

Small Business Regulatory Review Board Meeting

January 16, 2020

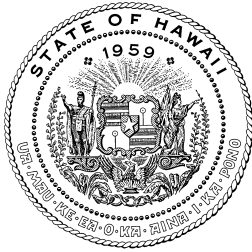
10:00 a.m.

Leiopapa A Kamehameha Building

(State Office Tower)

Conference Room 405 – 235 South Beretania Street,

Honolulu, HI 96813



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
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AGENDA

Thursday, January 16, 2020 ★ 10:00 a.m.

Leiopapa A Kamehameha Building - State Office Tower

Conference Room 405

235 South Beretania Street, Honolulu, HI 96813

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Garth Yamanaka
Vice Chairperson
Hawai'i

William Lydgate
2nd Vice Chairperson
Kaua'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

Mary Albitz
Maui

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of November 21, 2019 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Hawaii Administrative Rules (HAR) Title 15 Chapter 120, **Community-Based Economic Development Loan and Grants Programs**, and Repeal of HAR Chapter 116, **Community-Based Development Loan Program** and HAR Chapter 126, **Community-Based Development Grants Program**, promulgated by Department of Business, Economic Development and Tourism – **Discussion Leader – Chair Robert Cundiff**

IV. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Part 5, **Facilities Reserve Charge**, Section III **Applicability**, promulgated by Department of Water, County of Kauai, as follows: – **Back-up Discussion Leader – Chair Robert Cundiff**
1. **e. The Facilities Reserve Charge for a Guest House**; and
 2. **f. The Facilities Reserve Charge for an Additional Rental Unit**

- B. Discussion and Action on Proposed Amendments (Repeal) of Title 13 Chapter 251, **Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches**, promulgated by Department of Land and Natural Resources, as follows: – **Discussion Leader – Mary Albitz**

1. Subchapter 1, **Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits**
2. Subchapter 2, **Suspension or Revocation of Operator Permits**
3. Subchapter 3, **Violation of Operator Permit Provisions**
4. Subchapter 7, **Special Operating Restrictions**

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, as follows:
1. Board to be Interviewed on ThinkTech Hawaii's "Business in Hawaii" scheduled on January 23, 2020
 2. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on Behalf of the Board during the 2020 Hawaii State Legislative Session
 3. Meetings with Board Members and State Department Directors

VI. Next Meeting: Thursday, February 20, 2020, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

VII. Adjournment

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

II. Approval of November 21, 2019 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

November 21, 2019

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

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

MEMBERS PRESENT:

- Robert Cundiff, Chair
- William Lydgate, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- Harris Nakamoto
- Mary Albitz
- Jonathan Shick
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF OCTOBER 17, 2019 MINUTES

Mr. Nakamoto made a motion to accept the October 17, 2019 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13, Chapter 234, Section 26, Fees and Charges, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader Ms. Albitz introduced Mr. Edward Underwood, Administrator at DLNR's Division of Boating and Ocean Recreation (DOBOR), who reminded the members that a comprehensive rule amendment packet for passenger fees of cruise ships was previously presented to this Board. Since then, the fees were removed from the rules due to concerns from the cruise ship operators.

Concerns involved DLNR unable to charge a different fee for a foreign carrier versus a domestic carrier, and how to implement the fees. DOBOR engaged Cruise Lines International Association-Alaska (CLIA-Alaska) to discuss the various concerns and recommendations. Overall, these changes were likely to result in a net loss for the State with respect to passenger fees for DOBOR facilities. Since October, DOBOR has sent out

notices to businesses in billing statements and through emails informing them of the amendments.

Public hearings were held on Hawai'i island, Maui island, and O'ahu. No one attended the public hearings to provide testimony. One written testimony was received from CLIA-Alaska, which recommended a one-year delay for increasing certain fees that could be applicable to cruise vessels. As DOBOR estimated that CLIA-Alaska's proposals would result in a net loss with respect to passenger fees for DOBOR facilities, it was not included in the final rules.

Mr. Ritchie made a motion to move the proposed administrative rule amendments onto the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, promulgated by Department of Taxation (DoTax), as follows:

a. Chapter 231, Administration of Taxes, Section 3-14.17, Revocation of licenses because of abandonment;

Discussion leader and Second Vice Chair Mr. Lydgate introduced Mr. Jacob Herlitz, DoTax Administrative Rules Specialist who stated that the rules were promulgated a few years ago where a tax license would be revoked due to abandonment after 90 days when DoTax posts notice of its intent to revoke the license to petition DoTax not to revoke the license.

The proposed rule will change the period from 90 to 45 days to mirror the period for which the intent to revoke must remain posted under the section's subsection (d). The proposed rules also make non-substantive amendments to correct cross-references to other sections.

Second Vice Chair Lydgate made a motion to move the proposed amendments to the Governor for adoption. Ms. Albitz seconded the motion and Board members unanimously agreed.

b. Chapter 235 Income Tax Law

1. Proposed New Section 3-01, Distribution of credit for partnerships, S corporations, estates, and trusts;

Discussion leader and Second Vice Chair Lydgate explained that the proposed new rules add a new section that creates a general rule for how income tax credits may be distributed when the method of distribution is not specified by statute or the statute states that distribution shall be determined by a rule.

Mr. Herlitz explained that whenever the Legislature creates a tax credit that can be claimed at the "entity level," there is always a question as to how the entity may distribute the credits to its partners, etc. Thus, this new rule will create a default rule so the Legislature

will no longer be involved in every single tax credit; as such, this default rule will automatically take effect. The default rule is also based on a pro rata distribution; so, one's ownership stake in the partnership would equate to the percentage of the credit.

Second Vice Chair Lydgate made a motion to forward the rules to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board member unanimously agreed.

2. Proposed New Section 17-01 through 17-19, Motion picture digital media, and film production income tax credit

Discussion leader and Second Vice Chair Lydgate stated there was a substantial amount of testimony submitted at the public hearing. Mr. Herlitz explained that the proposed new rules provide guidance for the administration of the motion picture, digital media, and film production income tax credit, i.e., "film credit." Although the process of claiming film credits can be complicated, the rules clarify how the aggregate cap is applied, how credits are allocated and distributed, what constitutes a qualified production, and what qualifies as production costs for which the credit can be claimed.

Mr. Herlitz confirmed that there was a lot of testimony at the public hearing. One of the changes DoTax made to the rules, after the public hearing and based on the submitted testimony, relates to the film credit being tentatively allocated based on a first-come-first-served system combined with a mandatory two-year claim period for claims of \$250,000 or more. This new allocation system will likely benefit smaller production companies that are not already given small-claim priority over all new claims.

Ms. Titin Sakata, DoTax Rules Specialist, clarified that the Governor signed off on this rule November 7; it became effective on November 17th. Because the rule-making process started several years ago, she believes that nothing should be a surprise to the industry as there have been many meetings with the stakeholders and with DBEDT for clarification purposes.

Mr. Ricardo Galindez, Co-founder of Island Film Group, testified that the film industry is a very fragile industry. Island Film Group, which consists of attorneys, is the largest tax credit filer in Hawaii that helped with drafting the initial legislation that created the film tax credits. Thus, Island Film Group knows this industry and the requirements of the tax credits inside and out.

