WELCOME PACKET

HELPFUL INFORMATION

FOR THE

MARCH 2021

BOARD OF DIRECTORS
OF THE
HAWAII TECHNOLOGY
DEVELOPMENT CORPORATION

CONTENTS:

OPEN MEETINGS

Guide to "The Sunshine Law" for State and County Boards

Office of Information Practices
State of Hawaii

October 2021

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OPEN MEETINGS

Guide to "The Sunshine Law"

for State and County Boards

October 2021

Part I of Chapter 92, Hawaii Revised Statutes

CONTENTS

INTRODUCTION

This Open Meetings Guide (Guide) was prepared by the Office of Information Practices (OIP) as a reference tool for board members and members of the public to understand the open meetings requirements of Hawaii's "Sunshine Law" (Part I of Chapter 92, HRS). This edition of the Guide is applicable to all State and county boards, except neighborhood boards. A separate edition was developed by OIP specifically for neighborhood boards, which have some unique provisions under Part VII of Chapter 92, HRS. Both editions have been revised to incorporate changes to the Sunshine Law that allow boards to remotely conduct meetings online, effective January 1, 2022.

Every year, in response to questions and complaints about the manner in which State and county boards conduct their business, OIP initiates investigations into alleged Sunshine Law violations. Many of the questions, complaints, and violations arise because of a misunderstanding or a lack of understanding, and sometimes both, about the statute and its requirements.

The Sunshine Law imposes numerous requirements and restrictions on the manner in which a State or county board can conduct its business. Many board members, especially those who serve or have served on non-governmental boards, are surprised by the restrictions placed on how they, in their capacity as State or county board members, must conduct board business.

For instance, with a few exceptions, board members are not allowed to discuss board business with each other outside of a meeting, including by telephone or through email or social media. In addition, a board usually cannot consider at a meeting matters that were not included in its published agenda.

If you are elected or appointed to a government board, the honor and privilege of serving comes with the added responsibility of learning and complying with the Sunshine Law. We hope that this Guide will assist you and members of the public in generally understanding the statute's requirements.

We have attempted to present the law in "plain English" through the types of questions that are most frequently asked. We have also included the statute, various forms, and checklists.

Please note that the comments contained in this Guide are general in nature. OIP provides more detailed comments on various topics in Quick Reviews and other guidance that can be found on the Training page at oip.hawaii.gov.

If you have questions about specific factual circumstances that may not be answered by this Guide, you should consult with your attorney, your board's attorney, or OIP. OIP provides an "Attorney of the Day" (AOD) service, through which you may speak with an OIP staff attorney to receive, typically on the same day, general legal guidance and assistance with Sunshine Law issues.

Thank you for your participation in Hawaii's open government.

Cheryl Kakazu Park, Director

1

GENERAL INFORMATION

What is the Sunshine Law?

The Sunshine Law is Hawaii's open meetings law. It governs the manner in which all State and county boards must conduct their business. The law is codified at Part I of chapter 92, Hawaii Revised Statutes (HRS).

What is the general policy and intent of the Sunshine Law?

The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring State and county boards to conduct their business as openly as possible. The Legislature expressly declared in the statute that "it is the policy of this State that the formation and conduct of public policy — the discussions, deliberations, decisions, and actions of governmental agencies — shall be conducted as openly as possible."

In implementing this policy, the Legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to open meeting requirements be strictly construed against closed meetings. Thus, with certain specific exceptions, all discussions, deliberations, decisions, and actions of a board relating to the official business of the board must be conducted in a public meeting.

In other words, absent a specific statutory exception, board business cannot be discussed in secret. There must be advance notice; public access to the board's discussions, deliberations, and decisions; opportunity for public testimony; and board minutes.

What boards are covered by the Sunshine Law?

There is no list that specifically identifies the boards that are subject to the Sunshine Law. As a general statement, the Sunshine Law applies to all State and county boards, commissions, authorities, task forces, and committees that have supervision, control, jurisdiction, or advisory power over a specific matter and are created by the State Constitution, statute, county charter, rule, executive order, or some similar official act. A committee or other subgroup of a board that is subject to the Sunshine Law is also considered to be a "board" for purposes of the Sunshine Law and must comply with the statute's requirements.

Examples of State and county boards that are subject to the Sunshine Law include the county councils, neighborhood boards, police commissions, liquor commissions, licensing boards, island burial councils, Board of Water Supply, Board of Land and Natural Resources, Land Use Commission, Board of Agriculture, Board of Health, University of Hawaii's Board of Regents, Board of Education, Small Business Regulatory Review Board, Real Estate Commission, and the boards of the Hawaii Tourism Authority, Aloha Tower Development Corporation, Hawaii Health Systems Corporation, Natural Energy Laboratory of Hawaii Authority, and Stadium Authority.

The Sunshine Law does not apply to the judicial branch or to the adjudicatory functions exercised by certain boards (with the exception of Land Use Commission hearings, which are open to the public). The Legislature sets its own rules and procedures concerning notice, agenda, minutes, enforcement, penalties, and sanctions, which take precedence over similar provisions in the Sunshine Law.

What government agency administers the Sunshine Law?

Since 1998, OIP has administered the Sunshine Law. OIP also oversees the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), which is commonly referred to as Hawaii's "open records" law or Hawaii's version of the federal Freedom of Information Act.

2

PUBLIC MEETINGS

MEETINGS DEFINED

Are all meetings of State and county boards open to the public?

Generally, yes. All meetings of State and county boards are required to be open to the public unless an executive meeting or other exception is authorized under the law. The open meeting requirement also applies to the meetings of a board's committees or subgroups.

Are site inspections, presentations, workshops, retreats and other informal sessions that involve board business considered to be meetings open to the public?

Generally, yes. Apart from the permitted interactions set forth in section 92-2.5, HRS, which are discussed below, the Sunshine Law requires a board to conduct, in either open or executive meeting, all of its discussions, deliberations, decisions, and actions regarding matters over which the board has supervision, control, jurisdiction, or advisory power.

Moreover, based upon the express policy and intent of the Legislature that the formation and conduct of public policy be conducted as openly as possible, OIP interprets the statute to require that any site inspection or presentation regarding a matter before the board, or which is reasonably likely to come before the board for a decision in the foreseeable future, be conducted as part of a properly noticed meeting.

Because the site inspection or presentation of a matter before the board are an integral part of the board's deliberation and decision-making process, they must be conducted in a properly noticed meeting. If it is not practical to allow the public to attend a site inspection as part of a meeting, the board may still be able to conduct the site inspection as a "limited" meeting under section 92-3.1, HRS.

With respect to board retreats, if board business is to be discussed, the retreat must be conducted as a meeting, which requires public notice, the keeping of minutes, the opportunity for public testimony, and public access to the board's discussions, deliberations, and decisions. Conversely, so long as no board business is discussed, the retreat is not considered a meeting subject to the Sunshine Law's requirements.

Multi-site and Remote Meetings

Can a member of the public attend public meetings in person?

Yes. Public meetings have traditionally been held in person, whether at a single site or multiple connected sites. Although the Sunshine Law now allows boards to hold remote meetings over the internet, as described below, a board must still provide at least one physical location where members of the public may attend a public meeting in person, even if the rest of the meeting is being conducted remotely.

Must board members attend public meetings in person?

It depends on what type of meeting the board is holding. For an in-person meeting held at a single site or multiple connected sites, members must generally attend in person at a public meeting site listed in the board's notice. However, if the board is holding a remote meeting, board members can attend the meeting remotely from private locations such as their homes or offices.

Even when a board is holding an in-person meeting, a board member with a disability that limits or impairs the member's ability to physically attend may participate from a location not noticed and not accessible to the public, so long as the member is connected by audio and video means and identifies where the member is and who else is present with the member. Thus, for example, a disabled board member may participate from a non-noticed location such as a private residence or hospital, so long as the other Sunshine Law requirements are met. § 92-3.5, HRS.

What is a remote meeting?

Effective January 1, 2022, the Sunshine Law allows a board to hold a remote meeting by interactive conference technology (ICT). The law does not define a "remote meeting," but ICT is defined in section 92-2, HRS, as "any form of audio and visual conference technology, or audio

conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members." Because remote meetings require video interactivity with limited exceptions, a remote meeting held by ICT will typically be hosted via an online meeting platform such as Zoom or WebEx.

The new remote meeting option requires the ICT used by the board to allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting. The new section also establishes various requirements for remote meetings discussed below that would allow members of boards and the public to participate in a public meeting held online, from the privacy of their own homes, offices, or other nonpublic locations.

What is the difference between a remote meeting and a multi-site meeting?

A remote meeting allows "remote" board and public participation, typically online, from private locations. By contrast, a multi-site meeting is an in-person meeting held at multiple public locations that are connected by ICT. Even though ICT is used to connect the different sites, **board members must attend a multi-site meeting in person** at one of the physical locations identified in the notice as a public meeting site, unless they are disabled and meet the requirements of section 92-3.5, HRS, to be able to participate remotely. Members of the public are not necessarily required to be in-person — the board has the option, but is not required, to allow members of the public to participate remotely in a multi-site meeting, such as by phoning in oral testimony.

What is the difference between an "additional location" and the official meeting location(s)?

Besides the official in-person meeting site(s) that a board is required to provide for every meeting, the Sunshine Law allows boards to also set up additional unofficial in-person sites, also known as "courtesy" sites. Before the Sunshine Law was amended to allow remote meetings, OIP had interpreted the requirement for meetings held via ICT to terminate if connection was lost to one site as only applying to sites noticed as official meeting sites where board members may be present. OIP's interpretation was codified by Act 220, SLH 2021, to expressly allow boards the option to set up unofficial "additional locations" for the public's convenience. There are two differences between an official meeting site and an additional location. First, for any type of meeting, if a noticed "additional location" is cut off from the rest of the meeting by

a connection failure, the meeting can still continue without that location so long as the notice made it clear that such an occurrence could happen. This is in contrast to an official meeting site where the meeting would have to recess and perhaps terminate if that site was cut off. Second, for an in-person meeting, board members cannot participate from an "additional location," but instead must go to an official meeting site; the "additional location" is offered as an option for the public rather than for board members.

This option allows boards with a widespread constituency to improve public access to their in-person meetings for constituents in rural areas or on other islands while still limiting the number of sites for which a communication failure could require cancellation of the whole meeting.

What are the requirements for a board to hold a remote meeting online?

A board must provide **public access to the remote meeting**. The meeting has to be on a platform that allows for audio-visual interaction between board members and the public, who can attend and participate from anywhere they wish via an online connection, or in some cases a phone connection. Board members and the public do not need to be at a public meeting site, and the meeting notice is not required to list private locations where board members are attending from or to allow the public to join members at private locations. Instead, **the notice must tell the public how to remotely view and testify at the meeting.** This will usually be in the form of a link to an online platform, perhaps with a phone number as an additional option for the public. A board can choose to have separate connections for viewing and for testifying at a meeting; for instance, a board expecting large public interest in a contentious issue might prefer to offer the public a view-only online connection separate from the link used by board members, paired with a phone number for presenting oral testimony, to avoid the potential for abuse of the online platform and disruption to the meeting. In most cases, though, boards will find it easier to use the same online meeting link for all meeting attendees. In either case, public access to the meeting must be contemporaneous with the meeting and allow members and the public to hear the oral testimony provided.

Although board members and the public need not physically attend a remote meeting and can instead participate from private locations, the board must still **provide for the public at least one physical meeting site linked by ICT** to the remote meeting. This requirement recognizes that in-person meetings are the traditional way of holding public meetings and that not all persons, including board members, have

the ability, equipment, internet capacity, or desire to attend online meetings.

Except during executive meetings closed to the public or when the ICT connection is interrupted, a **quorum of board members must be visible** to other members and the public during the public portion of a remote meeting. As with an in-person meeting, a board member's brief absence from view during a meeting, such as to take a five-minute restroom break, would not cause the board to lose quorum. However, if a board member who is needed to meet the quorum requirement will be out of view for an extended period of time or will be absent during a vote, the board should call for a recess until quorum can be reestablished.

At the start of the meeting, the presiding officer must **announce the names** of the participating board members, and board members attending from private locations must state who else is with them. All votes must be conducted by **roll call**, unless the vote is unanimous.

The notice and minutes requirements for remote meetings are discussed later in the Procedural Requirements section. The requirements when a remote meeting's ICT connection is interrupted or lost are discussed below.

What happens if the ICT connection is interrupted or lost?

If the audio-visual connection is lost during the public portion of a remote meeting or during a multi-site meeting, the Sunshine Law **requires the meeting to automatically recess for up to 30 minutes while the board attempts to restore the connection.** This requirement applies for all official meeting sites and the remote connection(s) provided as part of a remote meeting, however, it does not apply when the remote connection is working properly but a member of the public has lost internet connectivity or is otherwise unable to access the remote connection due to issues on that person's end.

The board **may reconvene with audio-only communication** if the visual link cannot be restored, **provided that the board has provided reasonable notice** to the public as to how to access the reconvened meeting after an interruption. For remote meetings only, the law specifically **requires speakers to state their names before speaking**, if the meeting has been reconvened with audio-only communication.

Within 15 minutes of establishing audio-only communication,

copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation must be made available by posting on the internet or other means to all meeting participants (including those participating remotely), otherwise agenda items with unavailable visual aids cannot be acted upon at the reconvened meeting.

If the meeting cannot be reconvened within 30 minutes after interruption to communication, and reasonable notice has not been provided to the public of how the meeting will be continued to another date or time, then the meeting is **automatically terminated**. OIP recommends that board prepare in advance for the possibility of technical difficulties and has provided tips in the next section.

What are some tips to provide reasonable notice to continue any Sunshine Law meeting, whether in person or connected by ICT?

Here are some tips for providing reasonable notice to continue any Sunshine Law meeting:

- The board's **notice may contain a contingency provision** stating that if the board loses online connection, then people should check the board's website (give address) for reconnection information. Alternatively, the notice could provide that if the connection is lost for more than 30 minutes, the meeting will be continued to a specific date and time, with the new link for the continued meeting either on the agenda itself or to be provided on the board's website.

- **At the start of the online meeting, the board could announce audibly** that if online connection is lost, information on reconvening or continuing the meeting will be posted on its website and give the website address.

- If the audio and video have gone down but there is still a chat function or something similar available, the board should also **post a visual notice** of the continuation of a meeting in that way.

- If visual connection has been lost during a meeting using ICT, the board could **audibly announce** that the meeting will be continued and direct people to its website where the relevant information has been posted.

- If time permits, the board can **email** people on its email list with a notice of continuation of the meeting. *See* the appendix or OIP's website for a form notice of continuation.

May a board hold an in-person multi-site meeting via telephone?

Yes. Section 92-3.5, HRS, continues to allow board members to participate at an in-person meeting held at multiple meeting sites connected by ICT that provides for audio or audiovisual interaction among all board members and meeting participants. Unless the disability provisions of section 92-3.5, HRS, apply as described below, board members may participate only from the official, physical meeting sites noticed. Therefore, while the multiple sites may be connected only via telephone, board members must be at one of the in-person locations that was identified on the meeting notice as being open to the public.

