

DEPARTMENT OF WATER, COUNTY OF KAUAI RULES AND REGULATIONS

PART 1 RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

The following rules shall govern administrative practice and procedure before the Department of Water of the County of Kauai (hereinafter referred to as the "Department") and are promulgated pursuant to the provisions of Chapter 91, Hawaii Revised Statutes.

SECTION I - PUBLIC INFORMATION

1. The public may obtain information as to matters within the jurisdiction of the Department by inquiring at the office of the Department. Copies of rules and regulations shall be made available to the public at a price to be fixed by the Department to cover mailing and publication costs. Submittals or requests shall be made by addressing the same to the Manager and Chief Engineer.
2. Since the Department of Water has limited judicial functions, no formal rules of practice need be adhered to. No particular forms or instructions are prescribed.

In all matters concerning the affairs of the Department, any person affected by any action of the Department or by any action of the employees or agents of the Department shall first take up the matter with the Manager and Chief engineer. The affected person may, thereafter, write a letter to the Board of Water Supply, addressed to the Chairman of the Board, stating his grievance and the relief sought. The matter will then be put on the agenda of the Board at the earliest practicable time.

SECTION II - PROCEDURE FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

All rules and regulations of the Department shall be adopted and shall take effect in accordance with Section 91-3 and Section 91-4, Hawaii Revised Statutes; provided, however, that such procedure for the adoption, amendment and repeal of rules shall not be applicable to the adoption, amendment and repeal of rules pertaining purely to the internal procedure of the Department.

SECTION III - PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

1. Any petition submitted under Section 91-6, Hawaii Revised Statutes, requesting the adoption, amendment or repeal of a rule shall be made by letter addressed to the Board of Water Supply, County of Kauai. The letter shall state clearly and concisely the relief sought, the name, title and address of the person to whom correspondence or communication in regard to the request is to be addressed. The petition will be placed on the agenda for a meeting of the Board to be held at the earliest time practicable.
2. The petitioner will be notified of the time and date that he or his authorized representative may appear before the Board. Within 30 days of the receipt of the petition, the Board will either deny the petition in writing, stating its reasons for such denial, or initiate proceedings to effectuate the adoption, amendment or repeal requested.

SECTION IV - DECLARATORY RULINGS OF THE BOARD

1. Any petition submitted under Section 91-8, Hawaii Revised Statutes, requesting a declaratory ruling of the Board as to the applicability of any statutory provision or of any rule will be submitted by letter clearly presenting the views of the petitioner with respect to the questions raised or relief sought, addressed to the Board of Water Supply, County of Kauai. The letter shall also give the address of the person to whom correspondence or communication in regard to the request is to be addressed. The petition will be placed on the agenda for a meeting of the Board to be held at the earliest time practicable.
2. The petitioner will be notified of the time and date that he or his authorized representative may appear before the Board.
3. As soon as reasonably practicable after the appearance of the petitioner before the Board, the Board will make its ruling and inform the petitioner in writing.
4. If the ruling is contested, the petitioner shall so inform the Board by letter addressed as provided in Paragraph 1 above, and the Board will serve notice of and conduct a hearing in the manner prescribed in Section 91-9, Hawaii Revised Statutes.

SECTION V - DECISIONS AND ORDERS OF THE BOARD

Decisions and Orders of the Board shall be served by mailing certified copies to the party to the proceedings or his authorized representative. When service is not accomplished by mail, it may be made by delivery of a certified copy thereof to such party or his authorized representative.

SECTION VI - ADMINISTRATIVE HEARINGS PROCEDURE

I. DEFINITIONS

- A. "**Board**" shall mean the Department of Water and/or Board of Water Supply of the County of Kauai; the Board shall constitute the Board for purposes of Chapter 91, HRS.
- B. "**Board hearing**" refers only to such hearing held by the Board immediately prior to a judicial review of a contested case as provided in Section 91-14, HRS.
- C. "**Contested case**" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for Board hearing.
- D. "**Party**" means each person or board named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or board proceeding.
- E. "**Persons**" includes, individuals, partnerships, corporations, associations, or public or private organizations of any character other than boards.
- F. "**Rule**" means each Board statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedures, or practice requirements of the Board. The term does not include regulations concerning only the internal management of the Board and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to Section 91-8, HRS, nor intra-board memoranda.