Mr. Galindez proclaimed that for reasons unknown to him, DoTax's process of promulgating the rules was less than transparent as DoTax, at times, refused to meet with the stakeholders. While some of the comments outlined in the pre-public hearing statement reflect changes, which the small business stakeholders were in agreement, the post-public hearing statement reflects many other changes that stakeholders were not privy to or aware of. Because of this, there are now provisions in the rules that hinder small business.

Mr. Galindez attended the two public hearings and takes issue as to whether DoTax adequately addressed Island Film Group's concerns. Also, requested meetings with DoTax were ignored; it is unknown at this time what actions, if any, it will take against DoTax.

Ms. Donne Dawson, DBEDT's Hawaii Film Office Manager since 2001, testified that she was very instrumental in establishing the film tax credit legislation in 2006. Her role at DBEDT is to statutorily certify the tax credits by interfacing and explaining them to the production companies. She is also charged with administering the film program and securing film permits for production, which is very complicated work. For the industry as a whole, tax credits are the number one way the State attracts business which results in economic growth and development in Hawaii's film industry.

One of Ms. Dawson's main concerns about the rules is the immediate effective date. Also, verbiage of the adopted rules and verbiage of the proposed rules posted on the Film Office's website are very different. In the interest of transparency, fairness, and business operations, Ms. Dawson has requested that her office be given time to pull the notifications on the website that have been there for years and repurpose them. In particular, the key document on the website is a flowchart showing the process and steps to go through in applying for and receiving film tax credits with an estimated time frame to receive the credit. She has to now notify the production companies that the dynamics of the rules have changed in mid-stream.

Ms. Dawson noted that one of the main rule changes is a mandatory third-party independent CPA review for all production companies filing for the credit. While this will take some of the burden off the Film Office, the CPA firms will now have to rely on the agreed upon procedures. Letters of engagement have already set fees that were agreed upon with the production companies and now it is questioned whether additional staff hours and costs to applicants are needed in order to conform to the new set of rules.

She added that the \$500,000 or less threshold of anticipated credit for the smaller production companies, which is greatly appreciated, will be able to submit a priority position. Anything \$2,500,000 and above requires splitting of the tax credit over the course of two years. However, it is unclear to her what is being done about productions that are between the \$500,000 and \$2,500,000 threshold. Therefore, time is needed to understand the rules and to properly explain to those clients who spend hundreds of millions of dollars in the state. She estimated that approximately \$50,000,000 in tax credits were generated last year.

In response to Second Vice Chair Lydgate's inquiry as to why there is such a disconnect with DoTax, Ms. Dawson stated that there has been communication with DoTax, and that she has tremendous respect and gratitude to DoTax and the individuals responsible for promulgating and handling these rules. She believes the reason for the expeditiousness in adopting the rules may be due to a 2016 State audit where it was noted that there were no rules for the tax credits. At that time, the auditor placed the responsibility and timeline for adopting rules on DoTax. In an effort to meet the mandates, be responsive to the industry, and for the agency to be responsible for certifying the credits, a fast speed occurred.

Second Vice Chair Lydgate stated that monies from some of the larger productions as well as some small businesses go to funding other entertainment efforts, especially in Kauai, thereby having a very positive effect on small business. Ms. Dawson confirmed that there probably is not one sector in Hawaii that does not depend heavily on the film industry to make its living, at least indirectly.

In response to Mr. Ritchie's inquiry, Ms. Dawson stated that in addition to "timing" of the adoption of the rules, another concern is that the substantive changes were made in a way that certain costs are required to be qualified or not qualified. This is different than what was previously allowed and understood; an example is the change in how per diem is now qualified. She confirmed that the qualification requirements for certain expenditures are that they must be subject to income tax or excise tax.

She added that considering there is a rolling \$50,000,000 cap on the tax credit, the key element of the rules is the "allocation" method and how they are going to be distributed fairly, knowing that the cap is insufficient. She reiterated that the Film Office's concerns are the effective date and how the program is going to be rolled out to the industry. In terms of effectively rolling out the program, it may take one year, which may not be realistic. As the Film Office is statutorily responsible for film permitting as well as the administration of the tax credits, Ms. Dawson's time is constantly pulled away to handle problems that surface and to mitigate any resolution about the ground filming.

She also added that Hawaii's reputation is "on the line." Because she deals with very high-level studio executives, she believes that this does not look good and she is concerned that it will be difficult for the Film Branch to recover from the changes in the rules. Further, there may be some ramifications in terms of studios willing to make decisions to come to Hawaii as she is currently unable to adequately explain what the new rules entail.

Chair Cundiff appreciates everything that the Film Office has done because the film industry is a critically important element of the State's economy. He has concerns over "contracts" that are secured to bind production companies to come and produce film in the state over a set of rules that are current. When the contracts ultimately change due to changes in the rules there could possibly be legal ramifications as well as all the other ripple effects where production companies are concerned about coming to Hawaii due to the changes in the rules.

Chair Cundiff reiterated the process by which the rules come to this Board pre- and post-public hearings. While the Board makes recommendations on the rules, which relate directly to small business, it does not have control on how the Governor will respond to those recommendations. Thus, based on the information provided to the Board today, it appears that the timing of the submission of documents was not followed. It also appears that there was no allowance for a "roll-out period" with consideration of the State's Film Office responsibilities to inform and counsel those production companies who are now put in a bind over the immediate implementation of the rules.

Mr. Herlitz responded that his office follows Chapter 91, HRS, which requires that agencies submit to this Board a *small business statement after public hearing*, without the requirement of any specification of time. Regarding having any flexibility on when the rules may be implemented, he admitted that there is very little flexibility, in general, but rules can be delayed in their implementation for a short period of time, 30 to 60 days. Chair Cundiff noted that this would not help many of the production companies.

Mr. Nakamoto stated that he is very disappointed with the process and the lack of communication between DoTax and DBEDT, particularly for and on behalf of the State of Hawaii and its small businesses which are the heart of the economy. Ms. Albitz added that DoTax continues to perform the bare minimum for outreach and makes no effort to solicit testimony from small businesses.

Upon hearing the testimonies, Ms. Sakata explained the history and timeframe of the film credits and how they relate to general excise taxes and income taxes. The rules, as presented, are the result of DoTax cleaning up and clarifying the guidance and requirements of the statutory intent, bearing in mind that the Legislature may make any changes it deems necessary to change the intent of the rules and its requirements.

Chair Cundiff stated that he shares in the disappointment of the Board members to the extent where one of the primary goals of this Board is to drive people together prior to final rule-making so that the stakeholders are involved in generating rules that will have the minimal amount of impact to small business. He also shares this Board's disappointment in regards to the appropriate time to view the impact prior to public hearing, through the public hearing process, and even after the public hearing process where there may be a time period to regroup and decide what would be the best course of action to take; it does not sound as if this process was followed.

He further stated that even though the rules were signed by the Governor, the Board is still able to send a letter to the Governor post-public hearing and provide comments where the Board foresees the potential for negative impact to small business. Another comment might be to encourage DoTax to get involved in communication with the stakeholders. Mr. Ritchie added that other comments may include adopting the rules before the Board had an opportunity to review the post-public hearing statement as it relates to the Board's statute and process along with timing issues.

Mr. Galindez believes that overall there is a fundamental disconnect even with the information provided by DoTax today. Some of the changes were anticipated by the film industry, based on the statute, involving a change in the allocation of tax credits and the CPA review. However, there are approximately 15 other changes, such as restricting airfare, where there was no notice to the stakeholders and where DoTax had fundamentally changed the statutory language in the rules. He believes these additional changes to the rules were done without proper deliberation and which reduces the value of the tax credit.

