235-51.5-01 Pass-through entity election.

(a) An election for pass-through entity taxation must be made on or before the due date prescribed for the filing of the schedule for the taxable year as provided in section 18-235-51.5-05, including any extensions thereof.

(b) Failure to timely make an election on the form prescribed by the director shall constitute a waiver of the election of pass-through entity taxation for the taxable year." [Eff] (Auth: HRS §§231-3(9), 235-51.5) (Imp: HRS §235-51.5)

12. Chapter 18-235, Hawaii Administrative Rules, is amended by adding a new section 18-235-51.5-02 to read as follows:

"§18-235-51.5-02 Electronic filing. (a) All returns, schedules, statements, and other documents

required to be filed under chapter 235, HRS, and chapter 18-235, HAR, shall be filed electronically by an electing pass-through entity for the taxable year in which an election for pass-through entity taxation is made.

(b) The date of filing shall be the date the return, schedule, statement, or other document is successfully transmitted to the department in the form and manner prescribed by the director.

(c) Failure by an electing pass-through entity to electronically file as required in this section shall result in the cancellation of the election of pass-through entity taxation for the taxable year.

(d) The director may exempt any electing pass-through entity from the requirements in this section."
[Eff] (Auth: HRS §§231-3(9), 235-51.5)
(Imp: HRS §§231-9.9(a), 235-51.5)

13. Chapter 18-235, Hawaii Administrative Rules, is amended by adding a new section 18-235-51.5-03 to read as follows:

"§18-235-51.5-03 Electronic funds transfer. (a)
All payments required to be remitted by an electing pass-through entity under chapter 235, HRS, and chapter 18-235, HAR, shall be made by electronic funds transfer for the taxable year in which an election for pass-through entity taxation is made.

(b) The date of payment shall be the date the funds are deposited with the State.

(c) Failure by an electing pass-through entity to submit payment by electronic funds transfer as required in this section shall result in the cancellation of the election of pass-through entity taxation for the taxable year.

(d) The director may exempt any electing pass-through entity from the requirements in this section."
[Eff] (Auth: HRS §§231-3(9), 235-51.5)
(Imp: HRS §§231-9.9(a), 235-51.5)

14. Chapter 18-235, Hawaii Administrative Rules, is amended by adding a new section 18-235-51.5-04 to

read as follows:

"§18-235-51.5-04 Estimated pass-through entity tax payments. (a) For tax year 2024, each electing pass-through entity shall transmit payment of the estimated tax for the current taxable year as follows:

- (1) One-half of the estimated tax shall be paid on or before the twentieth day of the ninth month of the taxable year; and
- (2) One-half of the estimated tax shall be paid on or before the twentieth day of the first month following the close of the taxable year.

(b) For tax years beginning after December 31, 2024, each electing pass-through entity shall transmit payment of the estimated tax for the current taxable year as follows:

- (1) One-quarter of the estimated tax shall be paid on or before the twentieth day of the fourth month of the taxable year;
- (2) One-quarter of the estimated tax shall be paid on or before the twentieth day of the sixth month of the taxable year;
- (3) One-quarter of the estimated tax shall be paid on or before the twentieth day of the ninth month of the taxable year; and
- (4) One-quarter of the estimated tax shall be paid on or before the twentieth day of the first month following the close of the taxable year.

(c) For purposes of this section, "estimated tax for the current taxable year" means the lesser of:

- (1) 100 per cent of the tax shown on the return for the taxable year or, if no return is filed, 100 per cent of the tax for the taxable year; or
- (2) 100 per cent of the tax shown on the return for the preceding taxable year;

provided that subsection (c) (2) shall not apply if the preceding taxable year was not a taxable year of 12 months or an election for pass-through entity taxation was not made for the preceding taxable year.

(d) The penalties provided in section 235-97(f), HRS, shall apply to any underpayment of estimated tax provided in this section." [Eff] (Auth: HRS §§231-3(9), 235-51.5) (Imp: HRS §§235-51.5, 235-97(f))

15. Chapter 18-235, Hawaii Administrative Rules, is amended by adding a new section 18-235-51.5-05 to read as follows:

"§18-235-51.5-05 Pass-through entity tax payment; schedule of pass-through entity tax paid.

(a) Each electing pass-through entity shall file with the department a schedule detailing each member's share of the pass-through entity tax paid, on a form prescribed by the director, on or before the twentieth day of the fourth month following the close of the taxable year. The schedule shall be accompanied by payment of the balance of the tax for the taxable year.

(b) Each electing pass-through entity shall be granted an automatic six-month extension for the filing of the schedule; provided the conditions in section 18-235-98, including payment of the properly estimated tax liability on or before the due date prescribed for the filing of the schedule in subsection (a), are met.

(c) Amendments to the schedule shall not be allowed after the due date prescribed in this section, including any extensions thereof.

(d) The department may, in its discretion, cancel the election for pass-through entity taxation if an electing pass-through entity fails to file the schedule within the time provided for in this section.

Example 1:

Partnership1, a calendar-year taxpayer, pays the properly estimated tax liability on April 20 following the close of the tax year. On October 20, Partnership1 makes an election for pass-through entity taxation

and files the required schedule. On November 1, Partnership1 discovers that there were additional distributive shares of income owed to its members for which it failed to report and pay PTE tax. Partnership1 will not owe additional pass-through entity tax on the additional distributive shares of income and may not amend the schedule of pass-through entity tax to report the additional distributive shares of income. Partnership1 must, however, report the additional distributive shares of income on its income tax return."
[Eff] (Auth: HRS §§231-3(9), 235-51.5, 235-98) (Imp: HRS §§235-51.5, 235-98)

16. Chapter 18-235, Hawaii Administrative Rules, is amended by adding a new section 18-235-51.5-06 to read as follows:

"§18-235-51.5-06 Refund of pass-through entity tax. Any claim for refund of the pass-through entity tax shall be filed by the electing pass-through entity, on a form prescribed by the director, on or before the due date prescribed for the filing of the schedule of pass-through entity tax provided in section 18-235-51.5-05, including any extensions thereof; provided that if the amount of pass-through entity tax paid by an electing pass-through entity exceeds the amount claimed on the schedule required to be filed under section 18-235-51.5-05, any claim for refund of the overpayment shall be filed within the time prescribed by section 235-111, HRS.

Example 1:

Partnership1, a calendar year taxpayer, pays \$25,000, the properly estimated tax liability, on April 20 following the close of the tax year. On October 20, Partnership1 makes an election for pass-through entity taxation and files the

required schedule, which details each member's share of the \$25,000 pass-through entity tax paid. On November 1, Partnership1 attempts to amend the schedule to decrease the amount of pass-through entity tax from \$25,000 to \$20,000 and requests a \$5,000 refund. Partnership1 may not amend the schedule and may not receive the \$5,000 refund, as the amended schedule and refund claim were not timely filed by October 20.

Example 2:

Partnership2, a calendar-year taxpayer, pays \$30,000, the properly estimated tax liability, on April 20 following the close of the tax year. On October 20, Partnership2 makes an election for pass-through entity taxation and files the required schedule. The schedule details each member's share of \$25,000 of the pass-through entity tax paid. On November 1, Partnership2 requests a refund of \$5,000 for the overpayment of pass-through entity tax paid. Partnership2 may receive a refund of \$5,000 because the refund claim was timely filed within the time prescribed by section 235-111, HRS.