II. **CONTESTED CASE HEARING OR “BOARD HEARING”**

A. **NOTICE OF HEARING**

1. **Content of Notice**

- a. Date, time, place and nature of hearing.
- b. The legal authority under which the hearing is to be held.
- c. The particular sections of the statutes and rules involved.
- d. An explicit statement in plain language of the issues involved and the facts alleged by the Board in support thereof. If the Board is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application, a bill of particulars shall be furnished.
- e. The fact that any party may retain counsel if he so desires and the fact that an individual may appear on his own behalf, or a member of partnership may represent the partnership, or an officer of an authorized employee of a corporation or trade or association may represent the corporation, trade, or association.

2. **Service of Notice**

- a. All parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen (15) days before the hearing.
- b. If service by registered or certified mail is not made because of the refusal to accept service, or the Board has been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper which is printed at least twice weekly in the county affected by the proposed action.
- c. Notwithstanding the requirements of this section, notice by publication shall be provided pursuant to Section 91-3, HRS, if the hearing also involves the adoption, amendment, or repeal of rules, or if otherwise required by law.

B. **MODIFICATION OF PROCEDURES BY STIPULATION**

Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

C. **PROCEDURES IN CONDUCTING THE HEARING**

1. **Pre-hearing Motions and Conferences**

- a. **Pre-hearing Motions.** The Board may, prior to the hearing, consider and rule on all motions filed by any party to a contested case.

- (1) **Notice.** All parties shall be informed in writing by the moving party, of the time, date, and place for the pre-hearing motion.
 - (2) **Certificate of Service.** The moving party shall be required to file with the motion, a certificate to the effect that notice was given.
- b. **Pre-hearing Conferences.** The Board may, at the request of an interested party, or on its own initiative, conduct a pre-hearing conference to define issues of law and fact, to stipulate to those issues which are not contested, to stipulate to the admission of certain evidence, and to settle other matters which would help expedite the hearing.
- (1) **Notice.** All parties shall be informed in writing by the moving party, of the time, date, and place for the pre-hearing conference.
 - (2) **Certificate of Service.** The moving party shall be required to file a certificate to the effect that written notice of the pre-hearing conference was given

2. **Convening the Hearing**

- a. **Presiding Officer.** The chairperson of the Board or one of the members, shall preside at the hearing. The presiding officer controls the course of the hearing, disposes of matters that normally and properly arise in the course of the hearing, and takes all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing.
- b. **Calling the Hearing to Order.** The presiding officer will identify the case by name and number, state for the record a brief description of the nature and subject matter of the hearing including the authority therefore, and shall then briefly outline the procedures to be followed.
- c. **Identification of Parties and Counsel.** The presiding officer shall request all parties to identify themselves and their counsel. Where a party is represented by more than one counsel, only one counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.
- d. **Parties; Intervenors.** The Board shall determine and find on the record whether all parties, including intervenors, have a bona fide interest in the subject matter.
 - (1) **Who May Intervene.** All persons who can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the hearing is clearly distinguishable from that of the general public shall be admitted as parties.
 - (2) **Denial of Intervention.** Leave to intervene shall be freely granted, provided that the Board may deny intervention when in the Board's sound discretion, it appears that:
 - (a) the position of the applicant is substantially the same as the position of a party already admitted to the hearing; and

- (b) the admission of additional parties will render the hearing inefficient and unmanageable.
- (3) **Opposition to Intervention**. If any party opposes the request for intervention, the party shall state the objection for the record.
- (4) **Appeal from Denial**. An applicant who has been denied intervention may appeal such denial to the circuit court pursuant to Section 91-14, HRS.
- e. **Reading of Rights**. The rights of all parties shall be carefully explained to all parties, including their right to counsel, to present evidence, and to cross-examine. All parties shall acknowledge on the record, their full understanding of these rights.
- f. **Stating objections**. Before proceeding with the hearing, all parties shall be required to state for the record any objections they may have to any of the pre-hearing proceedings, and particularly the form and substance of the notice of the hearing.
- g. **Accurate Record**. To insure an accurate record, a tape recorder or other reliable recording equipment may be used. The decision to hire a court reporter or stenographer is left to the discretion of the Board. It shall not be necessary to transcribe the record unless requested for the purposes of re-hearing or court review.