Based on the information provided, Chair Cundiff stated that the Board can provide a letter to the Governor with specific areas of concern relative to the rules; outside of that, other issues should be taken to the Legislature. Mr. Ritchie added that, overall, there appears to be three concerns: 1) the timing issue as to when the rules were submitted to the Governor and when the rules and *small business statement after public hearing* were submitted to this Board; 2) establishing a period of time for the implementation of the rules given the challenges the State's Film Office would be tasked with; and 3) any unresolved concerns the stakeholders voiced today.

Second Vice Chair Lydgate made a motion for the Board to send a letter to the Governor that outlines: 1) the timing concern as to when the rules were submitted to the Governor and when the rules and *small business statement after public hearing* were submitted to this Board; 2) the establishment of a time period for the implementation of the rules, given the challenges the State's Film Office will be tasked with; and 3) any and all unresolved concerns voiced by the stakeholders today. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

c. Chapter 243 Fuel Tax Law:

1. Section 4-01, Refund of fuel taxes in excess of 1 cent per gallon for certain fuels used for operating agricultural equipment in areas other than upon the public highways of the State;

Mr. Herlitz explained that the proposed rules amend section 18-243-4-01, which requests refunds of fuel tax arising from the operation of equipment in areas other than upon public highways in the State. Under the current rule, this section specifies that certain information need not be furnished along with forms requesting the refund of fuel tax. The proposed rules amend the law by requiring taxpayers to furnish this information.

In addition, under the current rules, taxpayers may only apply for refunds on a quarterly basis if the refund amount is over \$1,000; otherwise claims must be made annually. The proposed rules allow all taxpayers to make refund claims quarterly regardless of the amount.

Second Vice Chair Lydgate made a motion to move the proposed amendments on to the Governor for adoption. Mr. Shick seconded the motion, and the Board members unanimously agreed.

2. Section 4-02, Refund of fuel tax on diesel oil and liquefied petroleum gas used for operating motor vehicles in areas other than upon the public highways of the State

Mr. Jacob Herlitz stated that the difference in Section 18-243-4-01 versus Section 18-243-4-02 is the type of gas being used. One of the refunds is for agricultural equipment and one is for diesel oil and liquefied petroleum gas used for operating motor vehicles in areas other than State public highways.

Second Vice Chair Lydgate made a motion to move the proposed administrative rule amendments on to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 20 Chapter 26, Public and Commercial Activities on Mauna Kea Lands, promulgated by University of Hawaii (UH)

Discussion leader, Ms. Atmospera-Walch introduced Mr. Jesse Souki, Associate General Counsel at UH, who explained that the proposed amendments were presented to this Board in June 2018. The Office of Mauna Kea Management (OMKM) met with small business

groups including commercial tour operators to discuss the drafting of the rules. In addition, the general public was invited to participate in open houses and a survey; also, many community meetings were held to provide opportunities for input on the proposed rules.

Commercial tour operations are the primary existing commercial use on Mauna Kea. Following the transfer of the function of commercial tours by the Board of Land and Natural Resources, UH issued permits to commercial tour operators (CTO's). The permit function, including its compliance, is managed by OMKM. Act 132 (2009), which grants UH rulemaking authority for the subject rules, identifies commercial tour activities as one of several examples of public and commercial activities that could be covered by administrative rules.

CTO's provide an important management function for the University. CTO's reduce the number of vehicles that visit the area by tourists, ensure that visitors are transported by drivers certified in first aid and serve as interpretive guides for non-English speaking visitors. Conditions of the CTO permit and OMKM policy does not allow certain activities such as driving in certain areas or allowing their passengers to hike to the summit. This helps reduce impacts to natural, cultural, and scientific resources and provides a measure of public safety. UH intends to continue to allow CTO's.

The primary concern of the existing tour operators was the status of their current permits after the rules became effective and how new permittees would be selected. UH cannot guarantee permits for existing operators. However, a record of safety, educational programming and safe equipment are prerequisites to any interested operator. Existing operators were also encouraged that the implementation of the new CTO provisions under the rules would be gradual and involve input from existing and interested CTOs.

Mr. Souki added that the rules are with the Governor's office and currently waiting for signature and adoption. Chair Cundiff thanked the UH representatives for attending the meeting as he remembered the rules coming in front of this Board before the public hearing. He also appreciated UH for taking this Board's input, at that time, and meeting with the stakeholders; this always benefits the process.

Ms. Albitz made a motion to continue the process for the adoption of the rules. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to HAR Title 13, Subtitle 11, Chapter 13-256-73, Kaneohe Bay Ocean Waters, promulgated by DLNR

Administrator Mr. Underwood explained that Kaneohe Bay has a long-standing issue with the way the rules were originally drafted based on the Kaneohe Bay Regional Council recommendations as it pertains to nonprofit entities operating on Kaneohe Bay. Although there are ten commercial operators in Kaneohe Bay, there are supposed to be no new commercial operators in the Bay. Thus, DOBOR's alternatives are limited because implementation of this rule is guided by the 1992 Kaneohe Bay Master Plan, which requires maintaining commercial activity levels and not allowing any new commercial activity.

Small businesses affected include those that want to operate ocean activity tours for profit in Kaneohe Bay. Overall, the changes will clarify ambiguous language relating to educational and not-for-profit operations in Kaneohe Bay. DOBOR could not find any other methods of compliance that would still be within the recommendations of the Kaneohe Bay Master Plan to limit commercial activity in Kaneohe Bay.

DOBOR met with affected businesses to discuss proposals that would be fair and compliant with the Kaneohe Bay Master Plan. While small businesses recommended allowing increased commercial activity, DOBOR could not implement this because of the guidelines of the Kaneohe Bay Master Plan. Mr. Underwood added that the BLNR already approved the rules to move forward to public hearing.

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

B. Discussion and Action on Proposed New HAR Title 13, Chapter 146, Fees, promulgated by DLNR

Mr. Curt Cottrell, Administrator at DLNR's Division of State Parks, explained that Hawaii's state parks are one of the State's crown jewels in terms of providing for its residents, cultural access, and the tourism industry; he introduced Property Manager Mr. Sang Pil Kim, and Legal Fellow Mr. Robert Park.

Prior to 2016, the only state park charging an entrance fee was Diamond Head; fees were not charged to residents. As most of the existing fees are based on 1999 rates, DLNR is now looking to increase the fees to today's levels. The following parks are currently collecting fees via public/private partnerships: Iao Valley State Monument, Haena State Park, Hapuna Beach State Park, Akaka Falls, Waimea Canyon, Koke'e State Park, Makena State Park, and Nuuanu Pali Lookout.

He noted that Hawaii has record-breaking tourism numbers, however, the parks are beginning to show wear and tear. He distributed rate sheets along with expenses of the State parks, noting that roughly \$4,000,000 was spent last year. There is also a current \$40,000,000 backlog in maintenance. Another handout depicted current vehicle rate charges versus the proposed new rates.

In response to a question posed by Mr. Ritchie regarding charging fees, Deputy Attorney General Ahn explained that fees are a perfect example as to what should go through the administrative rule process as people should be able to comment on the fees without an Agency quietly increasing fees without transparency.

Mr. Cottrell stated that the proposed rules are trying to navigate through the high level of tourism and provide future flexibility. Mr. Kim added that ideally, they would like to reassess the rules every five years. Currently, there is no income stream from residents as the ratio is primarily 98% visitors.