Example 3:

Partnership3, a calendar-year taxpayer, makes estimated tax payments throughout the year and pays the properly estimated tax liability on April 20 following the close of the tax year. Partnership3 does not make an election for pass-through entity taxation. On November 1, Partnership3 requests a refund of the estimated tax payments made. Because Partnership3 did not make an election for pass-through entity taxation, section 18-

235-51.5-06, HAR, does not apply.
Partnership³ may receive a refund of the
estimated tax payments made; provided the
request is made within the time prescribed by
section 235-111, HRS." [Eff]
(Auth: HRS §§231-3(9), 235-51.5) (Imp:
HRS §§235-111, 235-51.5)

17. Chapter 18-235, Hawaii Administrative Rules,
is amended by adding a new section 18-235-51.5-07 to
read as follows:

**"§18-235-51.5-07 Pass-through entity tax credit;
allowed.** (a) Each qualified member of an electing
pass-through entity may claim a nonrefundable income
tax credit equal to the qualified member's share of
pass-through entity taxes paid. For the purposes of
this subsection, the amount of pass-through entity
taxes paid does not include any amounts paid as
penalties or interest.

(b) No credit may be claimed by a beneficiary of
a trust or estate that is a qualified member of an
electing pass-through entity unless the trust or
estate files a schedule detailing each beneficiary's
share of the pass-through entity tax paid, on a form
prescribed by the director, on or before the due date
prescribed for the filing of the trust's or estate's
return under chapter 235, HRS, including any
extensions." [Eff] (Auth: HRS §§231-3(9),
235-51.5) (Imp: HRS §235-51.5)

18. Chapter 18-235, Hawaii Administrative Rules,
is amended by adding a new section 18-235-51.5-08 to
read as follows:

**"§18-235-51.5-08 Credit for substantially
similar taxes paid to another state or to the District
of Columbia.** A taxpayer claiming the credit for the
pro rata share of taxes paid to another state or to
the District of Columbia on income of any partnership
or S corporation of which the taxpayer is a member

shall attach to the taxpayer's income tax return for the taxable year a copy of the pass-through entity's tax return filed in the other state or District of Columbia and all available schedules showing the taxpayer's share of taxes paid." [Eff]
(Auth: HRS §§231-3(9), 235-51.5) (Imp: HRS §§ 235-51.5, 235-55(a))

19. Chapter 18-235, Hawaii Administrative Rules, is amended by adding a new section 18-235-91.5-01 to read as follows:

"§18-235-91.5-01 Income tax credits; ordering of credit claims. In the offsetting of a taxpayer's income tax liability, tax credits shall be applied in the following order:

- (1) Tax credits that may be refunded or paid to a taxpayer who has no income tax liability;
- (2) Nonrefundable tax credits that may not be carried forward; and
- (3) Nonrefundable tax credits that may be used as a credit against taxes in subsequent years until exhausted." [Eff] (Auth: HRS §231-3(9)) (Imp: HRS §235-91.5)

20. Material to be repealed is bracketed and stricken. New material is underscored.

21. These amendments to chapter 18-235, Hawaii Administrative Rules, are provided in the Ramseyer format for reference only.

III. New Business

C. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Title 12 Subtitle 8 Part 11 Chapter 229, General, Administrative and Legal Provisions, promulgated by Department of Labor and Industrial Relations – Exhibit 4

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

Date: October 6, 2025

Department or Agency: Labor and Industrial Relations

Administrative Rule Title and Chapter: Title 12, Subtitle 8, Part 11 Elevators and Related Systems.

Chapter Name: 12-229 General, Administrative, and Legal Provisions

Contact Person/Title: Bill Kunstman, Deputy Director

Email: william.g.kunstman@hawaii.gov **Phone:** (808) 586-8845

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.

Topic

Chapter 12-229 establishes the general administrative rules and legal provisions applicable to the five chapters governing elevators, dumbwaiters, moving walks, stage lifts, inclined lifts, personnel hoists, permanently installed material lifts, and any other similar mechanized equipment used to convey people in places other than a public right-of-way as well as amusement rides.

The proposed amendments include:

- Housekeeping revisions to improve clarity and consistency;
- Updated procedural guidance to reflect current practices; and
- Adjustments to fee schedules.

These fee adjustments are necessary to address increased costs associated with collective bargaining agreements, fringe benefits, and the overall rise in the cost of goods and services, as measured by the Consumer Price Index (CPI).

General Description

Act 103 (Session Laws of Hawai'i, 2012) established the Boiler and Elevator Special Fund, transitioning the program to a special fund model and creating a mechanism to support the self-sustainability of the Boiler and Elevator Branch (Branch) within the Hawai'i Occupational Safety and Health Division (HIOSH).

In enacting Act 103, the Legislature acknowledged that repeated budget cuts during downturns and systemic neglect had significantly weakened the effectiveness of the boiler and elevator inspection program. This deterioration not only compromised public safety but impeded economic revitalization efforts. Act 186 (SLH, 2018) subsequently amended the law by converting the special fund into a revolving fund.

Under Act 103, the Branch funds its operations through assessed fees. This funding model enables the program to recruit and retain qualified personnel and to perform essential

inspection and permitting functions that protect public safety and support economic development.

The Elevator and Related Systems rules were comprehensively revised in 2014 to align with Act 103 and to adopt more current national consensus codes. Each of those updates included housekeeping amendments, procedural refinements based on established practices, and fee increases necessary to sustain Branch operations.

In conjunction with Act 103, a shortage differential was introduced in 2012, increasing entry-level salaries for elevator inspectors by 50%. This differential was updated in 2023 to reflect a 40% increase in entry-level salaries. The adjustment was necessary because cumulative collective bargaining increases had rendered the original differential ineffective as salaries for inspector positions in other agencies had caught up, despite lacking a shortage differential.

Since the most recent fee increase in January 2021, non-revenue-generating clerical staff within the Branch (Units 3 and 4) have received a 17% salary increase through collective bargaining. Concurrently, the overall cost of goods and services has risen significantly, as reflected in a 21% increase in the Consumer Price Index for All Urban Consumers (CPI-U). Additionally, the fringe benefit rate applied to all Branch positions has increased from 63.28% to 64.25%.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? (If Yes, please provide webpage address and when and where rules may be viewed in person).

Draft rules in Ramseyer format are available at:

<https://labor.hawaii.gov/hiosh/proposed-rules/>

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

I. Rule Description: Amendment & Compilation

Amendment and Compilation of Chapter 12-229 General, Administrative, and Legal Provisions

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

Yes.

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

No.

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.)

No.

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

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

The proposed Elevator and Related Systems rules and codes adopted therein apply to any entity, including small businesses, which own, operate, or maintain elevators, dumbwaiters, moving walks, stage lifts, inclined lifts, personnel hoists, permanently installed material lifts, and any other similar mechanized equipment used to convey people in places other than a public right-of-way as well as amusement rides. These include owners, property managers, construction contractors, elevator service companies, and facility operators. The primary impact is financial, due to an updated fee schedule for inspections, permits, and tests.

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 attached Exhibit A and Exhibit B fee comparisons.

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 fee schedule ranges from \$176 to \$1,600. Under the proposed amendments, fees would increase to a range of \$225 to \$2,000. Fees for the Elevator Section were previously adjusted in 2014, 2016, 2019, and 2021 in accordance with Act 103 (SLH, 2012).

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

The proposed fee schedule ranges from \$225 to \$2,000, representing an average increase of approximately 25 percent. Variations in the percentage increases are due to rounding adjustments, as all fees have been standardized to the nearest \$25 increment.