3. **Presenting the Case: Rules of Evidence**

- a. **Order of Appearance**. The party initiating the hearing and with the burden of proof has the right to open and close. Other parties, including intervenors, will be allowed to present their case in an order agreed upon or as decided by the presiding officer.
- b. **Swearing in Witnesses**. Prior to giving testimony, the witnesses shall be sworn in by the presiding officer. (See Section 612-12, HRS).
- c. **Testimony**. Each interested person shall before testifying, state his name, address and shall give such information respecting his appearance as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing was called. In order to allow persons an equal amount of time to testify, or to prevent repetitious testimony, the presiding officer may limit the amount of time for testimony per individual or per issue. Each witness may be subject to questioning by the Board and all parties. A person may submit written comments during the hearing or for such period of time after the close of the hearing as determined by the presiding officer.
- d. **Rebuttal**. After all parties have rested their case, each party will be allowed to present rebuttal evidence in the same order as they presented their case in brief.
- e. **Rulings by Presiding Officer**. The presiding officer will make all rulings on points of law, including the admissibility of evidence, the merit of objections or motions, the granting of continuances, the limiting of testimony or witnesses, and other rulings authorized by law that are deemed necessary to the orderly and just conduct of the hearing and which

do not involve the final determination of the proceedings. Such rulings may be reviewed by the Board in determining the matter on its merits.

f. **Rules of Evidence.**

- (1) **Admissibility and Exclusion.** Any oral or documentary evidence may be received, but the Board shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- (2) **Record Supported by Evidence.** No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence.
- (3) **Privileges.** The Board shall give effect to the rules of privileges as recognized by law.
- (4) **Marking of Evidence.** All evidence shall be marked for identification with the parties' name and number or letter.
- (5) **Copies.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.
- (6) **Cross-examination.** Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- (7) **Official Notice.** The Board may take notice of judicially recognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within their specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.
- (8) **Burden of Proof.** Except as otherwise provided by law, the party initiating the hearing shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion.
- (9) **Standard of Proof.** The degree or quantum of proof shall be a preponderance of evidence.

4. **Closing Arguments**

- a. Each party, including intervenors, shall be allowed to present closing arguments in the same order as they presented their case in chief. The party initiating the hearing and having the burden of proof may speak last. The presiding officer may set a time limit for closing arguments.

5. **After Closing Arguments; Decisions and Orders**

- a. **Decision in Writing.** Every decision and order adverse to a party to the proceeding rendered by the Board in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law.
 - (1) If any party to the proceeding has filed proposed findings of fact, the Board shall incorporate in its decision a ruling upon each proposed finding so presented.
 - (2) Parties to the proceeding shall be notified by personal delivery or mailing, a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or attorney of record. With the personal delivery or certified mailing, the contested case is closed and the thirty-day period for court appeal pursuant to Section 91-14, HRS, begins to run.
- b. **Matters Outside Record.** No matters outside the record shall be considered by the Board in making its decision. No official of the Board in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex-parte matters authorized by law.
- c. **Decision-makers Not Present.** Whenever in a contested case, the officials of the Board who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the Board itself, shall not be made until a proposal for decision containing a statement of reasons and including the determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present arguments to the officials who are to render the decision, who shall personally consider the whole record or such portion thereof as may be cited by the parties.

III. RULE MAKING HEARING OR “PUBLIC HEARING”

A. **NOTICE OF HEARING.**

Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the Board shall give at least twenty (20) days’ notice for a public hearing.

1. **Content of Notice**

- a. Date, time and place where the public hearing will be held.
- b. A statement of the substance of the proposed rule.