If copies of visual aids are brought to such a meeting by board members or members of the public, they must be available to all meeting participants at all locations. Therefore, if audio-only interactive conference technology (*e.g.*, teleconference) is being used, all visual aids must be available within 15 minutes to all participants, or those agenda items for which visual aids are not available cannot be acted upon at the meeting.

If audio communication cannot be maintained at all noticed locations, then the meeting is automatically recessed for up to 30 minutes to restore communication. The meeting may reconvene if either audio or audiovisual communication is restored within 30 minutes. If it is not possible to timely reconvene the meeting, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated. Note that the failure to maintain at least audio communication at all noticed locations will require termination of the meeting, even if all or a quorum of board members are physically present in one location.

May a sick or disabled board member participate in a meeting from home or another private location?

Yes. If it is a remote meeting, that member can participate via the remote meeting link from a private location in the same way that other members and the general public can. Even for an in-person meeting, under the provisions for in-person multi-site meetings "a board member

with a disability that limits or impairs the member's ability to physically attend the meeting" may attend a meeting via a connection by **audio and video** means (*e.g.*, by videoconference, Skype, or Zoom) from a **private** location not open to the public, such as a home or hospital room. HRS § 92-3.5. The disability need not be permanent, so for example, a board member that has the flu or is hospitalized may participate via videoconference from home or a hospital room. A disabled board member attending from a private location must identify the location and any persons who are present at that location with the member. To protect the disabled member's privacy interests and because members of the public are not able to participate from the private location, the disabled member's location during a meeting may be generally identified, such as "home" or "hospital," without providing an exact address.

Because members of the public are not able to participate from the private location, the filed notice does not have to state that a disabled board member will be participating from home, a hospital, or other location. It is sufficient for the disabled board member to announce at the meeting that he or she is participating from a stated location, without providing an exact address, and to state the names of any person that are present at the location with the member.

Must a board provide additional in-person meeting sites to allow the public to more easily participate?

No. The Sunshine Law does not require a board to provide more than the one in-person meeting site for any meeting. For an in-person meeting, it also does not require accommodating requests to remotely participate. At the same time, the Sunshine Law does not restrict remote participation in an in-person meeting by people who are not board members. However, it is **up to the board to decide** whether or not to allow testifiers, presenters, and other members of the public to watch, testify, or otherwise participate in an in-person meeting from places other than the official meeting site(s) by:

- Allowing testifiers to call in from home;
- Allowing their participation via audio or videoconferencing from a location not listed on the notice; or
- Setting up audio or videoconferencing at a location where no board member will be present, such as an additional location listed as such on the notice and not guaranteed to remain open for the whole meeting.

Boards are not required by the Sunshine Law to provide additional locations or accommodate requests from testifiers to testify remotely by telephone or other means. Boards may be required, however, to reasonably accommodate individuals with disabilities under the Americans with Disabilities Act (ADA), and should consult with their own attorneys or the State Disability and Communication Access Board at (808) 586-8121 (Voice) or (808) 586-6162 (TTY), email dcab@doh.hawaii.gov, or go to DCAB's website at health.hawaii.gov/dcab/ for advice on how to comply with the ADA. OIP does not have authority to provide legal advice on the ADA.

If the notice lists one or more additional locations for the convenience of members of the public who cannot make it to the official in-person meeting location(s), the notice must make clear the distinction between the noticed official meeting location(s) and the listed additional location. An additional location may be cancelled or shut down early while the meeting continues at the public meeting locations listed on the filed notice. Moreover, in most cases, board members themselves cannot attend an in-person meeting from an additional location or another non-noticed location, which also means that they cannot call in, cannot participate or just listen in by phone, and cannot vote or be counted toward quorum for an in-person meeting if they are at an additional location or other non-noticed location. The only exception to this rule is for disabled board members, as described above.

Board Packets

What is a board packet?

A board packet consists of the documents that are compiled by the board or its staff and distributed to board members before a public meeting for use at that meeting. Not all boards create and distribute board packets, and the requirements relating to board packets only apply to those boards that actually distribute board packets.

Must board packets be made available to the public?

Yes, but documents may be redacted or withheld as discussed below. Any board packet prepared for a meeting must be made available for public inspection in the board's office at the time it is distributed to board members. Although the board is not required to automatically mail or email the packet itself to people on its

notification list, it must notify them that the board packet is available for inspection in the board's office and must provide "reasonably prompt" access to the packet to any person upon request. The board must accommodate requests for electronic access to the board packet as soon as practicable, which it can do by emailing the packet to requesters or by posting the packet on its website or in a file-sharing site and letting the public know where it can be found.

What board packet documents may be withheld or redacted from public inspection?

The public disclosure requirement for board packets only applies to information that would be disclosable under the UIPA; in other words, non-public information within board packets can be redacted. In addition, the law allows the board to potentially withhold more records in creating the public version of the board packet than could have been withheld in response to a formal UIPA record request. Specifically, the public version of a board packet is not required to include executive meeting minutes, license applications, and other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the meeting. In this way, the board packet provision recognizes the challenge facing a board when it must both put together a board packet and create a public version of the board packet in the short time before a meeting, when the board packet may include materials from third parties that the board has not previously reviewed, or materials with public information and nonpublic information mixed together.

For example, if a board packet includes a long document with confidential information embedded throughout it, which would make redaction unreasonable or overly time-consuming in the days before the board meeting, the board could withhold the entire record from the public board packet. On the other hand, if a similarly long document is made up of several distinct sections, only some of which are confidential, then it may be relatively straightforward for the board to separate them and include only the non-confidential sections in the public board packet. If a document includes some confidential information but is only a few pages long, then the confidential information can readily be redacted before the record is included in the public board packet. If a document of any length is fully public, then it should be included in an unredacted form in the public board packet.

If a board has made a public board packet available, does it still need to respond to a UIPA request for the original packet?

Yes. The UIPA has separate and different requirements from the Sunshine Law, and **the Sunshine Law's board packet disclosure requirement does not replace the right of a member of the public to request a board packet under the UIPA.** In responding to such a request, a board would follow the UIPA's deadlines, standards for what may be redacted, and fees. For most members of the public, however, free access to the public version of the board packet prior to the meeting under the Sunshine Law will be preferable to waiting two weeks or more to receive what may be a slightly less redacted version for which review and segregation fees may be assessed under the UIPA.

Do you have any practice tips for boards to prepare public board packets?

- When compiling a board packet, prepare the public version at the same time. As each document comes in, determine whether it must be included in the public packet and prepare a redacted version if necessary.

- Have a copy of the public board packet available in the board's office by the time the packet goes out to board members. If the public board packet is available for public inspection only in electronic format, have equipment available for the public to be able to view the packet.

- Have a PDF version of the public packet ready to be emailed or faxed upon request, or if the board prefers, available to download from the board's website or a file-sharing service.

Testimony

Must a board accept testimony at its meetings?

Yes. Boards are required to accept both oral and written testimony from the public on any item listed on the meeting agenda. Boards can decline to accept public testimony that is unrelated to a matter listed on the agenda.

Can the public provide testimony from a remote location by telephone, videoconference, or using other interactive technology?

If a board is holding a remote meeting via ICT, the public has a right to attend and testify at the meeting from a remote location using the ICT link(s) provided by the board.

If a board is conducting an in-person meeting, however, the law does NOT require a board to allow public testimony or participation from a location that was not listed on the notice as a meeting site, such as a person's home. Thus, unless the board is conducting a remote meeting, the **board may choose, but is not required** by the Sunshine Law, to hear testimony online or via telephone from members of the public who are not physically present at a meeting location.

Note, however, that a board may choose to establish additional locations to allow the public to testify remotely when holding an in-person meeting. *See* the discussion on additional locations in the earlier section for Multi-Site and Remote Meetings.

Is a board required to read aloud the written testimony during its meeting?

No. There is no requirement that a board read aloud each piece of written testimony during its meeting for the benefit of those attending the meeting. A board, however, must ensure that written testimony is distributed to each board member for that member's consideration before the board's action. Moreover, upon request, any member of the public is entitled to receive copies of the written testimony submitted to the board.

Is written communication received by only one board member regarding a matter on the board's meeting agenda considered written testimony?

Possibly. For instance, on occasion, the board chair or individual board members may receive email or other written correspondence regarding a matter on the board's agenda. If a written communication is received prior to the meeting and reasonably appears to be testimony relating to an agenda item (as opposed to correspondence directed only to the recipient), irrespective of whether the writing is specifically identified as "testimony," the board member receiving the communication must make reasonable efforts to cause the testimony to be distributed to the

other members of the board by the board's staff. The receiving board member should not directly distribute the testimony to other board members as it may be considered a serial communication or discussion outside of a meeting, which are prohibited by the Sunshine Law.

How can a board avoid the possible problem of only one board member receiving testimony intended for the entire board?

The Sunshine Law now requires that the posted notice for a meeting provide the board's electronic and postal contact information for submission of testimony before the meeting. This requirement avoids possible confusion as to whether an email or other written communication received by only one board member is intended to be "testimony" to the entire board, because the public will know the mailing address and email address written testimony should be directed to.

Providing the board's contact information does not completely relieve individual board members of their obligation to consider whether written communication that they individually receive was intended by the sender to be "testimony" for consideration by the entire board. Nonetheless, it reduces the likelihood of written testimony being sent to individual board members and may excuse a board member's reasonable failure to recognize that a written communication was intended to be "testimony."

How must a board distribute written testimony to its members?

Subject to the board packet requirements discussed above, the board is empowered to determine how to best and most efficiently distribute the testimony to its members, *e.g.*, whether to transmit it electronically or to circulate copies in paper format, and whether to distribute it in advance of the meeting or at the beginning of the meeting, so long as the testimony is distributed in a way that is reasonably calculated to be received by each board member. To avoid improper discussion of board business outside a meeting, however, the distribution of any testimony or other documents should be done by the board's staff, not members.

May a board limit the length of each person's oral testimony offered at its meetings?

Yes. Boards are authorized to adopt rules regarding oral testimony, including, among other things, rules setting limits on the amount of

time that a member of the public may testify. For instance, a council could adopt rules limiting each person's oral testimony to three minutes per item. Boards also are not required to accept oral testimony unrelated to items on the agenda for the meeting.

Recessing, Continuing, Cancelling, or Relocating Meetings

Can a board recess and later reconvene a meeting?

Yes, as a general rule, boards are authorized to recess both public and executive meetings, and to reconvene at another date and time to continue and/or complete public testimony, discussion, deliberation, and decision-making relating to the items listed on the agenda. Meeting continuances were extensively discussed by the Hawaii Supreme Court in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (Kanahele) (2013). The Court recognized that section 92-7(d), HRS, requires items of reasonably major importance, which are not decided at a scheduled meeting, to "be considered only at a meeting continued to a reasonable date and time." The Court also found that a board is not limited by this statute to only one continuance of a meeting and is not required to post a new agenda or accept oral testimony at a continued meeting.

There are specific procedures that boards must follow if the ICT connection to a remote or multi-site meeting has been interrupted or lost. *See* the previous sections on In-Person, Multi-Site, and Remote Meetings.

What kind of notice should a board provide for a meeting that will be continued?

Although the Sunshine Law contains no specific requirements for a written public notice or oral announcement for continued meetings, the Hawaii Supreme Court stated in Kanahele, discussed above, that "the means chosen to notify the public of the continued meeting must be sufficient to ensure that meetings are conducted "as openly as possible; and in a manner that 'protect[s] the people's right to know.'" Id. at 1198. When a meeting is being recessed for longer than 24 hours, the board should provide, if practicable, both oral and written (including, if possible, electronic) notice of the date, time, and place of a continuance. The date, time, and location of the reconvened meeting generally should be orally announced at the time that the meeting is recessed.

Based on the Court's guidance and examples in Kanahele, OIP has prepared a "Notice of Continuance of Meeting" form, which is available on the Forms page at oip.hawaii.gov and as an appendix to this Guide. This notice may be used to continue an ongoing meeting that had been originally posted as required under section 92-7, HRS. Consequently, the continuance notice is not subject to the same requirements of the original notice under section 92-7, HRS. Rather than post a new agenda for a continued meeting, a board should attach the agenda of the meeting being continued to a "Notice of Continuance of Meeting," on which the board should type, hand write, or otherwise note the agenda item(s) being continued.

Can the meeting be reconvened at a different location?

Yes. A board may reconvene a meeting at a location different from where the meeting was initially convened, as long as the board announces the location where the meeting is to be reconvened at the time when it recesses the meeting or otherwise notifies the public of the new location. The new location should be included in all announcements and other such publications, if any, regarding the reconvened meeting.

Must the continuance notice be posted?

Yes. A board should physically post in the board's office and, if practicable, at the physical meeting site, a "Notice of Continuance of a Meeting," with the agenda from the continued meeting attached thereto. Additionally, if possible and time permits, the Notice and agenda should be electronically posted on the board's website or the State or county electronic calendar, as appropriate, and emailed to persons on the board's email list.

Keep in mind that because the meeting notice requirements of section 92-7, HRS, do not apply to the notice of continuance, the failure to electronically post the continuance notice on the State or county electronic calendar or to give six days' advance notice would not require the cancellation of the continued meeting. State boards are also able to post a notice of a meeting being continued within six days by contacting NIC Hawaii (not OIP) at Hawaiicalendar@ehawaii.gov from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays).

Does a board have to re-hear testimony or accept new testimony at a continuation of a meeting?

No. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting.

Must a notice be posted online when cancelling a meeting?

Boards are not required by the Sunshine Law to electronically file a notice when cancelling a meeting. A board's mere failure to be present at a noticed meeting automatically cancels the meeting. However, as a courtesy to the public, OIP recommends posting notification of a cancelled meeting at the board's office and at the meeting location, taking down the original meeting notice from the online calendar, and informing those people who have asked to receive notice by email.

What notice must be provided if a physical meeting location must be changed?

If a board must change the physical location of a meeting on the day of the meeting (for example, the room loses power or air conditioning), it may call the meeting to order at the noticed location and announce that it will be recessed and then reconvened shortly thereafter in the new location. A written notification of the new meeting location should be posted at the originally noticed physical location.

What happens if the link to a remote meeting provided in the meeting notice has changed or does not work?

The meeting notice for a remote meeting must include the remote meeting location, typically a link for an online meeting platform. If a board must change the online location of a meeting on the day of the meeting, perhaps because the original link is not working, it may do so if its meeting notice also provided the alternative online location in its meeting notice as a back-up link in case of connection problems with the first. If a board cannot use its noticed remote meeting location and it has not previously provided an alternative, it would be unable to convene the meeting in the first place, and thus would not have the option to convene it and announce its continuation at a different online location.

Discussions Between Board Members Outside of a Meeting

Can board members discuss board business outside of a meeting?

The Sunshine Law generally prohibits discussions about board business between board members outside of a properly noticed meeting, with certain statutory exceptions. While the Sunshine Law authorizes interactions between board members outside of a meeting in specified circumstances, the statute expressly cautions that such interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

In practical terms, this means that board members cannot "caucus" or meet privately before, during, or after a meeting to discuss business that is before the board or that is reasonably likely to come before the board in the foreseeable future.