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

The Boiler and Elevator Branch operates as a self-sustaining revolving fund program, financed through assessed fees. This funding model enables the Branch to recruit and retain qualified personnel and to perform critical inspection and permitting functions that safeguard public safety and promote economic growth.

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

The DLIR developed the proposed fee schedule by evaluating the funding required to maintain the self-sufficiency of the Boiler and Elevator Branch. This assessment included the aggregated costs of inspector and non-revenue-generating staff salaries, as well as overhead expenses such as collective bargaining increases, rent charged by the Department of Accounting and General Services (DAGS), the fringe benefit rate applied to revolving funds, and the cost of supplies and services.

Recent economic and operational cost drivers include:

- A **40 percent increase in entry-level salaries** for elevator inspectors in 2023 to restore the effectiveness of a previously implemented shortage differential;
- A **17 percent salary increase for clerical staff** (Units 3 and 4) through collective bargaining since 2021;
- A **21 percent rise in the Consumer Price Index (CPI-U)**; and
- An increase in the **fringe benefit rate from 63.28 percent to 64.25 percent**.

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

The Department projects that the proposed fee schedule will generate an additional \$350,000 annually, a critical increase to sustain the operational capacity of the Boiler and Elevator Branch. This additional revenue will directly support core functions such as inspections, permitting, and administrative processing as well as enhance the Branch's ability to attract and retain qualified personnel.

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

The DLIR made a focused effort to ensure that the revised fee structure is aligned with actual cost increases and inflationary trends. To minimize the impact on small businesses, the Department clarified rule language to eliminate ambiguity and removed fees for building plan reviews that are now handled by county agencies.

In addition, several proposed provisions are designed to reduce costs for building owners, property managers, and elevator companies. These measures aim to streamline compliance, eliminate redundancies, and improve administrative efficiency while maintaining the Branch's commitment to public safety and service quality:

- The proposed rules permit the use of elevator and related equipment designs based on newer editions of the International Building Code (IBC), provided they meet or exceed the safety standards established in the 2012 edition. For example, under more recent IBC editions, elevator hoistway venting is no longer required for buildings over three stories. This change eliminates a costly and

outdated requirement, reducing construction expenses for many projects without compromising safety.

- If smoke, fire, or emergency power tests can be conducted during the initial inspection, no separate fee will be assessed. This change reduces costs for building owners and contractors, shortens turnaround times, and minimizes the need for follow-up inspections.
- Category 3 and 5 tests for roped hydraulic elevators can be combined where appropriate, cutting costs and inspection time while maintaining safety.
- The proposed rules provide greater flexibility in how operating permits are displayed. Previously, permits for new or altered equipment installed after January 31, 2021, were required to be posted inside the elevator cab. Under the revised rules, permits may instead be displayed in a secure and visible location outside the elevator or kindred equipment, provided they remain accessible for review and are accompanied by signage inside the elevator indicating the permit's location. This change reduces logistical and financial burdens, particularly for small businesses.

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

There is no availability or practicability of less restrictive alternatives as the adoption of updated standards is necessary for public safety.

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

The DLIR did not consider alternative funding mechanisms, as the proposed fee increases are modest and consistent with the Legislature's intent for the Boiler and Elevator Branch to operate in a self-sufficient manner.

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

The Department convened a stakeholder meeting with representatives from the elevator industry on May 29, 2025. In advance of the meeting, DLIR distributed the proposed rule amendments along with an invitation to participate in a review and discussion of the changes. Ten stakeholders attended the meeting, both in person and remotely, and were given the opportunity to review each proposed amendment and ask clarifying questions.

In addition to this formal engagement, the Department maintains ongoing communication with professionals in the elevator industry and regularly considers their input throughout the rulemaking process.

- 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.**

The three provisions outlined above in Question #4 (permit display flexibility, inspection efficiency, and modernization of design standards through the allowing the use of newer International Building Code (IBC) editions) were developed through DLIR's ongoing engagement with the elevator industry. These topics were also discussed in previous stakeholder meetings and reflect the Department's continued collaboration with industry professionals to ensure practical, safety-focused, and cost-effective rules updates.

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.

There are no 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-businss-impact-statements>

Exhibit A: Fee Comparison

Exhibit A: Elevator and Kindred Equipment Installation and Alteration Fees	1-Jan-21	1-Jan-25	% Increase
Alterations*:			
Involving only the replacement of a single major component (such as a car door operator, valve, a jack or a cylinder)	234	300	28%
Involving only cosmetic changes (such as car interior modernizations)	410	500	22%
Involving two or more major components and/or subsystems:			
1-3 floors	738	900	22%
4-9 floors	796	1000	26%
10-19 floors	866	1100	27%
20-29 floors	925	1150	24%
30-39 floors	995	1250	26%
40 or more floors	1112	1400	26%
Escalator alteration	NA	750	NA
New Installations: Dumbwaiter or material lift	615	750	22%
Escalator, moving walk, or moving ramp	615	750	22%
Platform lifts or stairway chairlifts	615	750	22%
Elevator: 1-3 floors	738	900	22%
4-9 floors	796	1000	26%
10-19 floors	866	1100	27%
20-29 floors	925	1150	24%
30-39 floors	995	1250	26%
40 or more floors	1112	1400	26%
Personnel hoists	527	650	23%
Temporary use permits (construction car)	527	650	23%
Additional inspections: Normal workday, up to two hours	400	500	25%
Normal workday, more than two hours	800	1000	25%
Overtime hours, up to two hours	800	1000	25%
Overtime hours, more than two hours	1600	2000	25%
Building Plan Reviews	234	NA	NA

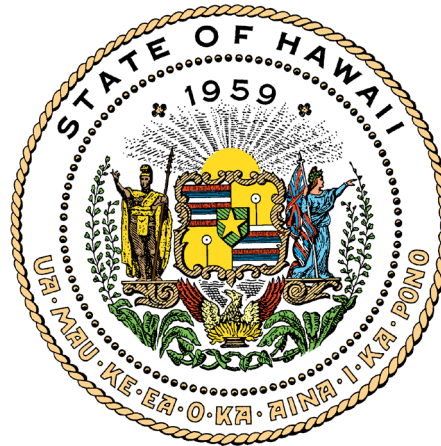
* The average fee increase is 25%

Exhibit B: Fee Comparison

Exhibit B: Elevator and Kindred Equipment Inspection Fees	1-Jan-21	1-Jan-25	% Increase
Dumbwaiter or material lift	176	225	28%
Escalator, moving walk, or moving ramp	264	325	23%
Platform Lift or Stairway Chairlift	264	325	23%
Hydraulic elevator – holed	322	400	24%
Hydraulic elevator – holeless	322	400	24%
Hydraulic elevator – roped holeless	381	475	25%
Traction elevators:			
1-3 floors	293	375	28%
4-9 floors	322	400	24%
10-19 floors	351	450	28%
20-29 floors	410	525	28%
30-39 floors	498	625	26%
40 or more floors	585	725	24%
Personnel hoist	351	450	28%
Temporary Use Permit (construction car)	351	450	28%
Category 3 test	381	475	25%
Category 3 test with safety overspeed valve	439	550	25%
Category 3/5 test for roped hydraulic	498	625	26%
Category 5 test	498	625	26%
Category 5 with counterweight test	615	775	26%
Escalator, internal	498	625	26%

*** The average fee increase is 26%**

Department of Labor and Industrial Relations Hawaii Occupational Safety and Health (HIOSH) Boiler and Elevator Inspection Branch



Small Business Regulatory Review Board Meeting

October 16, 2025

10:00 am

Capitol Modern Building
250 South Hotel Street
Conference Room 436

Chapter 12-229 establishes the general administrative rules and legal provisions applicable to the five chapters governing elevators, dumbwaiters, moving walks, stage lifts, inclined lifts, personnel hoists, permanently installed material lifts, and any other similar mechanized equipment used to convey people in places other than a public right-of-way as well as amusement rides.