During the discussion, Ms. Dawson added that the Film Office supports the Division of Parks' work and what it is currently doing. The film industry is directly impacted by the

condition of the state parks, which is the number one permit request for filming, partly due to the beauty of the parks. She concurred that the State has been charging substandard fees.

Chair Cundiff thanked DLNR's representatives for their insightful presentation noting that the fees and expenses need balancing with the park's beauty and natural resources and land. Clearly, waiting twenty years to increase fees is quite long. While everybody recognizes the fees necessity, the push-back is, "what am I getting for this?"

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

V. ADMINISTRATIVE MATTERS

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

a. Discussion and Action on the Board's Draft Annual Report Summary for Submission to the Hawaii State Legislature, under Section 201M-5, (f) HRS

Ms. Albitz has a change to her business name listed in the Report and Chair Cundiff will change the Chair's Message. Mr. Ritchie suggested sending the Report once more before formal submittal. If there are any last-minute changes, please let DBEDT staff know.

Mr. Ritchie made a motion to accept the Board's draft Annual Report Summary for submission to the Hawaii State Legislature subject to the suggested changes. Mr. Shick seconded the motion, and the Board members unanimously agreed.

b. Meetings with Board Members and State Department Directors

Ms. Albitz met with DLNR, DOBOR, on October 17, 2019. She complimented DLNR on stakeholder feedback.

VI. NEXT MEETING – The next meeting is scheduled for Thursday, December 12, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 12:17 p.m.

III. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15, Chapter 120, Community-Based Economic Development Loan and Grants Programs, and Repeal of HAR Chapter 15-116, Community-Based Development Loan Program and HAR Chapter 15-126 Community-Based Development Grants Program promulgated by DBEDT**

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

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

Phone Number: _____

E-mail Address: _____ Date: _____

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

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

Yes No

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

I. Rule Description: New Repeal Amendment Compilation

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

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

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

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

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

Yes No

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

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

Yes No

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

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

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

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

1. A description of how opinions or comments from affected small businesses were solicited.

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

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

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

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
 Yes **No**
 - (i) If "Yes," was the change adopted? **Yes** **No**
 - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This statement may be found on the SBRRB Website at:

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

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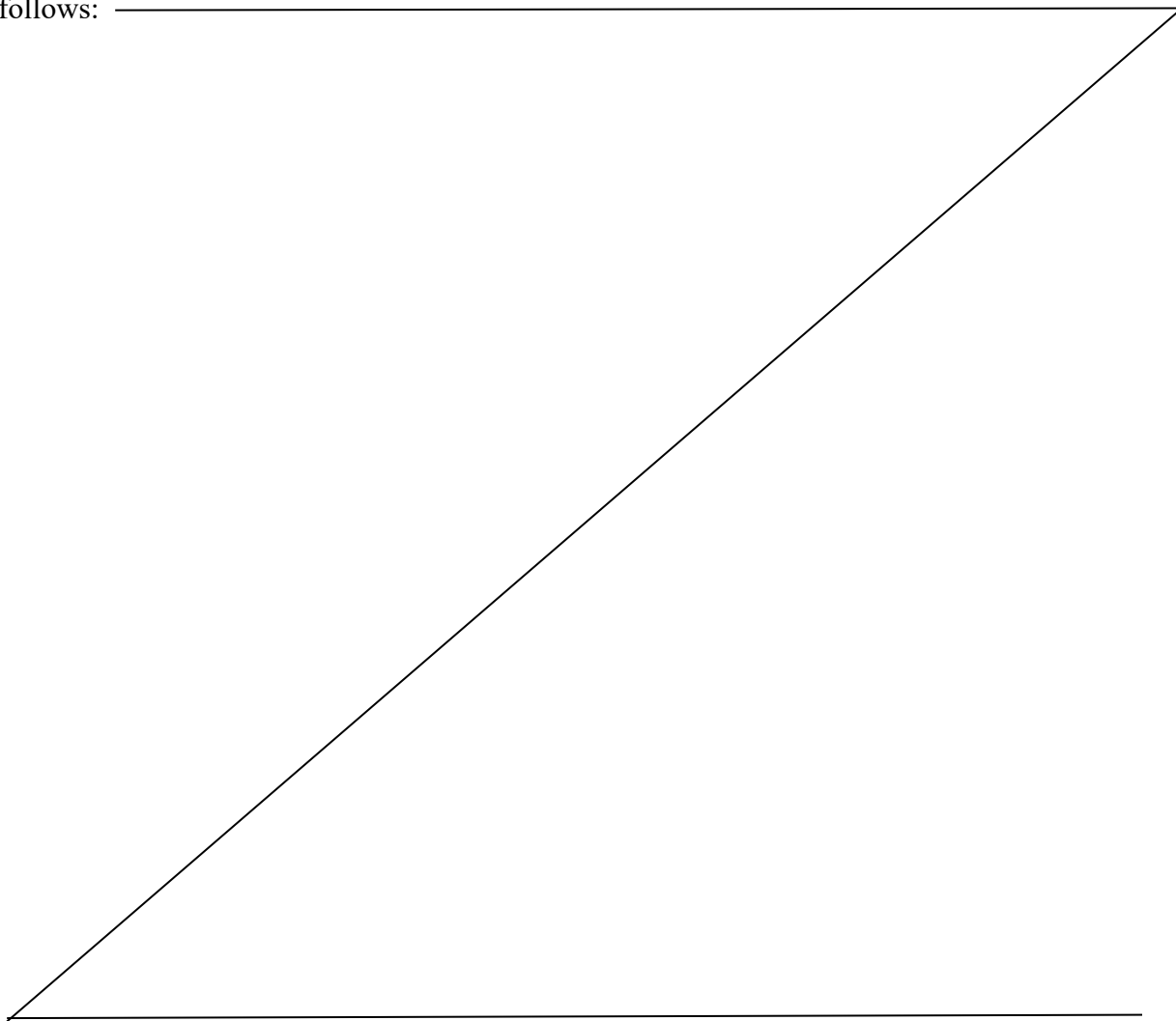
By JetaimeA at 10:15 am, Sep 11, 2019

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Repeal of Chapters 15-116 and 15-126
and Adoption of Chapter 15-120
Hawaii Administrative Rules

<Date of Repeal and Adoption>

1. Chapter 15-116, Hawaii Administrative Rules, entitled “COMMUNITY-BASED DEVELOPMENT LOAN PROGRAM”, is repealed.
2. Chapter 15-126, Hawaii Administrative Rules, entitled “COMMUNITY-BASED DEVELOPMENT GRANTS PROGRAM”, is repealed.
3. Chapter 15-120, Hawaii Administrative Rules, entitled “COMMUNITY-BASED ECONOMIC DEVELOPMENT LOAN AND GRANTS PROGRAM”, is adopted to read as follows: _____



“HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

SUBTITLE 10

COMMUNITY-BASED DEVELOPMENT PROGRAM

CHAPTER 120

COMMUNITY-BASED ECONOMIC DEVELOPMENT LOAN AND GRANTS PROGRAM

§15-120-1	Purpose
§15-120-2	Definitions
§15-120-3	Community-based economic development advisory council
§15-120-4	Revolving fund
§15-120-5	Purpose of grants
§15-120-6	Grant eligibility requirements
§15-120-7	Conditions for grants
§15-120-8	Purpose of loans
§15-120-9	Loan eligibility requirements
§15-120-10	Loan application procedure
§15-120-11	Conditions for loans
§15-120-12	Inspection of premises and records for loans
§15-120-13	Loan default

Historical note: This chapter is based substantially on chapters 15-116 and 15-126.
[Eff _____ ; R _____]

§15-120-1 Purpose. The purpose of this chapter is to provide rules and procedures governing the administration and implementation of the community-based economic development technical and financial assistance program authorized by chapter 210D, Hawaii Revised Statutes. [Eff _____] (Auth: HRS ch. 210D) (Imp: HRS ch. 210D)

§15-120-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

“Community-based economic development” shall have the same meaning as in section 210D-2, HRS.