The statute, however, does not prohibit discussion between board members outside of a properly noticed meeting about matters over which the board does not have supervision, control, jurisdiction, or advisory power. For instance, where the chair of a board has the sole discretion to set the agenda, the board has no "power" over that decision and, therefore, board members may request the addition of possible agenda items outside of a properly noticed meeting, so long as they do not discuss the substance of items. Similarly, logistical issues, such as when members are available to meet, are typically not "board business" and thus may be discussed in an email sent to all board members.

Does the Sunshine Law also prohibit board members from communicating between themselves about board business by telephone, memo, fax, or email outside of a meeting?

Yes. Board members cannot discuss board business between themselves outside of a properly noticed meeting by way of the telephone or by memoranda, fax, email, or social media, such as Facebook. As a general rule, if the statute prohibits board members from discussing board business face-to-face, board members cannot have that same discussion through other media.

Can board members discuss board business with non-board members outside of a meeting?

Generally, yes. The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. Because the Sunshine Law does not apply to **non**-board members, a board member may discuss board business with **non**-board members outside of a meeting.

Board members should not discuss with non-board members any matters discussed during a closed executive meeting, or the members could risk waiving the board's ability to keep the matters confidential.

Social Events

What about social and ceremonial events attended by board members?

The Sunshine Law does not apply to social or ceremonial gatherings where board business is not discussed. Therefore, board members can attend functions such as Christmas parties, dinners, inaugurations, orientations, and ceremonial events without posting notice or allowing public participation, so long as they do not discuss official business that is pending or that is reasonably likely to come before the board in the foreseeable future.

If I am a board member, what should I do if another board member starts talking about board business at a social event?

The Sunshine Law is, for the most part, self-policing. It is heavily dependent upon board members understanding what they can and cannot do under the law. In the situation where a board member raises board business with other board members outside of a meeting, board members should remind each other that such discussion can only occur at a duly noticed meeting. If a board member persists in discussing the matter, the other board members should not participate in the discussion and should physically remove themselves from the discussion.

Permitted Interactions

What are "permitted interactions"?

Over the years, the Sunshine Law has been revised to recognize eight "permitted interactions," which are designed to address instances when members of a board may discuss certain board matters outside of a meeting and without the procedural requirements, such as notice, that would otherwise be necessary. The statute specifically states that the "[c]ommunications, interactions, discussions, investigations, and presentations described in [the permitted interaction] section are not meetings for purposes of [the Sunshine Law]." These permitted interactions are summarized below.

What are the types of "permitted interactions" allowed by the Sunshine Law?

- ***Two Board Members***. Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board. Nevertheless, it would be a serial communication contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings.

- ***Investigations***. A board can designate two or more board members, but less than the number of members that would constitute a quorum of the board, to investigate matters concerning board business. The board members designated by the board are required to report their resulting findings and recommendations to the entire board at a properly noticed meeting. This permitted interaction can be used by a board to allow some of its members (numbering less than a quorum) to participate in, for instance, a site inspection outside of a meeting or to gather information relevant to a matter before the board.

- ***Presentations/Negotiations/Discussion***. The board can assign two or more of its members, but less than the number of members that would constitute a quorum of the board, to present, discuss, or negotiate any position that the board has adopted.

- ***Selection of Board Officers***. Two or more board members, but less than the number of members that would constitute a quorum of the board, can discuss between themselves the selection of the board's

officers.

- ***Acceptance of Testimony at Cancelled Meetings.*** If a board meeting must be cancelled due to lack of quorum or conference technology problems, the board members present may still receive testimony and presentations on agenda items from members of the public and may question them, so long as there is no deliberation or decision-making at the cancelled meeting. The members present must create a record of the oral testimony or presentations. At the next duly noticed meeting of the board, the members who were present at the cancelled meeting must provide the record and copies of the testimony or presentations received at the cancelled meeting. Deliberation and decision-making on any item, for which testimony or presentation were received at the cancelled meeting, can only occur at a subsequent duly noticed meeting of the board.

- ***Discussions with the Governor.*** Discussions between one or more board members and the Governor are authorized to be conducted in private, provided that the discussion does not cover a matter over which a board is exercising its adjudicatory function. This permitted interaction does not allow discussions with county mayors.

- ***Administrative Matters.*** Certain routine administrative matters, such as board budget or employment matters, can be discussed between two or more members of a board and the head of a department to which the board is administratively assigned.

- ***Attendance at Informational Meetings or Presentations.*** The Sunshine Law allows two or more members of a board, but less than a quorum, to attend an informational meeting. The board members may participate in discussions, even among themselves, so long as the discussions occur as part of the informational meeting or presentation and no commitment relating to a vote on the matter is made or sought. At the next duly noticed meeting of the board, the members who attended the informational meeting or presentation must report their attendance and the matters presented and discussed that related to official board business.

This informational meeting provision thus allows less than a quorum of board members to attend, for example, neighborhood board meetings, legislative hearings, and seminars, at which official board business is discussed, so long as no commitment to vote is made and the subsequent reporting requirements are met. The law is intended to improve communication between the public and board members and to enable board members to gain a fuller understanding of the issues and various

perspectives. As with the rest of the law, this permitted interaction will be interpreted to prevent circumvention of the spirit of the Sunshine Law and its open meeting requirements.

For a more detailed discussion, please see OIP's three-part "Quick Review: Who Board Members Can Talk to and When," which is posted on the Training page at oip.hawaii.gov.

Board Discusion of Legislative Issues

How can a Sunshine Law board keep up with the fast-paced legislative calendar and submit timely testimony on legislative issues?

When dealing with legislative matters, one major hurdle that boards face is the Sunshine Law's six-day notice requirement prior to conducting a meeting to discuss a legislative measure, even though legislative committees often give less than six days' notice of their hearings. Since most boards typically meet on a monthly or less frequent basis, their meeting schedule together with the notice requirement leave them with limited options to timely notice a meeting and discuss the adoption of its legislative testimony or position prior to the legislative hearing.

The Sunshine Law, however, allows board members to discuss board business outside a meeting in limited circumstances, as set forth in the "permitted interactions" section of the law, as discussed above. The permitted interactions that are most useful in developing or adopting positions on legislative measures are (1) the one allowing two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board; (2) the one allowing a board to assign less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting; and (3) the one allowing less than a quorum of board members to attend a legislative hearing (or other "informational meeting") and report their attendance at the next board meeting.

Besides permitted interactions, other options for a board to address legislative matters are through emergency or limited meetings or delegation to staff.

The various options or practical approaches that a board could take to discuss and submit timely testimony on legislative issues or measures

are discussed in more detail in OIP's "Quick Review: Sunshine Law Options to Address State Legislative Issues and Measures," which is posted on the Training page at oip.hawaii.gov.

Discusions Between Multiple Boards

When members of multiple Sunshine Law boards hold a joint meeting, roundtable discussion or similar event, how can they do so without violating the Sunshine Law?

When planning an event that will bring together members of multiple Sunshine Law boards, every attendee who is a member of a Sunshine Law board must be able to justify his or her presence under the Sunshine Law with respect to his or her own board. The justification could be that no one else from that particular board was present, so there was no discussion of board business among that board's members; or it could be that one of the Sunshine Law's permitted interactions applied to the particular board's members who attended; or it could be that the event was noticed as a meeting of the members' own board (or a joint meeting of multiple boards including theirs). The justification does not have to be the same for all the boards with members attending, but all members of each board should have a Sunshine Law justification before attending and participating in the discussion of their board's business during the roundtable meeting.

For a more detailed discussion, please see OIP's "Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law," which is posted on OIP's Training page at oip.hawaii.gov.

3

EXECUTIVE MEETINGS

What is an executive meeting?

An executive meeting (also called an executive session) is a meeting of the board that is closed to the public. Because an executive meeting is a narrowly construed exception to the Sunshine Law's presumption that all government board meetings will be open to the public, board members are advised to carefully weigh the interests at stake before voting to exercise their discretion to close a meeting. Because the "final action" taken by the board in an executive meeting may be voided by the courts if the board has violated the procedural requirements for going into such a closed meeting, boards must be careful to follow all requirements.

Must a board give notice that it intends to convene an executive meeting?

Yes, if the executive meeting is anticipated in advance.

What must the agenda contain when the board anticipates convening an executive meeting?

In addition to listing the topic the board will be considering (as is required for all items the board will consider whether in public or executive session), the agenda for the open meeting generally must indicate that an executive meeting is anticipated and should cite the statutory authority for convening the anticipated executive meeting. For an executive meeting, the listing of the topic should describe the subject of the executive meeting with as much detail as possible without compromising the closed meeting's purpose. For instance, if the board is to consider a proposed settlement of a lawsuit in an executive meeting, the agenda would note that the purpose of the executive session was consulting with the board's attorney on questions or issues regarding the board's powers, duties, privileges, immunities, and liabilities, and cite section 92-5(a)(4), HRS. The agenda in such a case should also describe the topic of the meeting as, at a minimum, the lawsuit identified by case name and civil number, and unless such description would compromise the purpose of closing the meeting from the public, that the board would consider a proposed settlement.

Can a board convene an executive meeting when it is not anticipated in advance?

With significant restrictions, the Sunshine Law allows the board to convene an executive meeting when the need for excluding the general public from the meeting was not anticipated in advance. If, for example, during the discussion of an open meeting agenda item, the board determines that there are legal issues that need to be addressed by its attorney, the board may announce and vote to immediately convene an executive meeting to discuss those matters pursuant to section 92-5(a)(4), HRS.

The board, however, cannot convene an executive meeting to discuss an item that is not already on its meeting agenda without first amending the agenda to add the item in accordance with the Sunshine Law's requirements. No item can be added to an agenda if it is of reasonably major importance and the board's action will affect a significant number of persons. At least two-thirds of the board's total members (present or absent) must vote in favor of amending the agenda.

How does a board convene an executive meeting?

To convene an executive meeting, a board must vote to do so in an open meeting and must publicly announce the purpose of the executive meeting. The minutes of the open meeting must reflect the vote of each board member on the question of closing the meeting to the public. Two-thirds of the board members present must vote in favor of holding the executive meeting, and the members voting in favor must also make up a majority of all board members, including members not present at the meeting and vacant membership position. Note that the 2/3 vote of all members present that is required to convene an executive meeting is different from the 2/3 vote of a board's total membership (including vacant positions) that is required to amend an agenda.

What are the eight purposes for which an executive meeting can be convened?

Section 92-5(a), HRS, gives the board the discretion to go into an executive meeting only for the following eight specific reasons:

(1) ***Licensee Information.*** A board is authorized to meet in an executive meeting to evaluate personal information of applicants for professional and vocational licenses.

(2) ***Personnel Decisions***. A board may hold an executive meeting to "consider the hire, evaluation, dismissal or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved." However, if the person who is the subject of the board's meeting requests that the board conduct its business about him or her in an open meeting, the request must be granted and an open meeting must be held.

(3) ***Labor Negotiations/Public Property Acquisition***. A board is allowed to deliberate in an executive meeting concerning the authority of people designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations.

(4) ***Consult with Board's Attorney***. A board is authorized to consult in an executive meeting with its attorneys concerning the board's powers, duties, immunities, privileges, and liabilities.

(5) ***Investigate Criminal Misconduct***. A board with the power to investigate criminal misconduct is authorized to do so in an executive meeting.

(6) ***Public Safety/Security***. A board may hold an executive meeting to consider sensitive matters related to public safety or security.

(7) ***Private Donations***. A board may consider matters relating to the solicitation and acceptance of private donations in executive meetings.

(8) ***State/Federal Law or Court Order***. A board may hold an executive meeting to consider information that a State or federal law or a court order requires be kept confidential.

Does "embarrassing" or "highly personal" information allow a board to hold an executive meeting?

A board may not hold such discussions in an executive meeting unless the discussion falls within one of the eight circumstances listed in the statute for which an executive meeting is allowed.

Can confidential or proprietary information be considered in a closed-door meeting?

Again, unless there is an exception that permits the board to convene in

an executive meeting, no matter how sensitive the information may be, a board cannot consider such information in a closed meeting. In such a case, a board may be better off using an applicable permitted interaction in section 92-2.5, HRS, to allow less than a quorum of board members to take a close look at the sensitive information so that it can be discussed in more general terms at the board's meeting.

Does the Sunshine Law require a closed meeting when one of the eight purposes is applicable?

No. A board may, but is not required to, enter an executive meeting closed to the public when one of the eight purposes listed above is applicable.

Is a board subject to the Sunshine Law's criminal penalties for holding an open meeting, even if one of the eight purposes is applicable?

No. Although section 92-13, HRS, provides for the criminal prosecution of board members who willfully violate the Sunshine Law, the Hawaii Supreme Court has held that holding an open meeting does not violate the Sunshine Law. Consequently, board members are not subject to criminal prosecution under section 92-13, HRS, for holding an open meeting.

When personnel matters concerning an individual will be discussed, can an open meeting be held only upon the subject employee's request?

No. Section 92-5(a)(2), HRS, gives the subject employee the right to request an open meeting, but does not require the employee's consent to hold an open meeting. Because the Sunshine Law presumptively requires open meetings, the board may choose to discuss personnel matters in the open. Meetings related to personnel matters are not required to be closed to the public.

Must all personnel matters be discussed in a closed executive meeting?

No. Certain personnel matters must be discussed in an open meeting. Under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), certain types of government employment information must be disclosed upon request, such as employee names, job titles, and salary information. HRS § 92F-12(a)(4). Consequently, government employees do not have a legitimate expectation of privacy

in such information, and the board cannot justify closing a meeting simply to discuss those types of personnel matters. Additionally, if the discussion is about personnel policies, and not about an individual, then there is no legitimate expectation of privacy at stake, so the meeting cannot be closed to discuss such policies. To the extent possible, policy-making must be conducted in public meetings.

The personnel matters that may be discussed in a closed meeting under section 92-5(a)(2), HRS, must relate to "the hire, evaluation, dismissal or discipline" of an individual officer or employee, or to "charges brought against" such an individual, and also requires a showing that "consideration of matters affecting privacy will be involved." Just because a matter involves an employee's personnel status does not necessarily mean that a legitimate privacy interest will be impacted. If no legitimate privacy interest will be involved in the board's discussion, then the board cannot properly close the meeting to the public.

How do you determine if there is a legitimate privacy interest under the personnel exception allowing closed executive meetings?

Unlike the test balancing private interests against the public interest that is set forth in the UIPA at section 92F-14(a), HRS, to determine if disclosure of a record would constitute a clearly unwarranted invasion of personal privacy, the Sunshine Law requires a case-by-case analysis of the specific person and information at issue to see whether the person being discussed has a legitimate expectation of privacy. Only people, not companies or entities, can have an expectation of privacy. There is a legitimate expectation of privacy in "highly personal and intimate" information, which may include medical, financial, education, or employment records. Some circumstances, however, may reduce or entirely defeat the legitimacy of a person's expectation of privacy, as in the case of government officials with high levels of discretionary and fiscal authority, like the University's president or a head coach. Moreover, if the information must be disclosed by law, rule or regulation, or if it has already been disclosed, then there is no legitimate expectation of privacy that would warrant holding a closed executive meeting to discuss such information.