The proposed amendments include:

- Housekeeping revisions to improve clarity and consistency;
- Updated procedural guidance to reflect current practices; and
- Adjustments to fee schedules.



Background & Legislative Actions

- Act 103 (2012) created the *Boiler and Elevator Special Fund*, enabling the program to become self-sustaining through assessed fees.
- The Legislature cited budget cuts and neglect as causes of weakened inspection effectiveness, impacting public safety and economic growth.
- Act 186 (2018) converted the special fund into a revolving fund, reinforcing long-term financial stability.

Program Enhancements & Financial Pressures

- Fee-based funding supports qualified staffing, inspections, and permitting to ensure safety and economic development.
- Rules updated in 2014 to align with national codes; included fee increases and procedural improvements.
- Salary adjustments:
Entry-level inspector pay increased by 50% in 2012 and 40% in 2023 to remain competitive.
- Since the 2021 fee increase, costs have risen:
17% in clerical wages, 21% in CPI-U, and fringe benefits from 63.28% to 64.25%.



Impact on Small Businesses

- Proposed rules apply to small businesses that own, operate, or maintain elevator and conveyance systems.
- Affected entities include property managers, contractors, service companies, and facility operators.
- Equipment covered: elevators, lifts, moving walks, dumbwaiters, amusement rides, and similar systems.
- Primary impact is financial, due to updated inspection, permit, and testing fees.



Proposed Fee Increases

- **Current Fees:** \$176 – \$1,600
→ Last adjusted in 2014, 2016, 2019, and 2021 (per Act 103, SLH 2012)
- **Proposed Fees:** \$225 – \$2,000
→ ~25% average increase, rounded to nearest \$25
- **Purpose:**
 - Maintain a self-sustaining revolving fund
 - Support staffing, inspections, and permitting
 - Ensure public safety and promote economic growth
- **See Exhibits A & B** for detailed fee comparisons

Exhibit A: Fee Comparison

* The average fee
increase is 25%

Exhibit A: Elevator and Kindred Equipment Installation and Alteration Fees	1-Jan-21	1-Jan-25	% Increase
Alterations*:			
Involving only the replacement of a single major component (such as a car door operator, valve, a jack or a cylinder)	234	300	28%
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New Installations: Dumbwaiter or material lift	615	750	22%
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Normal workday, more than two hours	800	1000	25%
Overtime hours, up to two hours	800	1000	25%
Overtime hours, more than two hours	1600	2000	25%
Building Plan Reviews	234	NA	NA

Exhibit B: Fee Comparison

* The average fee increase is 26%

Exhibit B: Elevator and Kindred Equipment Inspection Fees	1-Jan-21	1-Jan-25	% Increase
Dumbwaiter or material lift	176	225	28%
Escalator, moving walk, or moving ramp	264	325	23%
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Category 3/5 test for roped hydraulic	498	625	26%
Category 5 test	498	625	26%
Category 5 with counterweight test	615	775	26%
Escalator, internal	498	625	26%



Methodology for Determining Proposed Fees

- Fees based on sustaining the Boiler & Elevator Branch's operations
- Methodology included analysis of:
 - Inspector & clerical salaries
 - Overhead costs (collective bargaining increases, rent, fringe benefits, costs of supplies and services)

Goal: Maintain a self-funded model that supports safety and service delivery



Recent Economic and Operational Cost Drivers

- **40% increase** in entry-level inspector salaries for elevator inspectors in 2023 to restore the effectiveness of a previously implemented shortage differential;
- **17% increase** in clerical staff wages (Units 3 and 4) through collective bargaining since 2021;
- **21% rise** in Consumer Price Index (CPI-U)
- Fringe benefit rate increase: **63.28% → 64.25%**



Efforts to Reduce Impact on Small Business

- Fee structure aligned with actual cost increases and inflation trends
- Clarified rule language to eliminate ambiguity
- Removed fees for building plan reviews now handled by counties
- Designed to streamline compliance, reduce redundancy, and improve efficiency

Focus remains on public safety and service quality



Updated Building Code Use

- Proposed rules allow use of newer IBC editions if safety standards meet or exceed 2012 code
- Example: Hoistway venting may no longer be required for buildings over 3 stories
- Eliminates outdated, costly requirements
- Reduces construction costs without compromising safety



Combined Tests

- No separate fee if smoke, fire, or emergency power tests are conducted during initial inspection
- Category 3 and 5 tests can be combined for roped hydraulic elevators
- Reduces costs for building owners and contractors
- Speeds up project and inspection timelines



Flexible Operating Permit Requirements

- Previously required posting inside elevator cab for new/altered equipment (post-2021)
- Revised rules allow permits to be displayed outside elevator in a secure, visible location
- Signage inside the elevator cab directs to permit location
- Eases logistical and financial burden for small businesses



Alternatives and Flexibility Considered

- No less restrictive alternatives are available
→ Adoption of updated codes is essential for public safety
- Creative compliance options not pursued
→ Fee increases are modest and align with the Legislature's intent for a self-sustaining program
- Alternative funding mechanisms were not considered
→ Proposed structure ensures long-term operational stability



Small Business Involvement

- Stakeholder meeting held on May 29, 2025, with elevator industry representatives
- Proposed rules shared in advance for review and discussion
- 10 participants attended (in person and remotely) and provided feedback
- DLIR maintains ongoing communication with industry professionals
- Small business input incorporated into:
 - ✓ Permit display flexibility
 - ✓ Combined inspection fees
 - ✓ Use of updated IBC design standards

Questions? Comments?

**Thank You
Mahalo**



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendment and Compilation of Chapter 12-229
Hawaii Administrative Rules

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

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 229

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

§12-229-1	Scope and application
§12-229-2	Definitions
§12-229-3	Repealed
§12-229-3.1	Codes incorporated and adopted by reference
§12-229-4	Repealed
§12-229-4.1	Installation and alteration permits
§12-229-5	Repealed
§12-229-5.1	Permits to operate
§12-229-6	Repealed
§12-229-6.1	Fees

§12-229-7	Repealed
§12-229-7.1	Inspections and tests
§12-229-8	Repealed
§12-229-8.1	Rights and enforcement
§12-229-9	Repealed
§12-229-9.1	Complaints
§12-229-10	Repealed
§12-229-10.1	Reporting of accidents
§12-229-11	Repealed
§12-229-11.1	Investigations
§12-229-12	Repealed
§12-229-12.1	Violations and penalties
§12-229-13	Repealed
§12-229-13.1	Review and appeal
§12-229-14	Repealed
§12-229-14.1	Trade secrets
§12-229-15	Repealed
§12-229-15.1	Notifications of transfer and location
§12-229-16	Repealed
§12-229-16.1	Variances
§12-229-17	Records

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

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

- (1) Equipment or apparatus installed in private residences provided the equipment or apparatus is not accessible to the public or to other occupants in the building; ~~[Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;]~~

- (2) Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;
- [~~(2)~~] (3) Material hoists used to raise or lower materials during construction, alteration or demolition[~~-~~] (within the scope of ANSI A10.5); and
- [~~(3)~~] (4) Equipment or apparatus installed in buildings or structures wholly owned and operated by the United States government. [Eff 6/19/00; am and comp 6/30/14; comp 11/10/16; am and comp 2/15/19; comp 1/31/21; am and comp] (Auth: HRS §394-4) (Imp: HRS §397-4)

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

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

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

"ANSI" means the American National Standards Institute.