“Community-based organization” shall have the same meaning as in section 210D-2, HRS.

“Community-based enterprise” means a community-based economic development business that has a business model designed to increase community control over local resources and decision-

making processes and to have positive economic impacts in the community such as increased job creation, local sourcing of product inputs, and other resources for community economic empowerment.

“Community of identity” shall have the same meaning as in section 210D-2, HRS.

“Community of interest” shall have the same meaning as in section 210D-2, HRS.

“Council” means the community-based economic development advisory council.

“Department” means the department of business, economic development, and tourism.

“Director” means the director of business, economic development, and tourism.

“Financial institution” includes, but is not limited to, banks and other lending institutions whose regular course of business includes making of commercial and industrial loans.

“Grant” means an award of funds by the department to a nonprofit community-based organization or its for-profit subsidiary, or a cooperative association, or an organization providing technical assistance to community-based organizations.

“Grantee” means the recipient of a grant.

“HRS” means the Hawaii Revised Statutes.

“Loan” means a direct loan made by the department or a participation loan in which the department participates with a financial institution.

“Perquisite” means a privilege, gain, or profit incidental to regular salary or wages.

“Personal information” means any information, financial or otherwise, provided by an applicant, the disclosure of which is not required under chapter 92F, HRS.

“Program” means the community-based economic development technical and financial assistance program.

“Revolving fund” means the Hawaii community-based economic development revolving fund established in section 210D-4, HRS, from which moneys shall be used for purposes of this chapter.

“SBA” means the Small Business Administration of the United States Government.

“State” means the State of Hawaii.

“Technical assistance” means support to organizations targeted at a business development need or problem, and includes prescribing or providing management counseling, skills training, consulting services, and other instruction, monitoring business activities, and sharing information, working knowledge, and expertise, and may also include the transfer of technical data. Technical assistance may be provided directly by the department, or by consultants or contractors, or by grantees awarded a grant for that purpose. [Eff _____] (Auth: HRS §210D-8) (Imp: HRS §§210D-1, 210D-2, and 210D-8)

§15-120-3 Community-based economic development advisory council. The council shall review requests for financial assistance and make recommendations to the department as to whether the financial assistance is likely to achieve the purposes of the program, subject to the final approval of the department. [Eff _____] (Auth: HRS §210D-8) (Imp: HRS §210D-7)

§15-120-4 Revolving fund. Moneys in the revolving fund shall be used for the purposes of the program, including for the provision of grants and loans, the provision of technical assistance, the department’s costs to administer the program, and any other purpose designated by appropriation. [Eff _____] (Auth: HRS §210D-8) (Imp: HRS §210D-4)

§15-120-5 Purpose of grants. (a) The purpose of the grants is to assist in the establishment and development of economically viable community-based economic development activities or community-based enterprises and to provide technical assistance to community-based organizations.

(b) Grant funds may be used to cover costs such as, but not limited to, administration and personnel, training and education, technical assistance, organizational development and planning, and advertising and marketing; provided that such costs are directly related to and used exclusively for the establishment and development of the community-based economic development activity or community-based enterprise, or the provision of technical assistance. Grant funds shall not be used for capital improvements, equipment, salaries or other compensation, insurance, rent, utilities, or other non-exclusive, normal operating expenses.

(c) Grants shall be made based on the program's strategic plan and priorities and the recommendations of the council.

[Eff] (Auth: HRS §210D-8) (Imp: HRS §§210D-8 and 210D-11)

§ 15-120-6 Grant eligibility requirements. (a) To be eligible for a grant, the applicant shall be either:

- (1) A for-profit subsidiary of a nonprofit community-based organization incorporated under the laws of the State;
- (2) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service;
- (3) A cooperative association; or
- (4) An organization providing technical assistance to community-based organizations.

(b) In the case of a nonprofit organization, such organization shall have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies which describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and shall not employ or contract with two or more members of a family or kin of the first or second degree unless specifically permitted by the department.

(c) The applicant shall establish, to the satisfaction of the department, that sufficient funds are available for the effective operation of the community-based economic development activity or community-based enterprise, or provision of technical assistance for the purpose for which the grant is awarded. [Eff] (Auth: HRS §210D-8) (Imp: HRS §210D-11)

§15-120-7 Conditions for grants. (a) Before receiving a grant, each applicant shall provide written assurance to the department that it shall:

- (1) Use the grant exclusively for community-based economic development activities, community-based enterprises, or the provision of technical assistance to community-based organizations, consistent with the purposes of this chapter;
- (2) Have applied for or received all applicable licenses and permits;
- (3) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, disability, or any other characteristic protected under federal or state law;

- (4) Not use grant funds for entertainment purposes or as perquisites;
 - (5) Comply with other requirements as the department may prescribe;
 - (6) Comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes, permitting and agency rules;
 - (7) Indemnify and save harmless the State and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department;
 - (8) Not use or intend to use facilities for sectarian instruction or as a place of worship;
 - (9) Allow the representatives of the department and other state agencies full access to records, reports, files, and fiscal practices of the grantee so that grantee may be monitored and evaluated to assure the proper and effective expenditure of public funds and compliance with the purposes of this chapter;
 - (10) Allow the representatives of the department to inspect, at reasonable hours, the physical facilities and operations of the grantee relating to the operation of the community-based economic development activity or community-based enterprise, or provision of technical assistance, either in connection with the processing of a grant application or in the administration of the grant;
 - (11) Maintain sound fiscal management controls and accounting procedures to assure effective operation of the community-based economic development activity or community-based enterprise, or provision of technical assistance;
 - (12) Return to the department all unobligated grant funds at the end of the specified period; and
 - (13) Submit to the department progress and final reports relating to any aspects of the grant when requested by the department.
- (b) Grants shall be made for amounts not to exceed \$100,000 for each applicant.
- (c) The department may require an applicant to provide additional information or documents relating to an application deemed necessary by the department or the council.
- [Eff] (Auth: HRS §210D-8) (Imp: HRS §§210D-8 and 210D-11)

§15-120-8 Purpose of loans. (a) The department may make community-based enterprise establishment and improvement loans for the start-up costs, purchase, or improvement of a community-based enterprise, and for working capital, and for the purchase, construction, or improvement of facilities.

(b) The department may also make operating loans to carry on or improve an existing community-based enterprise for the purchase of equipment, and for production and marketing expenses including materials, labor, and services.