May a board vote in an executive meeting?

Generally, no. In most instances, the board must vote in an open meeting on the matters considered in an executive meeting. In rare instances, the Sunshine Law allows the board to vote in the executive meeting when the vote itself, if conducted in an open meeting, would

defeat the purpose of the executive meeting, such as by revealing the matter for which confidentiality may be needed.

Can non-board members participate in an executive meeting?

The board is entitled to invite into an executive meeting any non-board member whose presence is either necessary or helpful to the board in its discussion, deliberation, and decision-making regarding the topic of the executive meeting. Once the non-board member's presence is no longer needed, however, the non-board member must be excused from the executive meeting. Because the meeting is closed to the general public, the board should allow the non-board members to be present during the executive meeting only for the portions of the meeting for which their presence is necessary or helpful, such as when a board staff member, attorney, or applicant is there to address a particular issue. Non-board members who may be needed throughout an executive session may include those providing technical or production support, or who are taking the minutes of the meeting. All persons attending an executive meeting, however, would be required to maintain the confidentiality of what was discussed in the meeting.

There are additional requirements for an executive meeting held as part of a remote meeting, which are discussed next.

What are the requirements for an executive meeting when the meeting is held remotely?

During a remotely held meeting when board members go into an executive session closed to the public, they can participate via telephone or audio only, without being visible online as is generally required for the public portion of a remote meeting. Because participants may not be visible during an online executive session, and to preserve the executive nature of any portion of a meeting closed to the public, the presiding officer must **publicly state the names and titles of all authorized participants**. Upon convening the executive session, **all participants must confirm that no unauthorized person is present or able to hear them** at their remote locations or via another audio or audiovisual connection. Additionally, if the remote meeting platform allows doing so, **the person organizing the ICT must look at the listed participants and confirm that no unauthorized person has access** to the executive session.

These statutory requirements are intended to prevent the executive session from being breached by or remotely transmitted to unauthorized

persons during remote meetings. The "authorized participants" that the presiding officer must identify at the start of an executive session would generally be anyone properly included in the closed portion of the meeting, such as board members, staff members necessary to running the meeting (*e.g.*, technical or production staff), and in some cases, third parties whose presence is necessary to the closed meeting (*e.g.*, applicant, witness, or attorney).

For additional discussion of executive session issues, see OIP's **Quick Review: Executive Meetings Closed to the Public.**

4

OTHER TYPES OF MEETINGS

Emergency Meetings

Where public health, safety, or welfare requires a board to take action on a matter, can a board convene a meeting with less than six days' notice?

A board may hold an emergency meeting with less notice than required by the statute or, in certain circumstances, no notice when there is "an imminent peril to the public health, safety, or welfare." When the board finds that an emergency meeting is appropriate, (1) the board must state its reasons in writing; (2) two-thirds of all members to which the board is entitled must agree that an emergency exists; (3) the board must electronically file an emergency agenda and the board's reasons in the same way it would file its regular notice and agenda, except for the usual six-days' advance notice deadline; and (4) persons requesting notification on a regular basis must be contacted by postal or electronic mail or telephone as soon as practicable.

Unanticipated Events

When an unanticipated event requires a board to take immediate action, can a board convene a meeting with less than six days' notice?

A board may convene a special meeting with less than six calendar days' notice because of an unanticipated event when a board must take action on a matter over which it has supervision, control, jurisdiction, or advisory power. The law defines an unanticipated event to mean (1) an event that the board did not have sufficient advance knowledge of or reasonably could not have known about; (2) a deadline beyond the board's control established by a legislative body, a court, or an agency; and (3) the consequence of an event for which the board could not have reasonably taken all necessary action.

The usual rule is that a State or county board may deliberate and decide whether and how to respond to the unanticipated event as long as (1) the board states, in writing, its reasons for finding that an unanticipated

event has occurred and that an emergency meeting is necessary; (2) the attorney general and two-thirds of all members to which the board is entitled concur with the board's finding; (3) the board's findings and the agenda for the emergency meeting are electronically filed in the same way it would file its regular notice and agenda, except for the usual six-days' advance notice deadline; and (4) persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable. At an emergency meeting, the board can only take those actions that need to be immediately taken.

Limited Meetings

If a board finds it necessary to inspect a location that is dangerous or impracticable for public attendance, may the board hold a meeting that is not open to the public?

Yes. A board may hold a "limited meeting" that is not open to the public when it determines it is necessary to do so and specifies that the meeting location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable, and the OIP Director concurs in that determination. Prior to the limited meeting, the board must publicly deliberate in a regular meeting on the need for the limited meeting, and two-thirds of all members to which the board is entitled must adopt the determination specified above.

Public notice of a limited meeting must still be provided, and a videotape of the meeting must be made available at the next regular board meeting, unless the OIP Director waives the videotape requirement. No decision-making can occur during the limited meeting.

See the forms section of this Guide for a checklist to use when requesting the OIP Director's concurrence for a limited meeting or to request a waiver of the videotaping requirement.

Can county councils have limited meetings to attend other boards' or community groups' meetings, such as candidate forums?

Yes. County councils have a special limited meeting provision that allows an unlimited number of councilmembers to be the guests of a board or community group holding its own meeting, such as for candidate forums or neighborhood board meetings. To qualify for this

"guest meeting," the council must follow the requirements to hold a limited meeting, as described above. But unlike the regular limited meetings described above, the guest meeting must be open to the public. The council need not file an agenda. However, if the host organization itself is a board which must follow the Sunshine Law requirements, then that board must file an agenda. The council can have no more than one guest meeting per month for any one board or community group, and no guest meetings can be held outside of Hawaii.

See the appendices to this Guide for a checklist to use when requesting the OIP Director's concurrence for a council to attend a meeting as guests of another board or community group meeting or to request a waiver of the videotaping requirement.

5
PROCEDURAL REQUIREMENTS

NOTICE AND AGENDA

What are the Sunshine Law's requirements for giving notice of meetings?

With the exception of emergency meetings, **a board must give at least six calendar days' advance notice** of any regular, special, or rescheduled meeting or any anticipated executive meeting. Meetings held by interactive conference technology (section 92-3.5, HRS), and limited meetings (section 92-3.1, HRS) are subject to the following provisions on notice as well as other conditions set forth in the applicable sections of the Sunshine Law. Emergency meetings (section 92-8, HRS) must also be noticed, but notice may be filed within a shorter time period than the normal six days, and there are additional conditions.

Sunshine Law meeting notices must be posted on State and county electronic calendars as the official notice of the meeting. If there is a dispute as to whether an agenda was electronically filed at least six calendar days prior to the meeting, a printout of the electronic time-stamped agenda is conclusive evidence of the posting date.

A board must also file the notice with the Lt. Governor's office or the county clerk's office, which must continue to post the notices in a central location in a public building in paper form or in electronic format, such as via a monitor linked to the electronic calendar. This enables the public to still inspect courtesy copies of the meeting notices posted outside of the Auditorium at the State Capitol or at county buildings. The board must also retain proof of filing the notice with the Lt. Governor's or county clerk's office. The electronic calendar, however, will provide the official notice required by the Sunshine Law. Therefore, the failure to file timely copies of notices with the Lt. Governor's office or county clerks does not require cancellation of the meeting. Moreover, the Lt. Governor or county clerks have the discretion to determine whether they want paper documents to be provided to them, or if

electronic copies can be faxed to them or emailed to an email address designated by them.

The notice must also be posted at the meeting site, whenever feasible. Newspaper publication is not required for Sunshine Law meeting notices.

In addition to the date, time, and place of the meeting, the meeting notice must **include an agenda,** which lists all of the items to be considered at the forthcoming meeting. (The "guest meeting" form of limited meeting, discussed above, is an exception to this requirement.) The agenda requirements are discussed later herein.

If an executive meeting is anticipated, the notice must also state the **purpose of the executive meeting**. The Sunshine Law also requires all meeting notices to include the **board's electronic and postal contact information for submission of testimony** before the meeting, and provide instructions on **how to request an auxiliary aid or service or an accommodation due to a disability**, which may include a reasonable deadline. Sample language is provided on page 43 of this Guide.

Does a board have to notify individual members of the public of every meeting?

The Sunshine Law requires the board to maintain a list of names and addresses of those persons who have requested notification of meetings and to mail or email a copy of the notice to those persons at the time that the notice is filed. A meeting must be cancelled if the board fails to send notice at least six days in advance of the meeting via postal mail (as determined by postmark date) or email to people on its notification list.

What happens if a board files its notice less than six days before the date of the meeting?

The State electronic calendar will not allow a board to file a regular meeting notice with less than six days' notice, unless authorization is received after contacting NIC Hawaii (not OIP) at hawaiicalendar@ehawaii.gov from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays). Unless the short notice is specifically allowed (such as for an emergency meeting), if a board files its notice less than six calendar days before the meeting, the meeting is cancelled as a matter of law and no meeting can be held. The board chair or the director of the department within which the board is

established must ensure that a notice is posted at the meeting site to inform the public of the cancellation of the meeting.

Note that notices for emergency meetings may be posted on the State calendar with less than six days' notice, but only after special permission is obtained from the calendar's administrator (not OIP).

What happens if there is a joint meeting of two boards that are both subject to the Sunshine Law?

If there is a joint meeting with two or more boards, then each board is responsible for meeting the Sunshine Law's requirements, but they can coordinate to avoid duplicative actions. All boards must ensure that notices are timely mailed or emailed to persons on their own notification lists; but if a person is on more than one mailing list, then only one of the boards must send the notice to that person. If one board meets all Sunshine Law requirements, but the other board in a joint meeting fails to do so, then the first board can proceed with the meeting without the second board. The second board must cancel its meeting and cannot have a quorum or more of its members in attendance at what would have been a joint meeting with the first board.

Do you have any practice tips for boards to help them comply with the notice requirements?

- Be careful to keep accurate records of postal and email addresses of persons on the notification list, and any changes to those addresses, so that notices will be timely and properly sent to them, as the board's errors in an address that made a notice non-deliverable could potentially require the cancellation of a meeting.

- Reduce opportunities for clerical errors by board employees, particularly with email addresses. If possible, have requesters directly enter their own email or mailing addresses online to be added to the board's notification list, and keep a record of the addresses entered by the requesters so that any mistakes will be attributed to the correct source. Consider emailing an acknowledgement after requesters register for email notification, to ensure that the correct email address has been entered onto the board's email notification list.

- If mail is not deliverable, check the address to make sure that it was sent to the correct postal or email address. Keep a record of postal and email addresses that are returned as undeliverable and dates that they were sent to provide proof that the notification was timely sent to

the address provided by the requester.

- Consider filing agendas well before the six-day requirement, so that any potential errors in postal or email addresses can be corrected and timely notices can be sent to people on the notification list.

- Use technology to automate the notification process, reduce duplicative requests to the boards themselves, and eliminate potential clerical errors by the board in entering email addresses. Check to see whether the State or county electronic calendars will automatically notify those persons who subscribe to certain meeting notices.

- Keep a time-stamped copy of the agenda to provide conclusive evidence of the date when the notice was filed. The State electronic calendar shows the date and time that a meeting notice was posted or last updated. If a county calendar does not have this feature, then the board could print out and time-stamp a copy of the electronically filed meeting notice to keep in its files as evidence of the date that the meeting notice was posted.

What must the agenda contain?

The agenda must list all of the business to be considered by the board at the meeting. It must be sufficiently detailed so as to provide the public with adequate notice of the matters that the board will consider so that the public can choose whether to participate.

For anticipated executive meetings, as noted above, the agenda must be as descriptive as possible without compromising the purpose of closing the meeting to the public and must identify the statutory basis that allows the board to convene an executive meeting regarding the particular matter.

To meet the Sunshine Law's requirement to include instructions on how to request an auxiliary aid or accommodation, the Disability and Communication Access Board recommends that boards include the following language on its agendas: "If you require an auxiliary aid or accommodation due to a disability, please contact (808) _____ (voice/tty) or email [the board] at_____by [date]."

For a more detailed discussion, please see OIP's "Agenda Guidance for Sunshine Law Boards," which is posted on the Training page at oip.hawaii.gov.

Are general descriptions such as "Unfinished Business" or "Old Business" allowed?

No. The practice of listing general descriptions on agendas such as "Unfinished Business" or "Old Business" without any further description is insufficient and does not satisfy the agenda requirements.

Can a board amend its meeting agenda once it has been filed?

Adding an item to the agenda is **not** permitted if (1) the item to be added is **of reasonably major importance and** (2) action on the item by the board **will affect a significant number of persons**. Determination of whether a specific matter may be added to an agenda must be done on a case-by-case basis.

If the requirements above are met, boards may amend an agenda during a meeting to add items for consideration, but only after the affirmative vote of two-thirds of **all** board members to which the board is entitled, which **includes members not present at the meeting and vacant membership positions.** For example, if a board is entitled to 9 members, but only 5 are appointed and present, then it does not have the 6 votes needed to meet the 2/3 requirement to amend an agenda during the meeting.

Note that the voting requirement for amending an agenda **is not the same** as, and is typically harder to obtain than, the vote of two-thirds of members present and a majority of the total membership that is needed to go into an executive meeting.

Minutes

Is a board required to keep minutes of its meetings?

Yes. Boards must either keep written minutes, or recorded minutes with a written summary. If boards chose to keep written minutes, they must include the date, time, and place of the meeting; the members recorded as either present or absent; the substance of all matters proposed, discussed, or decided; a record by individual member of votes taken; and any information that a board member specifically asks at the meeting to be included.

Boards are not required to create a transcript of the meeting or to electronically record the meeting. But they may choose to keep a recording of the entire meeting instead of doing written minutes. For this option, a board must keep its minutes in a digital or analog recording format (e.g., via a cell phone, video, or tape recorder) and provide a written summary, which is required to include:

- The date, time, and place of the meeting;
- The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- A record, by individual members, of motions and votes made by the board; and
- A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

The written summary requirements will allow the public to quickly find key information about a meeting and skip to the point in the recording where an item of interest was discussed, without having to listen to the entire recording which may be hours long. Although a board does have the choice to record its minutes in either digital (audio or video computer file) or analog (e.g., a magnetic tape recording) format, OIP recommends that boards record in a digital format to avoid having to convert an analog recording into digital format to be able to place the recording online.

The option to create recorded minutes does not impose any general requirement to record meetings for boards that prefer using written minutes. Moreover, if a board is recording a meeting solely to help it prepare written minutes and plans to delete or record over the recording once those minutes are prepared, the temporary recording need not be posted online and typically need not be retained once the board no longer needs it. However, for one specific type of meeting — a remote meeting held using ICT — boards are required to record the meeting "when practicable" and make the recording electronically available to the public as soon as practicable after the meeting and until the board's actual minutes (whether written or recorded) are posted on the board's website. This provision recognizes that it is usually easy to record an online meeting but still allows boards to skip doing so in those unusual circumstances where recording an online meeting presents a more significant challenge.