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

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

"Approved" means approved by the department.

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

"ASME" means American Society of Mechanical Engineers.

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

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

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

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

"ASTM" means American Society for Testing and Materials.

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

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

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

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

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

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

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

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

"Director" means the director of the department of labor and industrial relations or the director's designee.

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

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

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

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

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

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

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

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

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

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

"Kindred equipment" means escalators, moving walks, dumbwaiters, permanently installed material lifts, platform lifts, inclined lifts, stage lifts, stairway chairlifts, personnel hoists, and any other similar mechanized equipment used to convey people in places other than a public right-of-way, but does not include amusement rides.

"May" means not mandatory.

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

"NFPA" means the National Fire Protection Association.

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

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

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

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

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

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

"Permit to operate" means a ~~[document,]~~ certificate, which may be electronic, issued by the department indicating the elevator or kindred equipment has met the required safety inspections and tests required by this part and that the required fees have been paid and authorizing the operation of an elevator, kindred equipment, or an amusement ride.

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

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

"Shall" means mandatory.

"Unsafe" means potential exposure to a recognized hazard.

"Violation" means the failure to comply with any citation, notice, or order of the department, or rule or standard promulgated under chapter 397, HRS. [Eff 6/19/00; am and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp 1/31/21; am and comp] (Auth: HRS §§397-4, 397-6)
(Imp: HRS §§397-4, 397-6)

§12-229-3 Repealed. [R 6/30/14]

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

- (1) ANSI/ASSE A10.4-2007, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as published ~~[in 2007]~~ by ~~[American National Standards Institute, Inc.;]~~ ANSI;
- (2) ASME A17.1-2010/CSA-B44-10, Safety Code for Elevators and Escalators, published ~~[in 2010]~~ by ~~[the American Society of Mechanical Engineers;]~~ ASME;
- (3) ASME A17.3-2011, Safety Code for Existing Elevators and Escalators, published ~~[in 2011]~~ by ~~[the American Society of Mechanical Engineers;]~~ ASME;
- ~~[-2-]~~ (4) ASME A17.5-2011, Elevator and Escalator Electrical Equipment, published ~~[in 2011]~~ by ~~[the American Society of Mechanical Engineers;]~~ ASME;
- ~~[-3-]~~ (5) ASME A17.6-2010, Standard for Elevator Suspension, Compensation and Governor

- Systems, published [~~in 2010~~] by [~~the American Society of Mechanical Engineers;~~] ASME;
- [~~(4)~~] (6) ASME A18.1-2011, Safety Standard for Platform Lifts and Stairway Chairlifts, published [~~in 2011~~] by [~~the American Society of Mechanical Engineers;~~] ASME;
 - [~~(5)~~] (7) International Building Code, 2012 edition, published [~~in 2012~~] by the International Code Council, [~~Incorporated;~~] Inc.;
 - [~~(6)~~] (8) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, published [~~in 2010~~] by the International Code Council, [~~Incorporated;~~] Inc.;
 - [~~(7)~~] (9) NFPA 1, [~~Uniform~~] Fire Code, 2009 Edition, published [~~in 2009~~] by [~~the National Fire Protection Association;~~] NFPA;
 - [~~(8)~~] (10) NFPA 72, National Fire Alarm and Signaling Code, 2010 edition, published [~~in 2010~~] by [~~the National Fire Protection Association;~~] NFPA;
 - [~~(9)~~] (11) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 edition, published [~~in 2010~~] by [~~the National Fire Protection Association;~~] NFPA; and
 - [~~(10)~~] (12) NFPA 70, National Electrical Code, 2011 edition, as published [~~in 2011~~] by [~~the National Fire Protection Association.~~] NFPA.
 [Eff and comp 6/30/14; comp 11/10/16; am and comp 2/15/19; am and comp 1/31/21; am and comp _____] (Auth: HRS §397-4)
 (Imp: HRS §397-4)

§12-229-4 Repealed. [R 6/30/14]

§12-229-4.1 Installation and alteration permits.

(a) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator, kindred equipment, or amusement ride subject to this

part without first obtaining an installation or alteration permit from the department.

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

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

- (1) Applicant's name (elevator contractor licensed to perform the work), business address and license number, expiration date of the license, name and contact information of the licensed mechanic or supervisor in charge of the work;
- (2) Building name and complete address, including island and zip code, of the installation or alteration;
- (3) The name and complete address of the legal owner of the elevator, kindred equipment, or amusement ride;
- (4) The anticipated start date of the installation or alteration and the anticipated completion date;
- (5) The type of equipment to be installed or altered, manufacturer of the equipment, maximum rise and number of floors;
- (6) The plans and specification for installation or alteration of elevators and kindred equipment together with the building details that are pertinent to the installation; provided that proposed designs based on International Building Code editions, or elements thereof, adopted after the 2012 edition may be accepted by the department.

The plans and specifications shall include sufficient documentation and justification for the use of an International Building Code, or elements thereof, adopted after 2012 demonstrating that the proposed design provides at least as, or greater than, safe operation and use of the elevator or kindred equipment as set forth in the International Building Code 2012 edition;

- (7) Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department;
- (8) For amusement rides, the application to review, approve, and register the new apparatus shall be submitted on a form authorized by the department and shall include manufacturers drawings, and engineering and test data; and
- (9) Any other information indicated as required by the application.

(b) Applications to install, alter, or register must be accompanied by the payment of the appropriate installation or alteration processing fee for each conveyance subject to this part as per the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2021,~~] January 1, 2025, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2021,~~] January 1, 2025, which is made a part of this chapter and located at the end of this chapter.

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

~~was due to circumstances beyond the control of the applicant; and~~

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

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

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

- (1) All alteration to elevators and kindred equipment as described in ASME A17.1, section 8.7;
- (2) Any alterations that ~~[requires]~~ require the equipment or conveyance to be tested by the department prior to being returned to service, including[÷

~~(A) The replacement or repair of any part or parts that would require recalibration or testing per ASME A17.1, section 8.7; or~~

~~(B) Work performed on components or equipment affecting or necessary for fire safety (e.g., cab interiors, systems associated with fire recall, etc.); and]~~

,but not limited to, the replacement of any part or parts that would require calibration or testing per ASME 17.1, section 8.7, or, work performed on components or equipment affecting or necessary for fire safety (e.g., cab interiors, systems associated with fire recall, etc.; and

- (3) Any alteration, renovation, or change to the original design of the car's interior.

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

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

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

(h) All new elevators and kindred equipment shall have the Hawaii registration number (HAW) assigned by the department painted on or permanently attached to both the car top crosshead and the controller. The owner is responsible for having the HAW number painted on or attached to the device or equipment, and ensuring that the number remains legible. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp 1/31/21, am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-5 Repealed. [R 6/30/14]

§12-229-5.1 Permits to operate. (a) The department shall issue a "permit to operate" for any elevator, kindred equipment, or amusement ride where the inspection and tests required by the department show that the equipment has been designed and installed in accordance with the requirements of chapter 397, HRS, and its related rules, including the payment of all required fees, and are in compliance with this part. It shall be a violation for any person, firm, association, partnership, or corporation to operate an elevator, kindred equipment, or amusement ride regulated by this part unless a permit for the operation has been issued by the department and the permit remains in effect.