(c) Loans shall not be made where the direct or indirect purpose or result would be to:

- (1) Pay off a creditor or creditors of the applicant who are inadequately secured and are in a position to sustain a loss;
- (2) Provide funds, directly or indirectly, for payment, distribution, or as a loan to owners, partners, or shareholders of the applicant's business, except as ordinary compensation for services rendered;

- (3) Effect a change in ownership of a business, unless the change shall promote the sound development or preserve the existence of the business;
- (4) Provide or free funds for speculation in any kind of property, real or personal, tangible or intangible;
- (5) Provide funds to an applicant to engage in the business of lending or investing money;
- (6) Finance the acquisition, construction, improvement, or operation of real property which is to be held primarily for sale or investment; provided that this prohibition shall not apply to a loan for the remodeling, maintenance, or improvement (including expansion) of existing commercial or industrial structures already held by the applicant for rental or for use as an essential part of an ongoing business;
- (7) Encourage monopoly or be inconsistent with generally accepted practices of the American system of free enterprise.

[Eff] (Auth: HRS §210D-8) (Imp: HRS §§210D-8 and 210D-9)

§15-120-9 Loan eligibility requirements. (a) To be eligible for a loan, the applicant shall:

- (1) Be an organization engaged in or establishing community-based economic development activities or a community-based enterprise;
- (2) Not be able to obtain a loan from at least one private or other public financial institution;
- (3) Furnish information to show that the applicant has the ability to repay the loan out of income from the business;
- (4) Have applied for or received all applicable licenses and permits;
- (5) Satisfactorily demonstrate to the department that it can operate on a sound financial basis;
- (6) If required by the department, provide collateral to reasonably protect the State's interest. The amount of collateral needed, considered along with other factors, shall be determined by the department on a case-by-case basis;
- (7) Demonstrate that the purpose of the loan is in conformity with provisions of this chapter;
- (8) Demonstrate that the loan amount is not obtainable:
 - (A) Through other existing state loan programs;
 - (B) Through the public offering or private placement of securities of the applicant;
 - (C) Through the disposal at fair price of assets not required by the applicant in the conduct of its existing business or not reasonably necessary to its potential healthy growth;
 - (D) Without undue hardship through utilization of the personal credit or resources of the owner, partners, management, or principal shareholders of the applicant; or
 - (E) Through other appropriate government financing.

[Eff] (Auth: HRS §210D-8) (Imp: HRS §210D-8)

§15-120-10 Loan application procedure. (a) All persons applying for loans shall utilize the department's designated loan application form or the appropriate SBA forms which may be

obtained from a commercial bank or the local SBA office.

(b) All financial statements submitted by an applicant shall show the applicable date of the information given and shall be signed and certified by the proprietor, partner, or a licensed public accountant. The department may require an audited statement. The department may also require that financial statements accompanying an application include balance sheets and profit and loss statements for the past five tax years, a year-to-date interim financial statement dated no later than ninety days prior to the application date, tax returns, and other documents or information deemed necessary by the department or the council.

(c) The applicant's proposed business plans, except financial statements or personal information, shall be reviewed by the council to assess whether the proposed community-based economic development activity or community-based enterprise is likely to achieve the purposes of this chapter.

(d) The department shall approve a loan only where the applicant can provide reasonable assurance that the loan can and will be repaid pursuant to its terms. Reasonable assurance of repayment shall be based upon consideration of the applicant's record of past loan activity, past earnings, or projections of future earnings which indicate that the applicant will be able to repay the loan from the income of the business.

(e) Information on applications meeting the requirements enumerated in this chapter shall be reviewed by the council. Financial statements or personal information shall be withheld from review by persons other than the director or the director's authorized staff. The council shall assess whether the proposed community-based economic development activity or community-based enterprise is likely to achieve the purposes of this chapter. The council shall make recommendations to the director regarding the acceptability of the proposed business concept. Final approval or disapproval of the loan application shall be made by the director.

(f) An applicant shall not be required to pay any fees in connection with filing an application but shall be required to pay for such costs as appraisals, title searches, documentation and recordation of mortgages, and any other work required in processing the loan which is not performed by the department. At the discretion of the department, an applicant may be responsible for hiring independent appraisers to determine the value of capital assets or to assess the economic feasibility of a business operation.

[Eff] (Auth: HRS §210D-8) (Imp: HRS §210D-8)

§15-120-11 Conditions for loans. (a) Loans shall be made to qualified applicants with the following terms and conditions:

- (1) The amount of the outstanding balance on all loans to any one applicant at any one time shall not exceed \$250,000.
- (2) The director shall determine the amount and kind of security required for each loan. Such security may be subordinated to other direct loans made by financial institutions.
- (3) The maximum term of a loan shall not exceed ten years.
- (4) Each loan shall bear a simple interest rate of not less than three and not more than six percent a year.
- (5) The department shall determine the commencement date for the repayment of the first installment. The director may defer principal and interest payments of loans for a period not to exceed two years, provided that principal and interest shall accrue over the two-year deferral period.

(6) When appropriate, the department may prescribe management counseling.
[Eff] (Auth: HRS §210D-8) (Imp: HRS §§210D-8, 210D-9, and 210D-10)

§15-120-12 Inspection of premises and records for loan. The department and other state agencies shall have the right to inspect and monitor, at reasonable hours, the plant, physical facilities, equipment, premises, books, records, and business activities of any applicant either in connection with the processing of a loan application or in the administration of a loan granted to that applicant. [Eff] (Auth: HRS §210D-8) (Imp: HRS §210D-8)

§15-120-13 Default. (a) Loans that are three installments in arrears shall be considered in default. The borrower shall also be considered to be in default for failure to comply with any term or condition of the loan authorization, loan agreement, or mortgage. If the borrower is in default, then at the option of the director, the entire balance plus accrued interest shall become due and payable. The director may foreclose any mortgage by any method provided by law. Any expense incurred by the department in recovering the monies shall be borne by the borrower.

(b) Loans in default shall be referred to the state attorney general for collection and legal action if the department is not able to obtain payment.”
[Eff] (Auth: HRS §210D-8) (Imp: HRS §210D-8)

2. The repeal of chapters 15-116 and 15-126, Hawaii Administrative Rules, and the adoption of chapter 15-120, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

Mike McCartney, Director
Department of Business, Economic Development,
and Tourism

APPROVED AS TO FORM:

Deputy Attorney General

IV. New Business – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Part 5, Rules and Regulations Governing Facilities Reserve Charge, Section III Applicability, promulgated by Department of Water, County of Kauai, as follows:

- 1. e. The Facilities Reserve Charge for a Guest House; and**
- 2. f. The Facilities Reserve Charge for an Additional Rental Unit**



Water has no substitute.....Conserve it

RECEIVED

By JetaimeA at 6:15 am, Jan 08, 2020

January 7, 2020

Small Business Regulatory Review Board (SBRRB)
DBEDT – Business Support Division
P.O. Box 2359
Honolulu, HI 96804

Dear SBRRB:

Subject: Department of Water, County of Kaua'i's Proposed Rule Amendments to
Part 5, Facilities Reserve Charge, Section III – Applicability

We are transmitting a proposed rule amendment that amends the language in Part 5 FRC, Section III Applicability. This was done as ongoing efforts by the County of Kaua'i to address the affordable housing supply and its urgent need of available rental units on Kaua'i, the Council of the County of Kaua'i recently amended Chapter 8 of the Kaua'i County Code 1987. Chapter 8 of the Kauai County Code 1987, amended Section 8-1.5 to include the definition of "Additional Rental Unit."

Proposed Rule Amendment Part 5 will have an impact of Small Businesses and we will have our Chief of Water Resources and Planning, Mr. Edward Doi and Civil Engineer, Mr. Michael Hinazumi attend the January 16, 2020 SBRRB meeting to answer any questions that the Board may have. The Board of Water Supply, County of Kaua'i plans to hold a public hearing on Friday, February 28, 2020. Please see attached pre-public hearing small business impact statement to the small business regulatory review board.