For a more detailed discussion of what must be included in minutes,

please see OIP's "Quick Review: Sunshine Law Requirements for Public Meeting Minutes," which is posted on the Training page at oip.hawaii.gov.

Must the minutes of a board's meeting be posted online?

Yes. The Sunshine Law requires all boards to post their written or recorded minutes online within 40 days after the meeting. If the board chooses to post a recording of its meeting, it still needs to also post a written summary within 40 days after its meeting, because the written summary is part of the recorded minutes.

A board that is preparing written minutes for an in-person meeting does not need to post a recording, even if it has one – for instance, temporary recordings intended to be used for note-taking to prepare written minutes do not need to be posted online, since the written minutes will be posted online instead. However, for a remote meeting held via ICT, a board is required to record the meeting "when practicable" and make that recording available to the public until its actual minutes are posted online.

Must draft minutes be posted online within 40 days after a meeting, even if they have not yet been approved by the board?

Yes. The Sunshine Law does not require boards to approve minutes. If a board does approve its minutes as a usual practice but has not had the opportunity to approve minutes for a meeting, minutes that satisfy the Sunshine Law's requirements must nevertheless be posted online within 40 days after the meeting, because there is no exception to the posting requirement when a board has not approved its minutes. The board can post its draft minutes online, marked as a "draft," and replace them with the board-approved minutes when those are ready, so long as it has minutes that satisfies the Sunshine Law's requirements posted within the required 40 days.

If the board does not have its own website, where must its minutes be posted?

A board that has its own website will most likely prefer to post its minutes there, but a board that does not have its own website may post its minutes on an appropriate State or county website instead, such as

the website for the department to which the board is administratively attached.

To provide enough time for an IT office or website administrator to post minutes online after they have been prepared by the board, the deadline for posting is 40 days after a meeting.

Must executive meeting minutes be posted online?

No. Minutes of an executive meeting closed to the public need not be posted online if the disclosure would defeat the purpose of going into executive meeting.

Keep in mind, however, that the Sunshine Law is different from the UIPA. The Sunshine Law permits boards to delay publication of executive meeting minutes for so long as publication would defeat the lawful purpose of the executive meeting. At some point in the future, the minutes may have to be disclosed in response to a UIPA request, when disclosure would no longer compromise the purpose for going into the executive meeting. For example, minutes of an executive meeting to discuss a property's acquisition should be disclosed after the property has been acquired. Thus, boards must review the minutes to determine if the need for confidentiality has passed, and may be required to disclose all or part of the executive meeting minutes in response to a UIPA request for the minutes.

Recordings by the Public

Must a board allow a member of the public to record the meeting?

The board must allow the public to record any portion or all of an open meeting, as long as the recording does not actively interfere with the meeting.

6

SUIT TO VOID BOARD ACTION

Can a member of the public file a lawsuit for an alleged Sunshine Law violation?

Yes. When the open meetings and the notice provisions of the Sunshine Law are not complied with, any person may file a lawsuit to void the board's action within 90 days of the allegedly improper board action. An OIP determination of wrongdoing is not necessary for a lawsuit to be filed. Enforcement is in circuit court of the circuit in which the prohibited act occurred.

Under certain circumstances, the judge may grant an injunction, but the filing of a lawsuit challenging a board's action does not stay enforcement of the action. Attorneys' fees and costs may be awarded to the prevailing party.

What is the penalty for an intentional violation of the statute?

A willful violation of the Sunshine Law is a misdemeanor and, upon conviction, may result in the person being removed from the board. The Attorney General and the county prosecutor have the power to enforce any violations of the statute.

Can a board appeal an OIP decision regarding the Sunshine Law?

Yes. OIP issues decisions in response to complaints that a board violated the Sunshine Law, and also on the question of whether a particular body is a board subject to the Sunshine Law. A board may appeal an OIP decision to the courts in accordance with section 92F-43, HRS. For more information, see OIP's Guide to Appeals to the Office of Information Practices, available on the Training page at OIP's website at oip.hawaii.gov.

7

OFFICE OF INFORMATION PRACTICES

If I have additional questions about the Sunshine Law, where can I go?

For general information on the Sunshine Law, please visit OIP's website at oip.hawaii.gov, call OIP at (808) 586-1400, or email **oip@hawaii.gov**. The full text of the Sunshine Law, as well as OIP's opinions relating to various open meeting issues, are posted on the website.

Office of Information Practices
(October 2021)

Sunshine Law:
PUBLIC MEETING NOTICE CHECKLIST

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1. **Notice Includes:**

- ☐ **Date:** In addition to the date itself, if the notice also specifies the day of the week, make sure it matches the date.
- ☐ **Time:** While the starting time must be provided, an ending time is not required.
- ☐ **Location: All notices must list at least one physical location** for the meeting. For an in-person meeting, the notice must list all locations where board members will be physically present and must state that the public can attend the meeting at any of those locations.
- ☐ For a **remote meeting using interactive conference technology (ICT)**, the link(s) allowing the public to contemporaneously view and hear the meeting and provide remote oral testimony.
- ☐ If **additional locations** (formerly known as "courtesy" locations) are being provided for the public's convenience, specify whether the meeting will continue without the additional location if the ICT connection between the additional location and the public meeting site(s) is lost, or will be automatically recessed to restore communication.
- ☐ **Board's electronic and postal contact information** for submission of testimony before the meeting.
- ☐ **Instructions** on how to request an auxiliary aid or service or an accommodation due to a **disability**. If there is a deadline to make such a request, it must be stated in the notice and must be reasonable.
- ☐ **Agenda** describing with reasonable specificity all matters to be considered.
- ☐ If an **executive meeting** is anticipated, the agenda describes the purpose and statutory authority in section 92-5(a), HRS, or other laws applicable to your board that allow the executive meeting. Use as much detail as

possible without compromising the executive meeting's purpose.

☐ Optional: For a meeting **using ICT,** information about what will happen in the event of a connection failure, such as where to find **reconnection information and any necessary visual aids** online or an alternative date, time, and place for **continuation** of the meeting if the ICT connection cannot be restored.

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2. Filing Notice:

☐ 6 calendar days prior to meeting:

Electronically post on:
- ☐ State Calendar: http://calendar.ehawaii.gov/calendar/html/event (State only)
- ☐ County Calendar (counties only)
- ☐ Board's website (unlike the above, this is not a legal requirement)

Physically post for public inspection in:
- ☐ Board's Office
- ☐ Site of meeting (when feasible or if meeting is canceled)

File (and keep proof of filing) with:
- ☐ Lieutenant Governor's Office (State)
- ☐ County Clerk (counties)

Mail or email to persons who requested notification of meetings (MUST be postmarked/emailed no later than 6 calendar days before the meeting):
- ☐ Postal mailing list
- ☐ Email list

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3. Meeting Canceled for Late Filing of Notice:

It is suggested but not required that the board post a notice canceling the meeting at:

- ☐ Meeting site
- ☐ State Calendar: http://calendar.ehawaii.gov/calendar/html/event (State only)
- ☐ County Calendar (counties only)
- ☐ Anywhere else notice was previously posted, mailed, or filed such as county or board website (not a legal requirement)

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4. **Special Instructions for Emergency Meetings**
(held less than 6 calendar days prior to meeting):

- Board must first decide to hold emergency meeting by vote of two-thirds of members to which board is entitled (include authorized but vacant positions)

- Must meet criteria in section 92-8, HRS, either:
  - when "imminent peril to the public health, safety, or welfare," or
  - because of an "unanticipated event" and board must take action.
    - For an unanticipated event, the Attorney General must concur (even for county boards).

☐ File board's findings justifying emergency meeting with emergency agenda as set forth in section 2 above (but without the 6-day notice requirement).

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5. **Special Instructions for Limited Meetings**

- Limited meetings not open to the public may be held when a board determines it necessary to inspect a location that is dangerous or that is impracticable for public attendance.

- Must obtain concurrence from OIP's Director.
See OIP's *Request for the Office of Information Practices' Concurrence for a Limited Meeting* form at www.oip.hawaii.gov/forms/.

- For county councils only: See OIP's *Checklist and County Council's Request to Waive Videotaping of a Meeting as Guests of a Board or Community Group* form at www.oip.hawaii.gov/forms/.

- Notice must be filed 6 days before limited meeting.

☐ File board's limited meeting agenda as set forth in section 2 above.

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6. **Special Instructions for In-Person Meetings Involving Board Members with a Disability**

- Notwithstanding the general requirements for multi-site in-person meetings in section 1 above, a "board member with a disability that limits or impairs the member's ability to physically attend the meeting" may attend an in-person meeting via a connection by **audio and video** means from a private location (*e.g.*, home or hospital room). The specific address of the private

location need not be listed on the notice, but a board member with a disability attending from a private location must generally identify the location (*e.g.*, home; hospital) and all persons present with the member.

- See OIP's *Quick Review: Sunshine Law Requirements for In-Person Meetings held at Multiple Sites* on OIP's Training Page at oip.hawaii.gov.

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7. Other Considerations

There are matters outside of OIP's jurisdiction that you may wish to consider when preparing a meeting notice, such as:

- Although the Sunshine Law requires a notice to include instructions for requesting a reasonable accommodation for disabled persons (for example, provision of sign language interpreters for individuals who are deaf or hard of hearing), OIP does not have authority to advise as to what constitutes a reasonable accommodation. If you have questions about what accommodations or auxiliary aids must be provided in response to a request, you may wish to contact your board's attorney or the State Disability and Communication Access Board: (808) 586-8121 (Voice or TTY) or email: dcab@doh.hawaii.gov for assistance.

- Applicable statutes or administrative rules related to your board.

- For county boards, your County's applicable charter, ordinances, or other provisions.

- Your board's own procedural rules or policies; or instructions for the public regarding, among other things, your board's preferred method for submission of written testimony and opportunity to provide oral testimony at the meeting.

- Whether the public can find and get into the meeting site. For example, is the meeting site large enough that someone might have trouble finding the right room? Are there improper barriers to public access such as a security checkpoint requiring attendees to show identification?

Request for the Office of Information Practices' Concurrence for a Limited Meeting
(HRS § 92-3.1)

Date: _____

Name of Board: _____
Contact Person: _____ Tel: _____
Fax: _____ Email: _____
Board's Attorney: _____ Tel: _____
Fax: _____ Email: _____
Date of Proposed Limited Meeting: _____
Place/Location of Proposed Limited Meeting: _____
_____

1. Type of Limited Meeting:

   ☐ location is dangerous to health or safety of the public
   ☐ public attendance is impracticable

2. (Attach relevant portion of draft or adopted minutes.) Board has, after sufficient public deliberation at a prior regular meeting, determined by vote of two-thirds of all voting members that:

   ☐ the limited meeting is necessary and the location would be dangerous to the health or safety of the attending public, or
   ☐ the on-site inspection is necessary and public attendance is impracticable

   The Board has made this determination based upon the following reasons:
   _____
   _____
   _____
   _____

3. Notice of the Limited Meeting under HRS § 92-7 (attach agenda):

   ☐ was filed on _____
   ☐ will be filed by _____

4. Required Videotape of the Limited Meeting:

   ☐ will be made
   ☐ Board requests a waiver of this requirement because:
   _____
   _____
   _____
   _____
   _____

OIP 5 (10/21)

CONCURRENCE

The Director of the Office of Information Practices has reviewed the request made for a Limited Meeting and:

☐ concurs
☐ does not concur

☐ waives the videotape requirement

If concurrence is granted above, the Board must:

1. provide notice in accordance with HRS § 92-7;

2. make no decisions at the Limited Meeting;

3. comply with all requirements of HRS § 92-9; and

4. videotape the meeting and make it available at its next regular meeting, unless this requirement is waived above.

_____
Cheryl Kakazu Park
Director

BOARD:

ADDRESS:

WEBSITE: E-MAIL:

TELEPHONE: FAX:

NOTICE OF CONTINUANCE OF MEETING

ORIGINALLY CONVENED ON _____, 20__, AT _____ __ M.
See attached agenda for original meeting

TO BE CONTINUED TO:

DATE: _____
TIME: _____ __M.
PLACE: _____
_____

___ Public testimony will be allowed in the manner described and on the items shown on the attached agenda as being continued.

___ Public testimony has concluded and no further testimony will be allowed on the items described in the attached agenda. The board will discuss, deliberate, decide, and/or act upon the items described in the attached agenda.

This notice has been physically posted at the following location(s):

___ Board Office

___ Meeting Site

(Optional) This notice has been electronically posted at _____

(This notice is not subject to the filing requirements of HRS Sec. 92-7.)

OIP Form 12-01

Chapter 92, Hawaii Revised Statutes
PUBLIC AGENCY MEETINGS AND RECORDS

The following is an unofficial copy of Part I of chapter 92, Hawaii Revised Statutes, which is current through the 2021 legislative session, including new and unnumbered provisions enacted by Act 220, SLH 2021, relating to remote meetings. For amendments made to the Sunshine Law by the Revisor of Statutes after publication of this manual, please visit OIP's website at oip.hawaii.gov and look under Laws/Rules/Opinions.

PART I. MEETINGS

Section

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

(1) It is the intent of this part to protect the people's right to know;
(2) The provisions requiring open meetings shall be liberally construed; and
(3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L

1975, c 166, pt of §1]

§92-1.5 Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

§92-2 Definitions. As used in this part:

"Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

"Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

"Interactive conference technology" means any form of audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

"Meeting" means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1; am L 2021, c 220, §3]

§92-2.5 Permitted interactions of members.

(a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and

(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

(A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

(B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177,§1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of § 1; am L 1985, c 278, §1]

§92-3.1 Limited meetings.

(a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
   (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
   (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
   (3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:
   (1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;
   (2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;
   (3) No more than one limited meeting per month shall be held by a county council for any one board or community group;
   (4) No limited meetings shall be held outside the State; and
   (5) Limited meetings shall not be used to circumvent the purpose of part I, chapter 92.

(c) At all limited meetings, the board shall:
    (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
    (2) Make the videotape available at the next regular meeting; and
    (3) Make no decisions at the meeting.
(d) Each county council shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the effectiveness and application of limited meeting procedures provided in subsection (b), including any recommendations or proposed legislation. [L 1995, c 212, §1; am L 2008, c20, §1; am L 2014, c 221, §2; am L 2016, c 56, §1, 2]

§92-3.5 In-person meeting at multiple sites by interactive conference technology; notice; quorum.

(a) A board may hold an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).
(b) Any board member participating in a meeting by interactive conference technology under this section shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.
(c) A meeting held by interactive conference technology under this section shall be automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive technology is being held, even if a quorum of the board is physically present in one location. The meeting may reconvene when either audio or audiovisual communication is restored. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and

the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

(d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2; am L 2021, c 220, §4]

§92-3.7 Remote meeting by interactive conference technology; notice; quorum.