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

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

- (1) The safe operation and proper maintenance of elevators and related systems after the installation or alteration has been approved and an initial permit to operate has been issued;
- (2) Conducting all periodic or maintenance tests required by this part;
- (3) Arranging for inspection of closed buildings and not readily accessible elevators and related systems by qualified elevator inspectors. Elevators and kindred equipment not inspected as a result of the owner's

failure to provide convenient access shall be considered removed from service and shall comply with section 12-229-7.1(b)(4); ~~and~~

- (4) Requesting and scheduling with the department all safety tests in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter~~[-]~~; and

- (5) Notifying the department within thirty calendar days of any changes to:

- (A) Building ownership;
- (B) Building address;
- (C) Billing address; or
- (D) Property management.

(d) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators and kindred equipment, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. ~~[For new or altered elevators, after the effective date of these rules, a copy of the]~~ The permit to operate shall be posted conspicuously in the car of the elevator, and on or near the dumbwaiter, escalator, moving walk, or other kindred equipment[-], or, alternatively, the permit to operate may be posted in a secure manner under a transparent cover, or in a suitable case or cabinet and in such a way that the permit is reasonably easy to read, outside the elevator or related system, if:

- (1) The location is approved by the department, on-site, and available for review during normal business hours; and
- (2) There is a permanent sign within the elevator, conspicuously displayed, in letters not less than 1/4-inch high, that identifies the equipment by the state registration number and states where the operating permit may be viewed.

(e) The department may immediately revoke any permit to operate for any equipment required to be inspected by this chapter that is found to be in an

unsafe condition; or when an owner or contractor fails to comply with a department order to correct specific defects or hazards and continues to use or operate the equipment, device, or apparatus without abating the hazards or defects. The department shall reissue a permit to operate when a subsequent inspection by a qualified elevator inspector finds that the hazardous condition has been corrected or when the department receives documentation that the noncompliant item has been abated.

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

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

(h) The owner or contractor may petition the department for additional time to correct any discrepancy or violation by submitting a request in writing by no later than the correction due date or the expiration date of the temporary permit, whichever is applicable, and shall include:

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

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

11/10/16; am and comp 2/15/19; comp 1/31/21; am and
comp] (Auth: HRS §397-4) (Imp: HRS
§397-4)

§12-229-6 Repealed. [R 6/30/14]

§12-229-6.1 Fees. (a) Departmental inspection fees. The department shall collect from the owner or contractor, the fee listed in the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2021,~~] January 1, 2025, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2021,~~] January 1, 2025, which is made a part of this chapter and located at the end of this chapter, for each inspection made by a qualified elevator inspector. The following shall apply to departmental inspection fees:

- (1) The fees for scheduled inspection delayed or canceled by the requester, shall be charged to the requester in accordance with the scheduled fee for the type of inspection scheduled, however, if the notice of cancellation or delay of the scheduled inspection is provided at least forty-eight (48) hours prior to the scheduled date and time, not counting weekends and state holidays, no additional fee will be charged. A delayed inspection includes situations where the equipment is not ready for the inspection or the requester is not ready to conduct the required tests within one hour of the scheduled date and time;
- (2) Where an inspection must be re-scheduled due to untimely notification of delay or cancellation, the appropriate inspection fee must be paid prior to the re-scheduling of the inspection;

- (3) Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [~~\$400~~] \$500 per day for up to two hours and [~~\$800~~] \$1,000 per day for more than two hours. Fees for overtime hours shall be [~~\$800~~] \$1,000 per day for up two hours and [~~\$1,600~~] \$2,000 per day for more than two hours;
- (4) When a special or dedicated inspection is made at the request of the owner, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee;
- (5) Whenever the requester of an inspection fails to pay the fees required pursuant to this section within sixty days (60) after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty [~~percent~~] per cent (50%) of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. [~~For online inspection requests, fees must be paid at the time of the request, except for additional fees for special, dedicated, return, or overtime inspections for which the amount owed could not be determined in advance. In such cases, the requester shall be invoiced by the department;~~]
- (6) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred;
- (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered on floor in determining installation permit fees; and

The department shall charge and collect the fees listed in Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2021,~~] January 1, 2025, which is made a part of this chapter and located at the end of this chapter, for each category 3 or 5, or internal escalator inspection, witnessed by qualified elevator inspectors of the department during regular working hours. [~~If~~] For additional follow up inspections or if the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [~~\$400~~] \$500 per day for up to two hours and [~~\$800~~] \$1,000 per day for more than two hours. Fees for overtime hours shall be [~~\$800~~] \$1,000 per day for up two hours and [~~\$1,600~~] \$2,000 per day for more than two hours.

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

- (1) The department, before accepting an application for installing, constructing, re-constructing, or relocating an elevator or a related system, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2021,~~] January 1, 2025, which is made a part of this chapter and located at the end of this chapter;
- (2) The department, before accepting an application for an alteration, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2021,~~] January 1, 2025, which is made a part of this chapter and located at the end of this chapter. For online applications, fees must be paid electronically at the time of the

application. Any transaction failure shall void the application;

- (3) For each instance requiring an installation or alteration permit fee, the department shall provide ~~[the final]~~ an installation or alteration drawing review, inspection and witnessing of the ~~[initial]~~ acceptance test ~~[on the installation]~~, which may include smoke, fire, or emergency power test if it can be conducted on the same day, and any resulting permit to operate~~[, and one additional follow-up inspection per permit, and the follow-up inspection shall be at the convenience of the department];~~

- (4) Fees in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated ~~[January 1, 2021,]~~ January 1, 2025, which is made a part of this chapter and located at the end of this chapter, or the fee in effect on the application submittal date shall be charged and collected for all applications for installation or alteration permits;

- ~~[-(5)-] For each instance requiring a building plan review, the department shall charge a fee in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated January 1, 2021, which is made a part of this chapter and located at the end of this chapter;~~

- ~~+(6)-] (5) [For] If additional follow-up inspections [for final acceptance,] are required, which may include, but are not limited to, smoke, fire, or emergency power tests if requested to be conducted on another day, the fee shall be ~~[\$400]~~ \$500 per day for up to two hours and ~~[\$800]~~ \$1,000 per day for more than two hours if during the normal workday. Fees for overtime hours shall be ~~[\$800]~~ \$1,000 per day for up to two hours and ~~[\$1,600]~~ \$2,000 per day for more than two hours; and~~

- ~~[(7)]~~ (6) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (c) Amusement rides, fees. The following shall apply to amusement ride fees:
- (1) The fee for an inspection of an amusement ride shall be \$200;
- ~~[(2)]~~ ~~Inspections, for which a fee is to be charged, shall include, but are not limited to:~~
- ~~(A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;~~
 - ~~(B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within the control of the requester;~~
 - ~~(C) A permit to operate; and~~
 - ~~(D) Scheduled inspections delayed or canceled by the requester where notification was provided to the department less than forty-eight hours prior to the scheduled inspection date and time (not including weekends and state holidays);~~
- ~~+(3)]~~ (2) When an unscheduled inspection is made at the request of the owner or contractor, the sum of expenses incurred shall be charged in addition to the inspection fee;
- ~~[(4)]~~ (3) For additional follow-up inspections for final acceptance, the fee shall be \$400 per day for up to two hours and \$800 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$800 per day for up to two hours and \$1,600 per day for more than two hours; and
- ~~[(5)]~~ (4) Whenever the requester fails to pay the fees required under this section within sixty days after notification, the requester shall pay in addition to the fees required, a

penalty equal to fifty [~~percent~~] per cent of the fee. For the purpose of this section, the date of the invoice shall be considered the date of notification. [~~For online inspection requests, fees must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections, which will be invoiced to the requester.~~] [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp 1/31/21; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-5)