2. **Service of Notice**

- a. The notice shall be mailed to all persons who have made a timely written request of the Board for advance notice of its rule-making proceedings; and

- b. Notice shall be published at least once in a newspaper of general circulation published in the County of Kauai.

B. **PROCEDURES IN CONDUCTING THE HEARING**

1. **Convening the Hearing**

- a. **Presiding Officer.** The presiding officer shall be the Chairman of the Board, or in his absence, by another member designated by the Board. The presiding officer controls the course of the hearing, disposes of matters arising in the course of the hearing, and takes all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing.
- b. **Accurate Record.** To insure an accurate record, a tape recorder or other reliable recording equipment may be used. The decision to hire a court reporter or stenographer is left to the discretion of the Board. It shall not be necessary to transcribe the record unless requested for the purpose of re-hearing or court review.
- c. **Order of Public Hearing.** At the commencement of the hearing, the presiding officer may acknowledge the notice of hearing and shall then conduct the proceeding in the following manner:
 - (1) Staff Findings. The Department shall present its findings.
 - (2) Questions of Staff Findings. Staff findings shall be subject to questioning by the Board.
 - (3) Open Hearing to Public. The presiding officer shall suspend the rules and the hearing shall then be opened to the public. Members of the public wishing to testify shall be subject to questioning by the Board. All interested persons shall be afforded the opportunity to submit data, views, or arguments, orally or in writing. The following procedure shall be followed when opened to the public:
 - (a) Anyone wishing to testify is required to register with the presiding officer prior to the presiding officer calling the meeting to order;
 - (b) Anyone testifying is entitled to the floor only when recognized by the presiding officer;
 - (c) Anyone testifying shall state his name, address, and whom they represent and if they are registered lobbyists in compliance with HRS Chapter 97, Lobbyist Law;
 - (d) The presiding officer shall confine the testimony to the matters for which the hearing was called;
 - (e) Anyone testifying shall refrain from direct questioning of the Board and shall direct any remarks or questions to the presiding officer;

- (f) Anyone with written testimony may be given priority at the discretion of the presiding officer;
 - (g) Oral presentation shall be limited to three (3) minutes per speaker; extended time may be granted by the presiding officer. The presiding officer shall have the prerogative to set the speaking time for each witness and may also set the order of speakers, speaking for or against any proposition, and may notify the speaker of the expiration of his speaking time, 30 seconds before such expiration;
 - (h) Anyone may speak a second time on the same question or subject, at the discretion of the presiding officer;
 - (i) The presiding officer shall grant to persons who have not registered, time to speak following the registered speakers;
 - (j) Anyone speaking may be subject to questioning by the Board. Questions by the Board shall be permitted only at the discretion of the presiding officer;
 - (k) The presiding officer may restrict or terminate the speakers' right to the floor for intemperate or abusive behavior or language;
 - (l) The presiding officer may ask for the removal of anyone who willfully disrupts a meeting to prevent and compromise the conduct of the meeting.
- d. **Admissibility.** The Board shall not be bound by technical rules of evidence.

2. **After the Hearing**

- a. The Board may make its decision at the public hearing or announce the date as to when it intends to make its decision.
- b. Upon adoption, amendment, or repeal of a rule, the Board shall, if requested to do so by an interested person, issue a concise statement of the principal reasons for and against its determination.
- c. The adoption, amendment, or repeal of any rule by the Board shall not be subject to the approval of the Mayor of the County of Kauai.
- d. Filing and publication of rules shall be in accordance with Chapter 91, HRS.

C. **EMERGENCY RULE.**

Notwithstanding the foregoing, if the Board finds that an imminent peril to the public health, safety, or morals or to livestock and poultry health requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing upon such

abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

D. **FEDERAL REQUIREMENTS.**

The requirements of this section may be waived by the Chairman whenever the Board is required by federal provisions to promulgate rules as a condition to receiving federal funds and the Board is allowed no discretion in interpreting such federal provisions as to the rules required to be promulgated; provided that the Board shall make such adoption, amendment, or repeal known to the public by publishing a statement of the substance of the proposed rule at least once in a newspaper published in the County of Kauai prior to the waiver by the Chairman.