(a) A board may hold a remote meeting by interactive conference technology; provided that the interactive conference technology used by the board allows audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided under this section; provided further that there is at least one meeting location that is open to the public and has an audiovisual connection. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at nonpublic locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall state who, if anyone, is present at the nonpublic location with the member. The notice required by section 92-7 shall:

(1) List at least one meeting location that is open to the public that shall have an audiovisual connection; and

(2) Inform members of the public how to contemporaneously:

(A) Remotely view the video and audio of the meeting through internet streaming or other means; and

(B) Provide remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.

The board may provide additional locations open for public participation. The notice required by section 92-7 shall list any additional locations open for public participation and specify, in the event an additional location loses its audiovisual connection to the remote meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) For a remote meeting held by interactive conference technology pursuant to this section:

(1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;

(2) Except as provided in subsections (c) and (d), a quorum of board members participating in the meeting shall be visible and audible to other members and the public during the meeting; provided that no

other meeting participants shall be required to be visible during the meeting;

(3) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board;

(4) At the start of the meeting the presiding officer shall announce the names of the participating members;

(5) All votes shall be conducted by roll call unless unanimous; and

(6) When practicable, boards shall record meetings open to the public and make the recording of any meeting electronically available to the public as soon as practicable after a meeting and until a time as the minutes required by section 92-9 are electronically posted on the board's website.

(c) A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(l) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). This subsection shall not apply based on the inability of a member of the public to maintain an audiovisual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audiovisual link to the meeting. The meeting may reconvene when either audiovisual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audiovisual communication, but only if the board has provided reasonable notice to the public as to how to access the reconvened meeting after an interruption to communication. If audio-only communication is established, then each speaker shall be required to state their name before making their remarks. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

(d) During executive meetings from which the public has been excluded, board members shall be audible to other authorized participants but shall not be required to be visible. To preserve the executive nature of any portion of a meeting closed to the public, the presiding officer shall publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection. The person organizing the interactive conference technology shall confirm that no unauthorized person has access to the executive meeting as indicated on the

control panels of the interactive conference technology being used for the meeting, if applicable. [L 2021, c 220, §2]

§92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2]

§92-5 Exceptions.

(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:
   (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
   (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
   (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
   (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
   (5) To investigate proceedings regarding criminal misconduct;
   (6) To consider sensitive matters related to public safety or security;
   (7) To consider matters relating to the solicitation and acceptance of private donations; and
   (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.

(a) This part shall not apply:
   (1) To the judicial branch.

(2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:

(A) Hawaii labor relations board, chapters 89 and 377;
(B) Labor and industrial relations appeals board, chapter 371;
(C) Hawaii paroling authority, chapter 353;
(D) Civil service commission, chapter 26;
(E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
(F) Crime victim compensation commission, chapter 351; and
(G) State ethics commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11; am L 1998, c 240, §6]

§92-7 Notice.

(a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board's electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

(b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall timely post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.

(c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.

(d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2; am L 2012, c 177, §2; am L 2014, c 68, §1; am L 2017, c 64, §2; am L 2018, c 63, §1; am L 2019, c 244, §2; am L 2021, c 220, §5]

[§92-7.5] Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section. [L 2017, c 64, §1]

§92-8 Emergency meetings.

(a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
    (1) The board states in writing the reasons for its findings;
    (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;

(3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and

(4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, with less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

(1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;

(2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;

(3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;

(4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and

(5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.

(c) For purposes of this part, an "unanticipated event" means:

(1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;

(2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or

(3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64 §3; am L 2019, c 244 §3]

§92-9 Minutes.

(a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Written minutes shall include, but need not be limited to:

(1) The date, time and place of the meeting;

(2) The members of the board recorded as either present or absent;
(3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
(4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:
(1) The date, time, and place of the meeting;
(2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
(3) A record, by individual member, of motions and votes made by the board; and
(4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

(c) All or any part of a meeting, of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1; am L 2017, c 64, §4]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

§92-12 Enforcement.
(a) The attorney general and the prosecuting attorney shall enforce this part.
(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.

(d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.

(e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:

    (1) There is likelihood that the party bringing the action will prevail on the merits;
    (2) Irreparable damage will result if a stay is not ordered;
    (3) No irreparable damage to the public will result from the stay order; and
    (4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5; am L 2012, c 176, §3]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

"THE SUNSHINE LAW" (2021)
HRS CHAPTER 92
PUBLIC AGENCY MEETINGS AND RECORDS

Part I. Meetings

Part II. Boards: Quorum; General Powers

Part III. Copies of Records; Costs and Fees

Part IV. Notice of Public Hearings

Part V. Public Records

PART I. MEETINGS

Attorney General Opinions

Department of agriculture advisory committee on plants and animals subject to provisions of this part; subcommittees not subject to this part. Att. Gen. Op. 90-7.

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

(1) It is the intent of this part to protect the people's right to know;

(2) The provisions requiring open meetings shall be liberally construed; and

(3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

§92-1.5 Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

§92-2 Definitions. As used in this part:

"**Board**" means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

"**Chance meeting**" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

"**Interactive conference technology**" means any form of audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

"**Meeting**" means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1]

§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and

(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

(A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

(B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may

provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

§92-3.1 Limited meetings. (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

(1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;

(2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

(3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:

(1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;

(2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;

(3) No more than one limited meeting per month shall be held by a county council for any one board or community group;

(4) No limited meetings shall be held outside the State; and

(5) Limited meetings shall not be used to circumvent the purpose of part I, chapter 92.

(c) At all limited meetings, the board shall:

(1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;

(2) Make the videotape available at the next regular meeting; and

(3) Make no decisions at the meeting.

(d) Each county council shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the effectiveness and application of limited meeting procedures provided in subsection (b), including any recommendations or proposed legislation. [L 1995, c 212, §1; am L 2008, c 20, §1; am L 2014, c 221, §§2, 4; am L 2016, c 56, §§1, 2]

§92-3.5 In-person meeting at multiple sites by interactive conference technology; notice; quorum. (a) A board may hold an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) Any board member participating in a meeting by interactive conference technology under this section shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by interactive conference technology under this section shall be automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. The meeting may reconvene when either audio or audiovisual communication is restored. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

(d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a

board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2; am L 2021, c 220, §4]

§92-3.7 Remote meeting by interactive conference technology; notice; quorum. (a) A board may hold a remote meeting by interactive conference technology; provided that the interactive conference technology used by the board allows audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided under this section; provided further that there is at least one meeting location that is open to the public and has an audiovisual connection. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at nonpublic locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall state who, if anyone, is present at the nonpublic location with the member. The notice required by section 92-7 shall:

(1) List at least one meeting location that is open to the public that shall have an audiovisual connection; and

(2) Inform members of the public how to contemporaneously:

(A) Remotely view the video and audio of the meeting through internet streaming or other means; and

(B) Provide remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.

The board may provide additional locations open for public participation. The notice required by section 92-7 shall list any additional locations open for public participation and specify, in the event an additional location loses its audiovisual connection to the remote meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) For a remote meeting held by interactive conference technology pursuant to this section:

(1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;

(2) Except as provided in subsections (c) and (d), a quorum of board members participating in the meeting shall be visible and audible to other members and the public during the meeting; provided that no other meeting participants shall be required to be visible during the meeting;

(3) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board;

(4) At the start of the meeting the presiding officer shall announce the names of the participating members;

(5) All votes shall be conducted by roll call unless unanimous; and

(6) When practicable, boards shall record meetings open to the public and make the recording of any meeting electronically available to the public as soon as practicable after a meeting and until a time as the minutes required by section 92-9 are electronically posted on the board's website.

(c) A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). This subsection shall not apply based on the inability of a member of the public to maintain an audiovisual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audiovisual link to the meeting. The meeting may reconvene when either audiovisual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audiovisual communication, but only if the board has provided reasonable notice to the public as to how to access the reconvened meeting after an interruption to communication. If audio-only communication is established, then each speaker shall be required to state their name before making their remarks. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

(d) During executive meetings from which the public has been excluded, board members shall be audible to other authorized participants but shall not be required to be visible. To preserve the executive nature of any portion of a meeting closed to the public, the presiding officer shall publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection. The person organizing the interactive conference technology shall confirm that no unauthorized person has access to the executive meeting as indicated on the control panels of the interactive conference technology being used for the meeting, if applicable. [L 2021, c 220, §2]

§92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public

shall be recorded, and entered into the minutes of the meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2]

§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;

(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;

(5) To investigate proceedings regarding criminal misconduct;

(6) To consider sensitive matters related to public safety or security;

(7) To consider matters relating to the solicitation and acceptance of private donations; and

(8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability. (a) This part shall not apply:

(1) To the judicial branch.

(2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:

(A) Hawaii labor relations board, chapters 89 and 377;
(B) Labor and industrial relations appeals board, chapter 371;
(C) Hawaii paroling authority, chapter 353;
(D) Civil service commission, chapter 26;
(E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
(F) Crime victim compensation commission, chapter 351; and
(G) State ethics commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11; am L 1998, c 240, §6]

§92-7 Notice. (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board's electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting, the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

(b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall timely post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.

(c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the

meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.

(d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2; am L 2012, c 177, §2; am L 2014, c 68, §1; am L 2017, c 64, §2; am L 2018, c 63, §1; am L 2019, c 244, §2; am L 2021, c 220, §5]

§92-7.5 Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section. [L 2017, c 64, §1]

§92-8 Emergency meetings. (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting; provided that:

(1) The board states in writing the reasons for its findings;

(2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;

(3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and

(4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

(1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;

(2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;

(3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;

(4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and

(5) The board limits its action to only that action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.

(c) For purposes of this part, an "unanticipated event" means:

(1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;

(2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or

(3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L

1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64, §3; am L 2019, c 244, §3]

§92-9 Minutes. (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Written minutes shall include, but need not be limited to:

(1) The date, time and place of the meeting;

(2) The members of the board recorded as either present or absent;

(3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and

(4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:

(1) The date, time, and place of the meeting;

(2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;

(3) A record, by individual member, of motions and votes made by the board; and

(4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

(c) All or any part of a meeting of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1; am L 2017, c 64, §4]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and

procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

§92-12 Enforcement. (a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.

(d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.

(e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:

(1) There is likelihood that the party bringing the action will prevail on the merits;

(2) Irreparable damage will result if a stay is not ordered;

(3) No irreparable damage to the public will result from the stay order; and

(4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5; am L 2012, c 176, §3]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

PART II. BOARDS: QUORUM; GENERAL POWERS

Note

The sections of this part are renumbered to eliminate duplication of the section numbers in Part I, as enacted by L 1975, c 166.

§92-15 Boards and commissions; quorum; number of votes necessary to validate acts. Whenever the number of members necessary to constitute a quorum to do business, or the number of members necessary to validate any act, of any board or commission of the State or of any political subdivision thereof, is not specified in the law or ordinance creating the same or in any other law or ordinance, a majority of all the members to which the board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board or commission is entitled shall be necessary to make any action of the board or commission valid; provided that due notice shall have been given to all members of the board or commission or a bona fide attempt shall have been made to give the notice to all members to whom it was reasonably practicable to give the notice. This section shall not invalidate any act of any board or commission performed prior to April 20, 1937, which, under the general law then in effect, would otherwise be valid. [L 1937, c 40, §1; RL 1945, §482; RL 1955, §7-26; HRS §92-11; ren §92-15]

§92-15.5 Nonattendance of board member; expiration of term.

(a) Notwithstanding any law to the contrary, the term of a board member shall expire upon the failure of the member, without valid excuse, to attend three consecutive meetings duly noticed to all members of the board and where the board failed to constitute quorum necessary to transact board business. The chair or acting chair of the board shall determine if the absence of the member is excusable. The expiration of the member's term shall be effective immediately after the third consecutive unattended meeting and unexcused absence. The vacancy shall be filled in the same manner as the original appointment.

(b) This section shall not apply to ex officio members of a board.

(c) Notwithstanding the definition of "board" in section 92-2, this section shall apply only to a state board and shall not apply to a board of any political subdivision of the State or whose authority is strictly advisory. [L 2004, c 234, §1]

§92-16 Power of boards to issue subpoenas, administer oaths, appoint masters, etc. (a) Any board (which term as used in this section means any board or commission of the State or of any political subdivision of the State) which is by law authorized or required to hold hearings for the purpose of receiving evidence, shall have the following powers, in addition to those provided for by any other law, in connection with the hearings:

(1) To subpoena witnesses upon subpoena signed by the chairperson, acting chairperson, or any member, or executive secretary, or executive officer of or under the board who is so authorized by the board. The subpoenas shall be served in the same manner, and the witnesses subpoenaed shall be entitled to the same witness fees, as in the case of a witness subpoenaed to testify before a circuit court. Any circuit court, upon the written application of any member of the board or of any master appointed by it as in this section provided, shall have power to enforce obedience to the subpoena by contempt proceedings.

(2) Through the chairperson, acting chairperson, or any member of the board, or through the executive secretary or executive officer of or under the board so authorized by the board, to administer oaths to witnesses and

require the testimony of such witnesses on matters germane to the subject under inquiry at the hearing. Any party to the hearing upon request shall be allowed to be represented by counsel and be allowed reasonable rights of examination and cross-examination of witnesses. Any false swearing by a witness at the hearing upon any material issue or matter shall constitute perjury, and be punishable as such.

(3) To appoint, by written resolution adopted by vote of a majority of the board, a master or masters (who may, but need not be, a member or members of the board, or a disinterested attorney at law or other person, or a combination of any of them) to hold the hearing and take testimony upon the matters involved in the hearing and report to the board the master's or their findings and recommendations, together with a transcript of the hearing or a summary of the evidence and testimony taken thereat, and to adopt the findings and recommendations, in whole or in part, or otherwise act upon the report and transcript or summary, and, in the board's discretion, to hold further hearings and take further evidence and testimony in connection therewith, before taking final action thereon. Any master may be paid such reasonable compensation as shall be determined by the board, provided that no member of the board shall be eligible to receive any additional compensation for services as master.

(b) Subpoena fees, master's fees, and other expenses in connection with the hearings shall be payable out of any moneys appropriated or available for expenditure by the board for personal services or current expenses, or both. Any master so appointed shall have all of the powers which would be held and enjoyed by the board or the chairperson or any member thereof in connection with the hearing. [L 1949, c 329, §1; RL 1955, §7-27; HRS §92-12; am L 1973, c 31, pt of §21; ren §92-16; gen ch 1985, 1993]

§92-17 Consumer complaints; procedures and remedies. (a) All boards as defined by section 92-2(1) established to license or regulate any profession, occupation, industry, or service, shall receive complaints from consumers and other persons claiming to be aggrieved by business practices related to their respective jurisdictions.

(b) Upon receipt of a written complaint or upon receipt of an investigation report generated by the board on its own motion or upon staff investigation which establishes an alleged violation of any provision of law or rule, the board or its authorized representative shall notify the licensee or person regulated of the charge against the licensee or person and conduct a hearing in conformity with chapter 91 if the matter cannot be settled informally. If the board finds that the charge constitutes a violation, the board may order one or more of the following remedies as appropriate relief:

(1) Refunding the money paid as fees for services;

(2) Correcting the work done in providing services;

(3) Revocation of the licensee's permit or license;

(4) Suspension of the licensee's permit or license;

(5) Imposition of a fine; and

(6) Any other reasonable means to secure relief as determined by the board.