If you have any questions, please call me at 245-5408.

Respectfully,

A handwritten signature in blue ink that reads "Kurt Akamine".

Kurt Akamine
Chairperson, Board of Water Supply
County of Kaua'i

Attachments: Amended rules Part 5, Facilities Reserve Charge, Section III - Applicability
Pre-Public Hearing Small Business Impact Statement to the SBRRB

mja

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

(Hawaii Revised Statutes §201M-2)

RECEIVED
By *JetaimeA* at 6:15 am, Jan 08, 2020

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

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

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

Yes No

If "Yes," provide details: _____

I. Rule Description:

New Repeal Amendment Compilation

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

Yes No

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

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

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

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

Yes No

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

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

Yes No

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

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

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

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

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

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

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

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

* * *

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

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

DEPARTMENT OF WATER

County of Kaua‘i

“Water has no Substitute – Conserve It!”

RECEIVED

By JetaimeA at 6:16 am, Jan 08, 2020

Administrative rule material to be repealed is bracketed. New material is underscored. Deleted material is ~~stricken through~~ or [bracketed]. In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included

PART 5
FACILITIES RESERVE CHARGE
within the County of Kauai
and Providing Penalties for the Violations Thereof

SECTION I – GENERAL PROVISIONS

1. Purpose and Authority
 - a. Capital water facilities expansion is needed in order to accommodate increased demands on existing source, storage, and transmission pipeline capacity due to new development and/or additional demand of existing users. New development and/or additional demand shall be assessed a Facilities Reserve Charge in proportion to its impact and demand on capital water facilities. The Facilities Reserve Charge shall be expended for public capital water facilities projects. These rules were enacted pursuant to Hawaii Revised Statutes (H.R.S.) §46-141 *et seq.* and other applicable State law.
2. Findings
 - a. In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the recent and anticipated population growth rates and corresponding water demands would place additional burdens on the existing water system. The Board further finds that such growth and increased demand would necessitate increased expenditures of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare. The Board also finds that it is fair and reasonable to impose additional fees to accommodate such development. *Finally, the Board finds that establishing benefit zones as identified in Hawaii Revised Statutes (H.R.S.) §46-14* is not necessary as a reasonable benefit can otherwise be derived.*
 - b. The following rules shall govern the assessment of impact fees for the Board of Water Supply, County of Kauai capital water facilities expansion. New development and/or additional demand shall be assessed impact fees in proportion to its demand on capital

water facilities and the impact fees assess shall be expended for public capital water facilities projects. The Facilities Reserve Charge (FRC) was adopted in accordance with the report prepared by an independent consultant retained by the County of Kauai, Board of Water Supply (Board) to assess and study water facilities. The report calculated the proportionate costs associated with the water development needs as laid out in the Board approved Department facilities needs assessment study entitled “Water Plan 2020”, as amended.

SECTION II – DEFINITIONS

“Affordable or Workforce Housing Project” shall mean any project confirmed or sponsored by the County Housing Agency as a residential development where the majority of housing lots, single family dwelling units, or multiple-family dwelling units are affordable housing or workforce housing as defined in Chapter 7A of the Kauai County Code 1987, as amended.

“Applicant” means any person, individual, subdivider, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

“Consumer” has the meaning ascribed to it under Section I of Part 2 of the Department’s Rules and Regulations.

“Facilities Reserve Charge” (FRC) means the fee to be paid by an Applicant as their proportionate share in required improvements to capital water facilities.

“Grant Funds” shall mean a contribution, gift, or subsidy bestowed to the Board for specific water facilities improvement associated with a specific project that necessitates such water facilities improvements.

“Grantor” means the person or entity that makes a grant of funds.

“Offset” means a reduction in Facilities Reserve Charge designed to fairly reflect the value of non-site related capital water facilities improvements provided by an Applicant pursuant to Department of Water requirements.

“Recoupment” shall be defined as in H.R.S. 46-141, as amended, and refers to the proportionate share of the water facility capital improvement costs of excess capacity in existing water capital facilities where excess capacity has been provided in anticipation of the needs of development.

“Subdivider” has the meaning ascribed to it under section I of Part 3 of the Department’s Rules and Regulations.

“Subdivision” has the meaning ascribed to it under section I of Part 3 of the Department’s Rules and Regulations.

“Water transmission main” or “main” means a main extension under Paragraph 2.d [2.a.(4)] of Section II of Part 2 of the Department’s Rules and Regulations.

As used in this Section, the following rules of construction shall apply:

Number. Words in the singular or plural number signify both the singular and plural number.

“Or”, “and”. Each of the terms “or” and “and”, has the meaning of the other or of both.

SECTION III – APPLICABILITY

1. The Facilities Reserve Charge shall be assessed against all new developments and subdivisions requiring supply of water from the County of Kauai, Department of Water, and existing developments requiring new or additional supply of water from the Department’s system. The Facilities Reserve Charge must be paid before water services are made available to the new or existing development.
2. The Facilities Reserve Charge shall be paid by all Applicants for new or additional water service, including but not limited to the following:
 - a. All irrigation services and/or meters.
 - b. Additional buildings to be connected to existing services where additional demands are indicated. The charges shall be based on the meter sizes required if the buildings were metered separately.
 - c. Additional dwellings connected to existing services and meters under the categories of single family and multi-family residential units. The charges will be based on the established schedule of charges for the respective categories.
 - d. Changes in service that require an increase in meter size.
 - e. Where an FRC was paid but a water meter was never installed to serve the subject property, the applicant shall pay the Facilities Reserve Charge in accordance with Part 5, Section IV (4) of these Rules.
3. The Facilities Reserve Charge shall apply to all Applicants for water service as follows:
 - a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a Facilities Reserve Charge has not yet been paid, the applicable Facilities Reserve Charge shall be \$14,115.00.
 - b. The Facilities Reserve Charge for multi-family and/or resort development will be the cost of the approved meter size or the cost of \$9,880.00 per unit or hotel room,

whichever number is larger.

- c. The Facilities Reserve Charge for conversion of legally existing single-family units to a multi-family unit structure, as provided by law, will be assessed at 50% of the Facilities Reserve Charge for multi-family units, per unit.
- d. For projects developed by the County of Kaua'i Housing Agency or in partnership with the County of Kaua'i Housing Agency, and certified by the County of Kauai as affordable housing (defined by Kauai County Ordinance 7A-1.3), the Facilities Reserve Charge shall be \$4,940.00 per unit.

e. The Facilities Reserve Charge for a Guest House, containing a kitchen, shall be \$9,880.00.

f. The Facilities Reserve Charge for an Additional Rental Unit (ARU) shall be \$9,880.00.

[e-] **g.** For all other uses, the Facilities Reserve Charge shall be determined by the size of the meter, as shown below. Meter sizes shall be determined by the Department and not by the Developer or Applicant.

Meter Size	Amount
5/8"	\$ 14,115.00
3/4"	\$ 21,170.00
1"	\$ 35,290.00
1 1/2"	\$ 70,580.00
2"	\$ 112,920.00
3"	\$ 225,840.00
4"	\$ 352,880.00
6"	\$ 705,750.00
8"	\$ 1,129,200.00

Facilities Reserve Charges are periodically adjusted by the Department. These adjustments may increase or decrease existing Facilities Reserve Charge amounts. Where adjustments to Facilities Reserve Charges result in decreases of such charges, no refund will be made of the difference between the higher, pre-existing charges and the lower, adjusted charges.