§12-229-7 Repealed. [R 6/30/14]

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

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

- (1) All permit renewal inspections and witnessing of tests of elevators or kindred equipment as required under this chapter shall be performed by qualified elevator inspectors employed by the department;
- (2) Where notifications of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable code, rule, or standard;
- (3) Elevator or kindred equipment regulated under this part shall be inspected and tested in accordance with the schedule in

Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter;

- (A) Internal inspection of escalators and moving walks shall be performed at intervals of thirty-six (36) months;
 - (B) Personnel hoists shall be load tested at intervals of three (3) months;
 - (C) The category 3 test shall be performed on all holed and holeless hydraulic elevator systems. The interval may be extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection; and
 - (D) The period between inspections may be extended by the department for cause. A written application by the owner must be received by the department prior to the expiration date for review;
- (4) Any elevator or kindred equipment that is out of service and not continuously maintained for a period exceeding one year or has not been inspected in accordance with paragraph (3) shall be taken out of service by the owner by complying with the following:
- (A) Car and counterweight (if any) shall be landed at the bottom of the hoistway and hoisting ropes shall be disconnected at both ends. For hydraulic driven elevators and hydraulic driven kindred equipment, the car shall be lowered to the bottom of the hoistway, oil line disconnected with partial or total oil supply line removal, and oil removed from the tank reservoir;

- (B) All electric power shall be removed by disconnected and removing the power feeders; and
 - (C) All hoistway entrances or escalator entrances and exits shall be permanently blocked or barricaded to prevent inadvertent entry. The owner or the owner's agent shall submit a certification that the unit has been properly taken out of service as indicated in this paragraph, on a form provided by the department. Prior to placing the elevator or kindred equipment back in service, the department shall be notified, and an inspection made; and
- (5) While conducting tests and inspections required by section 12-229-5.1 for acceptance of new elevators for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.
- (c) Amusement rides. The following shall apply to amusement rides:
- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and chapter 12-250 at least semi-annually, for all amusement rides at a carnival, circus, fair, amusement park, or other public venue, for protecting the safety of the public;
 - (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five (5) months nor greater than seven months;
 - (3) If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets ~~[with]~~ the requirements of this chapter and chapter 12-

250, the department shall affix to the ride in a prominent location a permit to operate bearing upon its face the date of the inspection and the permit expiration date; and

- (4) No ride shall be operated unless it has affixed to it a current permit to operate. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp 1/31/21, am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-8 Repealed. [R 6/30/14]

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

Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, or elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS;
 - (2) The department may question any employer, owner, operator, agent, or employee in investigation, enforcement, and inspection activities covered by this chapter; and
 - (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.
- (b) Enforcement.
- (1) Whenever the right of entry to a place to inspect an amusement ride, elevator, or kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the

department may apply to the circuit court where the equipment is located for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court;

- (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected under this part is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or its standards and codes and deliver the same to the contractor or owner. Each order shall be in writing and may be delivered by mail, electronically, or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance with the purposes and provisions of chapter 397, HRS. An order to bring the operation of elevator or kindred equipment into compliance may require the owner to submit a plan of compliance that addresses interim corrective plans to ensure public and worker safety as well as the schedule for the correction of the non-conforming element. A plan of compliance shall not exceed five years for residential buildings or three years for all other buildings. The owner or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties;

- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employer or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided;
- (4) Pursuant to section 397-4(d)(4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe;
- (5) Pursuant to section 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts;
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
 - (A) Immediately take steps to obtain abatement by informing the owner,

- contractor, and all person in harm's way of the hazard by meeting, posted notice, or otherwise;
- (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the owner, contractor, or their representative is not available;
 - (C) Take steps to obtain immediate abatement when the nature and imminence of the danger or hazard does not permit a search for the owner or contractor; and
 - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner or contractor; and
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; am and comp 2/15/19; comp; comp 1/31/21; comp]
(Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6, 397-8)

§12-229-9 Repealed. [R 6/30/14]

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

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless

prior permission has been given by the complainants or witnesses to release his or her names, or unless it has been determined by the state attorney general that disclosure is necessary for the enforcement and review under this chapter. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp 1/31/21; comp] (Auth: HRS §397-4) (Imp: HRS §397-7)

§12-229-10 Repealed. [R 6/30/14]

§12-229-10.1 Reporting of accidents. (a)

Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner shall promptly notify the division within eight (8) hours by telephone at (808) 586-9141. For reporting purposes, "accident" is defined as an occurrence resulting in ~~[significant]~~ damage to an elevator and kindred equipment ~~[and]~~ or amusement device~~[, including when it is rendered inoperative]~~ that renders the unit inoperative, or creating a safety hazard, or any occurrence resulting in physical injury to a person or persons.

An accident report shall be submitted to the department within two (2) calendar days after the owner has completed the accident investigation, and shall include the following information:

- (1) The date and time of the accident;
- (2) Hawaii registration number (HAW number) of the amusement ride, elevator, or kindred equipment involved;
- (3) Name and address of the victim or victims;
- (4) A brief description of the accident, including the nature and scope of the injuries;
- (5) Whether the amusement ride, elevator, or kindred equipment sustained any damage rendering it inoperative for any period of time;

- (6) Names and contact information of any witnesses interviewed;
- (7) A brief description of any inspections or tests conducted of the equipment to determine probable causation and who conducted them;
- (8) The investigators' conclusions as to the cause of the accident; and
- (9) The name and contact information of the investigator. For purposes of this section, the owner may contract another to perform the actual accident investigation, however, the owner is responsible for the report and its timely submittal to the department. If the accident investigation cannot be completed within three months of the date of the incident, the owner shall submit the incomplete report to the department with information as to when the investigation is expected to be completed. The final report shall be submitted as soon as the investigation is completed.

(b) Whenever an accident occurs which results in loss of life, the owner shall promptly notify the division by telephone at (808) 586-9141, or messenger, within eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts, shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life or limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp 1/31/21; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-11 Repealed. [R 6/30/14]

§12-229-11.1 Investigations. The department may investigate accidents reported under section 12-229-10.1 involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the causal factors. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp 1/31/21; comp] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-229-12 Repealed. [R 6/30/14]

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

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

- (1) Any owner or contractor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, its standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation;
- (2) Any owner or contractor who allows or initiates the installation, construction, reconstruction, relocation, or alteration of any elevator or kindred equipment prior to obtaining an installation or alteration permit as required by section ~~[12-229-5.1]~~ 12-229-4.1 shall be assessed a civil penalty of not more than \$10,000. The penalty may be

- reduced by a maximum of ten [~~percent~~] per cent for history of past violations;
- (3) Owners who fail to report an accident as required by section 12-229-10.1 shall be assessed a civil penalty of not more than \$5,000 per instance. Consideration may be given for good faith and history of violations;
 - (4) Owners who fail to maintain or provide records or reports to the department as required by this part shall be assessed a civil penalty of not more than \$5,000 per record not maintained or provided;
 - (5) Repeated violations shall be assessed a civil penalty of not more than \$10,000. Consideration may be given for gravity only;
 - (6) Owners who fail to take an elevator or kindred equipment out of service as specified in section 12-229-7.1(b) (4) shall be assessed a civil penalty of not more than \$10,000; and
 - (7) Each day a violation continues shall constitute a separate violation except during an abatement period.
- (c) Discrepancies and penalties. The following shall apply to discrepancies and penalties:
- (1) Any conditions found not in conformance with applicable standard or codes adopted pursuant to chapter 397, HRS, shall be regarded as discrepancies and shall be made known to the owner or contractor by letter or written order to correct or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious hazard, the department may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section;

(2) Assessing penalties.