The board may also assess the licensee, as a penalty, any cost incurred in publishing the notice of hearing when service by registered or certified mail to the address listed on the licensee's record is unsuccessful.

(c) Notwithstanding any provision to the contrary:

(1) No license or permit shall be suspended by the board for a period exceeding five years.

(2) A person whose license or permit has been revoked by the board may not reapply for a license until the expiration of at least five years from the effective date of the revocation of the license or permit.

(3) A suspended license or permit shall be reinstated at the end of the suspension; provided that the suspension does not carry forward to the next license period, and the person satisfies all licensing requirements and conditions contained in the order of the suspension. If a suspension carries forward to the next license period, the board shall not renew the suspended license or permit during the usual renewal period. At the end of the suspension period, a person whose license or permit was suspended may be reinstated upon filing a reinstatement form provided by the board and payment of the renewal fees, satisfaction of any other renewal requirements, and fulfillment of conditions, if any, contained in the order of suspension. If the person fails to file for reinstatement within thirty days after the end of the suspension, the person's license or permit shall be forfeited.

(d) The failure or refusal of the licensee to comply with any board order, including an order of license suspension, shall also constitute grounds for further disciplinary action, including a suspension or revocation of license, imposition of which shall be subject to chapter 91 and the procedural rules of the board. The board may also apply to any circuit court for injunctive relief to compel compliance with the board's order. Where appropriate, the board shall refer for prosecution to the proper authority any practice constituting a violation which is subject to criminal penalty.

(e) If the subject matter of the complaint does not come within its jurisdiction, or if it is found that the charge does not constitute a violation, the board shall notify and inform the complainant in writing with regard to the reasons for its inability to act upon the complaint.

(f) The complainant and the licensee or person regulated may agree to resolve the complaint through final and binding arbitration pursuant to chapter 658A. In the event of an agreement to arbitrate, the board may enter an order dismissing any proceeding instituted pursuant to subsection (b); provided that the order of dismissal may be conditioned upon prompt and complete compliance with the arbitrator's award. In the event that the licensee or person regulated fails to comply with the terms of the arbitrator's award, the board may reopen the proceeding and may, after a

hearing in conformity with chapter 91, order one or more of the remedies set forth in subsection (b).

Notwithstanding any provision of chapter 658A to the contrary, an arbitration agreement entered into pursuant to this section shall be approved by the board, and the parties shall agree on an arbitrator within five days after execution of the agreement. If the parties fail to agree on an arbitrator within the time above prescribed, the board may appoint an arbitrator from a list of arbitrators maintained for that purpose by the department of commerce and consumer affairs.

(g) A fine levied in a final order of a board or commission pursuant to subsection (b) shall be confirmed as a judgment by a circuit court in which the respondent resides or has property or in which the act complained of had occurred, by filing the board or commission's final order any time after thirty days after the issuance of that final order. The judgment issued thereon shall have the same force and effect and be enforceable and collectible as any other judgment issued in the circuit court. Nothing herein shall impair the right of the board or commission to apply to the circuit court for injunctive relief pursuant to subsection (d). [L 1974, c 117, §2; HRS §92-13; ren §92-17; am L 1977, c 94, §1; am L 1978, c 158, §1; am L 1982, c 174, §1 and c 204, §8; am L 1983, c 181, §1; am L 1984, c 45, §3; am L 1985, c 45, §1; gen ch 1985; am L 1986, c 274, §2; am L 1993, c 109, §1; am L 2001, c 265, §4]

PART III. COPIES OF RECORDS; COSTS AND FEES

§92-21 Copies of records; other costs and fees. Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public, shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy. Except as provided in section 91-2.5, the cost of reproducing any government record, except geographic information system digital data, shall not be less than 5 cents per page, sheet, or fraction thereof. The cost of reproducing geographic information system digital data shall be in accordance with rules adopted by the agency having charge or control of that data. Such reproduction cost shall include but shall not be limited to labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All fees shall be paid in by the public officer receiving or collecting the same to the state director of finance, the county director of finance, or to the agency or department by which the officer is employed, as government realizations; provided that fees collected by the public utilities commission pursuant to this section shall be deposited in the public utilities commission special fund established under section 269-33. [L 1921, c 96, §1; RL 1925, §166; am L 1929, c 166, pt of §1; am L 1931, c 178, §1; RL 1935, §147; RL 1945, pt of §458; am L 1945, c 248, §1; am L 1949, c 345, §1; am L Sp 1949, c 23, §1; RL 1955, §7-1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §92-21; am L 1974, c 145, §2; am L 1976, c 212, §3; am L 1991, c 145, §3; am L 1993, c 103, §1; am L 1994, c 226, §2; am L 1998, c 311, §4; am L 1999, c 160, §1 and c 301, §3(1)]

§§92-22, 23 REPEALED. L 1989, c 14, §§18, 19.

§92-24 Directors of finance and commerce and consumer affairs; fees. Except as provided in section 91-2.5, the director of finance and the director of commerce and consumer affairs each shall charge the following fees:

(1) For administering any oath, $1;

(2) For preparing every photostat copy of any document on record in the director's office, 50 cents per page or portion thereof;

(3) For preparing every typewritten copy of any document on record in the director's office, 50 cents per page or portion thereof;

(4) For preparing a certificate of compliance, $5 for the original certificate, and $1 for each additional copy thereof, of which $4 from each certificate and 75 cents of each additional copy shall be deposited in the compliance resolution fund established pursuant to section 26-9(o);

(5) For comparing any document submitted for certification, 15 cents per page or portion thereof;

(6) For certifying any document on record in the director's office, 25 cents for each certification;

(7) For all other acts and duties, the fees of which are not otherwise provided for, such charges as each may from time to time prescribe. [CC 1859, §690; RL 1925, §1253; RL 1935, §2212; RL 1945, §5813; am L 1949, c 172, §1; RL 1955, §132-14; am L Sp 1959 2d, c 1, §§14, 15; am L 1963, c 114, §§1, 3; HRS §92-24; am L 1983, c 153, §1; am L 1988, c 141, §9; gen ch 1993; am L 1999, c 129, §4 and c 301, §3(2)]

§92-25 Fees for copies of pleadings, etc. Fees as established by court rules may be charged for the certification of copies of any pleadings, order, or other paper or document filed in any court, or process thereon, or any transcript of testimony, and for the certification of records on appeal in any proceeding in any court; provided that state agencies shall be exempt from the fees; and provided further that limitations on the extent of the exemption may be established by court rules. [RL 1925, pt of §166; am L 1929, c 166, pt of §1; RL 1945, pt of §458; RL 1955, §7-2; HRS §92-25; am L 2010, c 189, §1]

§92-26 Fees; exemption. One department of the state government shall not be required to pay any fee to any other department of the state government for the preparation and certification by the latter of any government record, nor shall section 92-21 be held to amend or repeal section 94-4. [L 1921, c 96, §2; RL 1925, §167; RL 1935, §148; RL 1945, §459; RL 1955, §7-3; HRS §92-26; am L 1991, c 145, §3]

§92-27 Fees to be accounted for. All official and departmental fees shall be accounted for and paid over into the public treasury, except fees designated and intended to be applied in compensation of the officers receiving the same. No public officer in receipt of a salary for the

officer's services, shall receive any other or further compensation therefor, unless specially allowed by law. [CC 1859, §1494; RL 1925, §168; RL 1935, §149; RL 1945, §460; RL 1955, §7-4; HRS §92-27; gen ch 1985]

§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

(1) *[Paragraph effective until June 30, 2020. For paragraph effective July 1, 2020, see below.]* The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 436E, 436H, 437, 437B, 438, 439, 440, 440E, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453, 453D, 455, 456, 457, 457A, 457B, 457G, 458, 459, 460J, 461, 461J, 462A, 463, 463E, 464, 465, 465D, 466, 466D, 466K, 467, 467E, 468E, 468L, 468M, 469, 471, 472, 481E, 482, 482E, 484, 485A, 501, 502, 505, 514B, 514E, 572, 574, and 846 (part II) and any board, commission, program, or entity created pursuant to title 25 and assigned to the department of commerce and consumer affairs or placed within the department for administrative purposes;

(1) *[Paragraph effective July 1, 2020. For paragraph effective until June 30, 2020, see above.]* The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 436E, 436H, 437, 437B, 438, 439, 440, 440E, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453, 453D, 455, 456, 457, 457A, 457B, 457G, 458, 459, 460J, 461, 461J, 462A, 463, 463E, 464, 465, 465D, 466, 466D, 466K, 467, 467E, 468E, 468L, 468M, 469, 471, 472, 482, 482E, 484, 485A, 501, 502, 505, 514B, 514E, 572, 574, and 846 (part II) and any board, commission, program, or entity created pursuant to title 25 and assigned to the department of commerce and consumer affairs or placed within the department for administrative purposes;

(2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;

(3) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapter 304A shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be

preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;

(4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;

(5) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and

(6) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5. [L 1964, c 32, §2; Supp, §7-4.5; HRS §92-28; am L 1983, c 167, §2; am L 1985, c 270, §4; am L 1987, c 283, §15; am L 1988, c 141, §10; am L 1989, c 89, §2; am L 1993, c 350, §3; am L 1995, c 95, §1; am L 1996, c 251, §2; am L 1999, c 301, §3(3); am L 2002, c 40, §3; am L 2003, c 210, §2; am L 2004, c 116, §2; am L 2006, c 75, §6 and c 229, §4; am L 2007, c 155, §§1, 2; am L 2009, c 11, §26; am L 2017, c 147, §1 and c 181, §6; am L 2019, c 193, §3]

§92-29 Reproduction of government records. Any public officer having the care and custody of any record, paper, or document may cause the same to be photographed, microphotographed, reproduced on film, or copied to an electronic format. Any device or electronic storage system used to copy or reproduce the record, paper, or document shall accurately reflect the information in the original thereof in all details. [L 1945, c 26, pt of §1; RL 1955, §7-5; HRS §92-29; am L 1991, c 145, §2; am L 2005, c 177, §3]

§92-30 Copy deemed original record. A photograph, microphotograph, reproduction on film, or electronic copy of a government record shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, facsimile, or certified copy thereof, for all purposes recited in this section, shall be deemed to be a transcript, exemplification, facsimile, or certified copy of the original record. [L 1945, c 26, pt of §1; RL 1955, §7-6; HRS §92-30; am L 2005, c 177, §4]

§92-31 Disposition of original record. A photograph, microphotograph, reproduction on film, or electronic form of a government record shall be placed in conveniently accessible files and provisions made for preserving, examining, and using the same. Thereafter, a public officer, after having first received the written approval of the comptroller as provided in section 94-3, may cause such record, paper, or document to be destroyed. The comptroller may require, as a prerequisite to the granting of such approval, that a reproduction or print of such photograph, microphotograph, or reproduction on film, or electronic form of the record be delivered into the custody of the public archives for safekeeping. The comptroller may also require the delivery into the custody of another governmental department or agency or a research library of any such record, paper, or document proposed to be destroyed under the provisions of this section. [L 1945, c 26, pt of §1; RL 1955, §7-7; am L 1959, c 7, §1; am L Sp 1959 2d, c 1, §12; HRS §92-31; am L 2005, c 177, §5]

PART IV. NOTICE OF PUBLIC HEARINGS

§92-41 Giving public notices. Notwithstanding any law to the contrary, all governmental agencies scheduling a public hearing shall give public notice in the county affected by the proposed action, to inform the public of the time, place, and subject matter of the public hearing. This requirement shall prevail whether or not the governmental agency giving notice of public hearing is specifically required by law, and shall be in addition to other procedures required by law. [L 1972, c 188, §2; am L 1998, c 2, §29]

PART V. PUBLIC RECORDS

§§92-50 to 52 REPEALED. L 1988, c 262, §3.

PART VI. GENERAL PROVISIONS

§92-71 Political subdivision of the State; applicability. The provisions contained in this chapter shall apply to all political subdivisions of the State. Provided, however, in the event that any political subdivision of the State shall provide by charter, ordinance or otherwise, more stringent requirements relating to mandating the openness of meetings, the more stringent provisions of said charter, ordinance, or otherwise, shall apply. [L 1976, c 212, §5]

PART VII. NEIGHBORHOOD BOARD

§92-81 Neighborhood board; notice and agenda; public input; quorum. (a) Any contrary provision in this chapter notwithstanding, the provisions of this part shall apply to neighborhood boards overseen by a neighborhood commission of the city and county of Honolulu, and such other neighborhood boards as may be created in other counties and overseen by a county-based commission.

(b) The agenda required to be included in written public notice of a neighborhood board meeting may include an opportunity for the board to receive public input on issues not specifically noticed for consideration at the forthcoming meeting.

(c) Any matter raised as part of the public input agenda allowed under subsection (b) may be discussed and information on the matter may be received by the board at the meeting; provided that the board shall not make a decision relating to the matter. The board may make decisions on matters originally raised as part of a public input agenda only at a later meeting, where the agenda for the meeting shall give notice of decision-making on the matter.

(d) A quorum for a meeting of a neighborhood board shall be required for:

(1) Conducting official board business;

(2) Discussions prior to and related to voting; and

(3) Voting required to validate an act of the board as part of official board business.

A neighborhood board may receive information or testimony on a matter of official board business without a quorum; provided that the board shall not make a decision on the issue. The board members, at the next meeting of the neighborhood board, shall report the matters presented as information or testimony. [L 2008, c 153, pt of §1]

§92-82 Permitted interactions of neighborhood board members. (a) Neighborhood board members may attend meetings or presentations located on Oahu on matters relating to official board business; provided that the meeting or presentation is open to the public, does not charge a fee or require registration, and is not specifically and exclusively organized for or directed toward members of the board; and provided further that no member makes a commitment to vote on any of the issues discussed.

(b) Neighborhood board members who attend meetings or presentations allowed by subsection (a) may ask questions relating to official board business of persons other than fellow board members. [L 2008, c 153, pt of §1; am L 2015, c 91, §1]

§92-83 Neighborhood board meeting; unanticipated events; public interest. An unanticipated event that occurs after public notice of a neighborhood board meeting has been issued, but before the scheduled meeting, may be the subject of discussion at the scheduled meeting if timely action on the matter is necessary for public health, welfare, and safety. At a duly noticed meeting, a board may take action on an unanticipated event in the public interest that is not on the agenda in the same manner as if the board had held an emergency meeting to take action on the issue, pursuant to section 92-8. [L 2008, c 153, pt of §1]

Hawaii Revised Statutes (HRS) CHAPTER 206M
HAWAII TECHNOLOGY DEVELOPMENT CORPORATION (2021)

Part I. General Provisions

Section

Part II. Hawaii Software Service Center--Repealed

Part III. Special Facility Revenue Bonds

Part IV. High Technology Innovation Corporation--Repealed

206M-51 to 59 Repealed

Part V. Strategic Development Programs

A. General Provisions

B. Program for Seed Capital Assistance

C. Program for Venture Capital Assistance

D. Program for Capital Access

Note

Chapter heading amended by L 2017, c 69, §2.
L 2017, c 69, §9 provides:

"SECTION 9. This Act shall not affect the validity of any contract, lease, rule, other document, or appropriation that uses the term "high technology development corporation" or "high technology special fund.""