SECTION IV – COLLECTION AND REFUND OF FRC

1. Upon collection of the Facilities Reserve Charge, the Facilities Reserve Charge shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund.
2. If the Facilities Reserve Charge is not expended or encumbered within six years from the date of collection, it shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).

- a. An application for a refund shall be submitted to the Board within one year of the date upon which the refund right arises;
 - b. Amounts unclaimed within one year of the date the right to refund arises shall be retained in a special trust fund or interest bearing account and shall be expended for capital facilities improvement projects.
3. If the Board terminates the Facilities Reserve Charge (or analogous) requirement, all unexpended or unencumbered funds shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).
- a. Public notices of termination and availability of refunds shall be given by the Board at least two times in a manner approved by the Board. All funds available for refund shall be retained for a period of one year and at the end of said one year period, any remaining funds may be transferred to the Board's general fund and expended for any public purposes involving water supply or service as determined by the Board.
4. No FRC refund shall be made for existing meters requiring a decrease in water demand, decrease in meter size, or decrease in existing water supply fixture units; or requests to change service categories.
5. Recoupment shall be exempt from subsections (2) and (3).
6. Facilities Reserve Charge Paid Prior to Enactment of Part 5 Rules
- a. This Section applies to those Applicants that have paid a Facilities Reserve Charge prior to enactment of these Part 5 Rules and have failed to install a water meter on the subject property for which the Facilities Reserve Charge was paid, hereinafter referred to as "Prior Applicants".
 - b. Prior Applicants shall have three (3) years from the date of enactment of these Part 5 Rules, hereinafter referred to as the "Grace Period", to install a water meter, at no additional Facilities Reserve Charge cost.
 - c. After expiration of the Grace Period, Prior Applicants must pay the difference of the original Facilities Reserve Charge paid and the Facilities Reserve Charge in effect at the time the meter is installed.
 - d. The Manager may grant exceptions to item 6c if the Manager finds all of the following:
 - i. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and

- ii. The Prior Applicant's circumstance or condition is unique or exceptional and the Manager would grant the same request if made by ever similarly situated Prior Applicant; and
- iii. Such exception thereof is as reasonably necessary or expedient and not contrary to law or the intent and purposes of these rules.

7. Facilities Reserve Charge Paid After Enactment of Part 5 Rules

- a. The Department may issue conditional approval for water service requests.
- b. A conditional approval shall be valid for a period of one year and shall expire unless installation of the meter occurs within that period or an extension of the conditional approval is granted.
 - i. An extension of the conditional approval may be granted for a single additional one-year period.
- c. Upon expiration, the conditional approval shall become null and void and the Applicant will be required to re-apply to the Department of Water for water service. Any request for water service will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.
- d. A Water Meter Application and FRC payment can only be made upon completing the requirements set forth in the conditional approval.

8. Facilities Reserve Charges for Affordable and Work Force Facilities Housing Projects

- a. The Manager may defer collection of Facility Reserve Charges for Affordable or Workforce Housing Projects, provided, however that applicable Reserve Charges shall be collected before building permit approval or installation of applicable meters, whichever occurs first.
- b. Administrative fees related to the Facility Reserve Charge shall be waived for Affordable or Workforce Housing Projects.

SECTION V - FRC OFFSETS

When an Applicant, is required to construct and dedicate water source or water storage facilities, or water transmission mains, to the Department, the following rules shall apply:

- 1. The applicable FRC liability of such Applicant, shall be offset by up to 22% where water source improvements are constructed, up to 41% where water storage improvements are constructed, and up to 37% where water transmission mains are constructed; provided

that the total amount of all offsets that an Applicant, receives shall not exceed 100% of the Applicant's, FRC liability.

- a. An Applicant who provides 100% of the necessary source or storage or transmission requirements shall be entitled to an offset for the entire amount per category of source, storage, or transmission improvements as shown above.
2. The Department, and not the Applicant, shall calculate and determine the total amount of an Applicant's, FRC offset in any given case. The Department may require the Applicant to submit documentation verifying the actual cost of a source or storage improvement or transmission main.
3. The offsets described in this Section V "FRC Offsets" shall not apply to water transmission mains constructed by an Applicant which are within or adjacent to a subdivision or lands either 1) owned by the Applicant, or 2) developed by the Applicant. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands.
4. Grant Funds. Grant funds, specifically allocated to projects by the Grantor, may be used by the Manager to offset the FRC assessed to said projects on a dollar for dollar basis as it relates to source development, storage development and/or transmission main development.
 - a. Applicants shall be offset by up to 22% where water source improvements are constructed; up to 41% where water storage improvements are constructed; and up to 37% where water transmission mains are constructed; provided that the total amount of all offsets that an Applicant receives shall not exceed 100% of the Applicant's FRC liability.
 - b. The Manager shall determine which improvements are eligible for FRC offsets.
 - c. FRC offsets shall be afforded only to those Applicants that are beneficiaries of the Grantor and identified as such at the time the Grant fund is made.
 - d. FRC offsets for Grant Funds shall be a one-time event.

SECTION VI – APPEAL OF FACILITIES RESERVE CHARGE

1. Any person assessed a Facilities Reserve Charge under these rules may contest the amount of the Facilities Reserve Charge assessed by following the requirements in Part 1 of these Rules and Regulations.

IV. New Business – Before Public Hearing

B. Discussion and Action on Proposed Amendments (Repeal) of Title 13 Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches, promulgated by DLNR, as follows:

- 1. Subchapter 1, Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits**
- 2. Subchapter 2, Suspension or Revocation of Operator Permits**
- 3. Subchapter 3, Violation of Operator Permit Provisions**
- 4. Subchapter 7, Special Operating Restrictions**

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

RECEIVED
By JetaimeA at 10:56 am, Jan 06, 2020

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

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

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

Yes No

If "Yes," provide details: _____

I. Rule Description:

New Repeal Amendment Compilation

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

Yes No

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

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

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

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

Yes No

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

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

Yes No

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

* * *

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

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

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

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

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

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

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

 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
-
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

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

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

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

7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

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

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

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

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

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

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

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

* * *

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

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

DEPARTMENT OF LAND AND NATURAL RESOURCES

Repeal of Subchapters 1, 2, 3, and 7 of
Chapter 13-251
Hawaii Administrative Rules

[Date of adoption by agency]

1. Subchapter 1 of Chapter 13-251, Hawaii Administrative Rules, entitled "Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits", is repealed.
2. Subchapter 2 of Chapter 13-251, Hawaii Administrative Rules, entitled "Suspension or Revocation of Operator Permits", is repealed.
3. Subchapter 3 of Chapter 13-251, Hawaii Administrative Rules, entitled "Violation of Operator Permit Provisions", is repealed.
4. Subchapter 7 of Chapter 13-251, Hawaii Administrative Rules, entitled "Special Operating Restrictions", is repealed.
5. The repeal of subchapters 1, 2, 3 and 7 of Chapter 13-251, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

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, HRS, including:

- 1. Board to be Interviewed on ThinkTech Hawaii's "Business in Hawaii" scheduled on January 23, 2020**
- 2. Discussion and Action on Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on Behalf of the Board during the 2020 Hawaii State Legislative Session**
- 3. Meetings with Board Members and State Department Directors**