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

(d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, upon conviction, shall be punished by a fine of not more than \$10,000 or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the director, who shall consult with the state attorney general for purposes of initiating appropriate action. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp 1/31/21; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-8)

§12-229-13 Repealed. [R 6/30/14]

§12-229-13.1 Review and appeal. (a) Any order or citation of the director shall be final and conclusive against an owner or contractor, unless an appeal is made in writing, clearly stating what items

are being contested. The notice of contest must be addressed to the director and received or, if mailed, postmarked by no later than the twentieth calendar day following receipt of the order or citation.

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

(c) An owner or contractor may petition the director for modification of the abatement requirements in an order, as provided in section 397-9, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp 1/31/21; comp] (Auth: HRS §397-4) (Imp: HRS §397-9)

§12-229-14 Repealed. [R 6/30/14]

12-229-14.1 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director for purposes of carrying out chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp 1/31/21; comp] (Auth: HRS §397-4) (Imp: HRS §397-11)

§12-229-15 Repealed. [R 6/30/14]

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

(b) The owner of any elevator or kindred equipment who gives, scraps, demolishes, or removes the device shall report the transaction and the name and address of the new owner, if any, within thirty calendar days of the transaction to the department using the form provided by the department. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp 1/31/21; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-16 Repealed. [R 6/30/14]

§12-229-16.1 Variances. (a) In cases of practical difficulties, undue hardships, or new developments, an owner may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

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

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

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

(e) The hearing requested by the objecting party shall be held no later than forty-five days after the thirty-day period stated in the public notice as follows:

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

general circulation stating the reasons why the variance is not granted.

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

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

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

(2) Any party objecting to the director's decision shall use the review and appeal process as provided for in section 12-229-13.1. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp 1/31/21; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

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

1/31/21; comp
(Imp: HRS §397-4)

] (Auth: HRS §397-4)

EXHIBIT A
ELEVATOR AND KINDRED EQUIPMENT INSTALLATION AND
ALTERATION FEES

January 1, 2025

Alterations*:

Involving only the replacement of a single major component (such as a car door operator, valve, a jack or a cylinder)	\$300
Involving only cosmetic changes (such as car interior modernizations)	\$500
Involving two or more major components and/or subsystems:	
1-3 floors	\$900
4-9 floors	\$1,000
10-19 floors	\$1,100
20-29 floors	\$1,150
30-39 floors	\$1,250
40 or more floors	\$1,400
Escalator alteration	\$750

New Installations*

Dumbwaiter or material lift	\$750
Escalator, moving walk, or moving ramp	\$750
Platform lifts or stairway chairlifts	\$750
Elevator:	
1-3 floors	\$900
4-9 floors	\$1,000
10-19 floors	\$1,100
20-29 floors	\$1,150
30-39 floors	\$1,250
40 or more floors	\$1,400
Personnel hoists	\$650
Temporary use permits (construction car)	\$650

Additional inspections:

Normal workday, up to two hours	\$500/day
Normal workday, more than two hours	\$1,000/day
Overtime hours, up to two hours	\$1,000/day
Overtime hours, more than two hours	\$2,000/day

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

EXHIBIT B

ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES

January 1, 2025

Permit and Renewal Inspection Fees¹:

Dumbwaiter or material lift	\$225
Escalator, moving walk, or moving ramp	\$325
Platform Lift or Stairway Chairlift	\$325
Hydraulic elevator - holed	\$400
Hydraulic elevator - holeless	\$400
Hydraulic elevator - roped holeless	\$475
Traction elevators:	
1-3 floors	\$375
4-9 floors	\$400
10-19 floors	\$450
20-29 floors	\$525
30-39 floors	\$625
40 or more floors	\$725
Personnel hoist	\$450
Temporary Use Permit (construction car)	\$450

Safety, load or internal test (witness fees):

Category 3 test	\$475
Category 3 test with safety overspeed valve	\$550
Category 3/5 test for roped hydraulic	\$625
Category 5 test	\$625
Category 5 with counterweight test	\$775
Escalator, internal	\$625

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

Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$500 per day for up to two hours and \$1,000 per day for more than two hours. Fees for overtime hours shall be \$1,000 per day for up to two hours and \$2,000 per day for more than two hours.

EXHIBIT C

INSPECTION AND TEST INTERVALS (IN MONTHS)

January 1, 2017

Equipment Type	Permit Renewal	Category 3	Category 5
Electric elevators	12	N/A	60
Hydraulic elevators	12	36	N/A
Roped-hydraulic Elevators	12	36	60
Escalators and moving walks ^[1]	12	36	N/A
Dumbwaiters	12	36	60
Material lifts	12	36	60
Platform lifts and stairway chairlifts	12	N/A	N/A
Inclined elevators	12	36	60
Screw-column elevators	12	36	60
Roof-top elevators	12	36	60
Construction cars	3	36	60
Personnel hoists ^[2]	3	N/A	N/A
Amusement rides	6	N/A	N/A

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

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

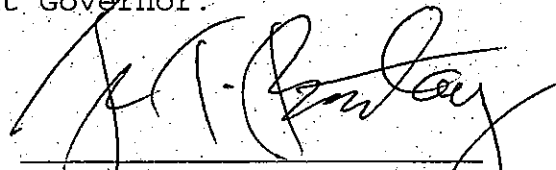
Where an equipment is listed under both Category 3 of 36 months and Category 5 of 60 months, a combined Category 3 and Category 5 testing may be conducted every 5 years.

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.

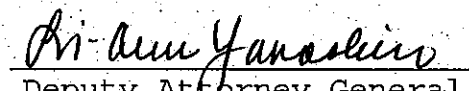
4. These amendments to and compilation of chapter 12-229, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on January 1, 2025, and filed with the Office of the Lieutenant Governor.



JADE T. BUTAY
Director of Labor and
Industrial Relations

APPROVED AS TO FORM:



Deputy Attorney General

V. Administrative Matters

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

1. Update on the Business Revitalization Taskforce's most current meeting pursuant to Act 142 (Sessions Law Hawaii 2024, Senate Bill 2974 Relating to Economic Development) – Mandates that DBEDT establish a task force in order to identify methods to improve Hawaii's general economic competitiveness and business climate, including the mitigations of regulatory and tax burdens – *No Attachment*
2. Update on the SPEED (Simplified Permitting for Enhanced Economic Development) Task Force's most recent meeting pursuant to Act 133, SLH 2025 – Establishes the SPEED Task Force to identify actions taken, challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental development permit processes; and appropriates funds – *No Attachment*
3. Update and Discussion on Becker Communications Inc., regarding the Board's Small Business Outreach – *No Attachment*
4. Presentations to Industry Associations – *No Attachment*
5. Staff's Small Business Outreach – *No Attachment*