Hydrogen implementation working group (ceases to exist July 1, 2030). L 2015, c 98, §2.

PART I. GENERAL PROVISIONS

Note

Part heading added by L 1990, c 106, §4(1) and amended by L 2017, c 69, §3 and L 2019, c 56, §5.

§206M-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Board" means the board of directors of the development corporation established in section 206M-2, and any successor thereto.

"Bonds" or "special purpose revenue bonds" mean bonds, notes, and other instruments of indebtedness of the State issued pursuant to this part.

"Cost" means the total cost in carrying out all undertakings that the development corporation deems reasonable and necessary for the development of a project or industrial park, including but not limited to the cost of studies, surveys, plans, and specifications, architectural, design, engineering, or any other special related services; the cost of site preparation and development, demolition, construction, reconstruction, rehabilitation, and improvement; the cost of financing such project or industrial park, including interest on bonds issued to finance such project or industrial park from the date thereof to the estimated date of completion of such project or industrial park as determined by the board; the cost of an allocable portion of the administrative and operating expenses of the development corporation related to the development of such project or industrial park; and the cost of indemnity and surety bonds, premiums on policies of insurance, legal fees, and fees and expenses of trustees, depositories, and paying agents for the bonds, and for the issuance of letters of credit or other banking arrangements whether for the development corporation or a qualified person; all as the development corporation shall deem necessary.

"Development corporation" means the Hawaii technology development corporation established by section 206M-2.

"Direct investment" means an investment by the corporation in qualified securities of an enterprise to provide capital to an enterprise.

"Economic development project" means an endeavor related to industrial, commercial, or advanced technology-based agricultural enterprise. "Economic development project" shall not include that portion of an endeavor devoted to the construction of housing.

"Enterprise" means a person with a place of business in Hawaii which is, or proposes to be, engaged in business in Hawaii; provided that the endeavor shall not be devoted to the sale of goods at retail, construction of housing, or tourism-related services.

"Industrial park" means a tract of real property determined by the board as being suitable for use as building sites for projects by one or more industrial, processing, or manufacturing enterprises engaged in technology,

including research, training, technical analyses, software development, and pilot plant or prototype product development, and may include the installation of improvements to the tract incidental to the use of real property as an industrial park, such as water, sewer, sewage and waste disposal, and drainage facilities, sufficient to adequately service projects in the industrial park, and provision of incidental transportation facilities, power distribution facilities, and communication facilities. Industrial parks shall not include any buildings or structures of any kind except for buildings or structures incidental to improvements to the industrial park.

"Minority-owned businesses" means businesses at least fifty per cent owned, controlled, and managed by socially or economically disadvantaged persons.

"Person" means a sole proprietorship, partnership, joint venture, corporation, or other association of persons organized for commercial or industrial purposes.

"Professional investor" means any bank, bank holding company, savings institution, trust company, insurance company, investment company registered under the federal Investment Company Act of 1940, financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, or any person, partnership, or other entity of whose resources a substantial amount is dedicated to investing in securities or debt instruments and whose net worth exceeds $250,000.

"Project" means the acquisition, construction, improvement, installation, equipping, and development of any combination of land, buildings, and other improvements thereon, including, without limitation, parking facilities for use of, or to assist a technology industrial, manufacturing, or processing enterprise located within or without an industrial park, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus that shall be deemed necessary, suitable, or useful to the enterprise.

"Project agreement" means any agreement entered into under this chapter by the development corporation with a qualified person to finance, construct, operate, or maintain a project or an industrial park from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist a technology industrial, manufacturing, or processing enterprise, including, without limitation, any lease, sublease, loan agreement, conditional sale agreement, or other similar financing contract or agreement, or any combination thereof.

"Public agency" means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of the federal, state, or county government.

"Qualified person" means any individual, firm, partnership, corporation, association, cooperative, or other legal entity, governmental body or public agency, or any combination of the foregoing, possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible resources, required for the purposes of a project and other qualifications as may be deemed desirable by the development corporation in

administering this chapter and which enters into a project agreement with the development corporation.

"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.

"Real property" means lands, structures, and interests therein, and natural resources including water, minerals, and all such things connected with land, including lands under water and riparian rights, space rights, air rights, and any and all other things and rights usually included within the term. Real property also means any and all interests in such property less than fee title, such as leasehold interests, easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

"Seed capital" means financing provided for the earliest stage of business development, including but not limited to developing a working prototype, preparing a business plan, performing an initial market analysis, or organizing a management team.

"Technology" means industries that are technology-intensive, including but not limited to electronics, biotechnology, software, computers, telecommunications, and other computer-related technologies.

"Venture capital investment" means any of the following investments in a business:

(1) Common or preferred stock and equity securities without a repurchase requirement for at least five years;
(2) A right to purchase stock or equity securities;
(3) Any debenture or loan, whether or not convertible or having stock purchase rights, which are subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders, and that is for a term of not less than three years, and that has no part amortized during the first three years; and
(4) General or limited partnership interests. [L 1983, c 152, pt of §2; am L 1984, c 103, §1; am L 2000, c 72, §4 and c 297, §22(2); am L 2017, c 69, §§4, 5; am L 2019, c 56, §6]

§206M-2 Establishment of the Hawaii technology development corporation; purpose. (a) There is established the Hawaii technology development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the development corporation shall be to facilitate the growth and development of the commercial technology industry in Hawaii. Its duties shall include but not be limited to:

(1) Connecting Hawaii-based technology companies and entrepreneurs to new market opportunities;
(2) Developing and encouraging industrial parks as technology innovation centers and other technology infrastructure projects and developing or assisting with the development of projects within or outside of industrial parks, including participating with the private sector in such development;
(3) Encouraging, initiating, and aiding in the development and commercialization of local innovation and technology;
(4) Furnishing the financial and other support and services to institute and grow local innovation and technology;
(5) Developing policy and resource allocations to enable and support start-up companies, sustain existing companies, and attract companies to relocate or establish offices in Hawaii;
(6) Attracting resources from public and private sector organizations and agencies to develop a local qualified innovation research and technology workforce;
(7) Coordinating with other state agencies and entities to support the innovation and technology industry;
(8) Collecting and analyzing information on the state of local and global technology activity; and
(9) Taking any and all other actions reasonably designed to promote the purposes of the corporation in the interest of promoting the general welfare of the people of the State.

(b) The governing body of the development corporation shall consist of a board of directors having nine voting members. The director of business, economic development, and tourism, and an appointed member from the University of Hawaii, or their designated representatives, shall serve as ex officio[,] voting members of the board. All members shall have knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, telecommunications, innovation, and other technology fields. Seven of the members shall be appointed by the governor pursuant to section 26-34 for staggered terms; provided that membership shall include:

(1) Three members who shall be appointed by the governor from a list of four nominees submitted by the president of the senate, and three members who shall be appointed by the governor from a list of four nominees submitted by the speaker of the house of representatives; provided that if fewer than four nominees are submitted for each appointment, the governor may disregard the list; and
(2) One member who shall be appointed by the governor from the economic development board of Maui, Kauai, or Hawaii county.

The governor shall make board member appointments to ensure the fulfillment of all requirements of paragraphs (1) and (2); provided that upon the occurrence of a vacancy subject to paragraph (1), the governor shall notify the president of the senate and the speaker of the house of representatives of any unfulfilled requirements pursuant to paragraphs (1) and (2), and the president of the senate or the speaker of the house of representatives, as appropriate, shall submit nominees who fulfill the requirements pursuant to paragraphs (1) and (2). All appointed members of the board shall continue in office until their respective successors have been appointed. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect other officers as it deems necessary.

(c) The members of the board appointed under subsection (b) shall serve without compensation, but may be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint a chief executive officer, who shall serve at the pleasure of the board and shall be exempt from chapter 76. The board shall set the salary and duties of the executive officer.

(e) The board shall appoint a management advisory committee for each industrial park and related project or projects governed by the board. Each committee shall have five members, who shall serve without compensation but may be reimbursed for expenses incurred in the performance of their duties. The members shall be drawn from fields of activity related to each industrial park and related project or projects. [L 1983, c 152, pt of §2; am L 1987, c 336, §7; am L 1989, c 274, §2; am L 1990, c 293, §8; am L 1991, c 288, §1; am L 2000, c 72, §§5, 6, c 253, §150, and c 297, §25; am L 2017, c 69, §§4, 5; am L 2019, c 56, §7]

Attorney General Opinions

Cited, as a constitutional board and commission statute where members may serve as holdovers until their successors are "appointed", without any reference to the successors being fully "qualified"; an "appointment" properly occurs under the interim appointments provision of article V, §6 of the state constitution. Att. Gen. Op. 16-3.

§206M-2.5 Meetings of the board. (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise that seeks entry into or use of one of its facilities or the disclosure of which might be harmful to the business interests of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of section 92-4, and this authorization shall be an addition to the exceptions listed in section 92-5, to enable the development corporation to respect the proprietary requirements of enterprises with which it has business dealings.

(c) The board shall be exempt from section 26-35(a)(4) and (5). [L 1989, c 274, pt of §1; am L 2000, c 297, §26; am L 2004, c 16, §4]

§206M-3 Powers, generally. (a) The development corporation shall have all the powers necessary to carry out its purposes, including the powers to:

(1) Sue and be sued;

(2) Have a seal and alter the same at its pleasure;

(3) Make and execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, including, with the approval of the governor, a project agreement, or an amendment or supplement to an existing project agreement, with a qualified person, and to enter into and carry out any agreement whereby the obligations of a qualified person under a project agreement shall be unconditionally guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person; and extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal

contained in a project agreement or related agreement theretofore approved by the governor;

(4) Make and alter bylaws for its organization and internal management;

(5) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with industrial parks, projects, multi-project programs, and the operations, properties, and facilities of the corporation;

(6) Through its chief executive officer, appoint officers, agents, consultants, advisors, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76;

(7) Prepare or cause to be prepared development plans for industrial parks;

(8) Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project, including by way of easements;

(9) Acquire, construct, improve, install, equip, or develop or provide for the acquisition, construction, improvement, installation, equipping, or development of any project and designate a qualified person as its agent for such purpose;

(10) Own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;

(11) Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with an industrial park or project;

(12) Prepare, or cause to be prepared, plans, specifications, designs, and estimates of cost for the acquisition, construction, reconstruction, improvement, installation, equipping, development, or maintenance of any project or industrial park, and from time to time modify the plans, specifications, designs, or estimates;

(13) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(14) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;

(15) Issue special purpose revenue bonds and refunding special purpose revenue bonds pursuant to and in accordance with this chapter in principal amounts as may be authorized from time to time by law to finance or refinance the cost of a project, singly or as part of a multi-project program, or an industrial park as authorized by law and provide for the security thereof as permitted by this chapter;

(16) Lend or otherwise apply the proceeds of the bonds issued for a project or an industrial park either directly or through a trustee to a qualified person for use and application by the qualified person in the acquisition, construction, improvement, installation, equipping, or development of a project or industrial park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;

(17) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project to:

(A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the development corporation under the project agreement for the project for which the bonds are issued;

(B) Pledge and assign the interest and rights of the development corporation under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;

(C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the development corporation with respect to the project; or

(D) Any combination of the foregoing;

(18) With or without terminating a project agreement, exercise any and all rights provided by law for entry and reentry upon or take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or reentry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the development corporation pursuant to the project agreement;

(19) Enter into arrangements with qualified county development entities whereby the board would provide financial support to qualified projects proposed;

(20) Create an environment in which to support technology economic development, including but not limited to:

(A) Supporting all aspects of technology-based economic development;

(B) Developing instructive programs, identifying issues and impediments to the growth of technology industry in Hawaii; and

(C) Providing policy analysis and information important to the development of technology industries in Hawaii;

(21) Develop programs that support start-up and existing technology companies in Hawaii and attract new companies to relocate to or establish operations in Hawaii by assessing the needs of these companies and providing the physical and technical infrastructure to support their operations;

(22) Coordinate its efforts with other public and private agencies involved in stimulating technology-based economic development in Hawaii, including but not limited to:

(A) The department of business, economic development, and tourism;

(B) The Pacific international center for high technology research;

(C) The office of technology transfer and economic development of the University of Hawaii; and

(D) The state energy office;

(23) Promote and market Hawaii as a site for commercial technology activity, including the expenditure of funds for protocol purposes at the discretion of the board;

(24) Provide advice on policy and planning for technology-based economic development;

(25) Finance, conduct, or cooperate in financing or conducting technological, business, financial, or other investigations that

are related to or likely to lead to business, technology, and economic development by making and entering into contracts and other appropriate arrangements, including the provision of loans, start-up and expansion capital, loan guaranty, loans convertible to equity, equity charged and received by the corporation, and other forms of assistance;

(26) Solicit, study, and assist in the preparation of business plans and proposals of new or established businesses;

(27) Provide advice, technical and marketing assistance, support, and promotion to enterprises in which investments have been made;

(28) Acquire, hold, and sell qualified securities;

(29) Consent, subject to the provisions of any contract with noteholders or bondholders, whenever the corporation deems it necessary or desirable in the fulfillment of the purposes of this chapter, to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, or any other terms, of any contract or agreement of any kind to which the corporation is a party;

(30) Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the State;

(31) Coordinate the development corporation's programs with any education and training program;

(32) Carry out specialized programs designed to encourage the development of new products, businesses, and markets;

(33) Prepare, publish, and distribute such technical studies, reports, bulletins, and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information;

(34) Organize, conduct, sponsor, or cooperate in and assist in the conduct of conferences, demonstrations, and studies relating to the stimulation and formation of businesses;

(35) Provide and pay for such advisory services and technical, managerial, and marketing assistance, support, and promotion as may be necessary or desirable to carry out the purposes of this chapter;

(36) Accept donations, grants, bequests, and devises of money, property, service, or other things of value that may be received from the United States or any agency thereof, any governmental agency, or any public or private institution, person, firm, or corporation, to be held, used, or applied for any or all of the purposes specified in this chapter. Receipt of each donation or grant shall be detailed in the annual report of the development corporation. The report shall include the identity of the donor or lender, the nature of the transaction, and any conditions attaching thereto;

(37) Acquire real property, or an interest therein, by purchase or foreclosure, where that acquisition is necessary or appropriate to protect or secure any investment or loan in which the development corporation has an interest; sell, transfer, and convey the property to a buyer and if the sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease the property to a tenant;

(38) Acquire, own, hold, dispose of, and encumber personal property of any nature, or any interest therein;

(39) Enter into agreements or other transactions with any federal, state, or county agency;

(40) Appear on its own behalf before state, county, or federal agencies;
(41) Appoint advisory committees as deemed necessary;
(42) Exercise any other powers of a corporation organized under the laws of the State; and
(43) Do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this chapter.

(b) The corporation shall be exempt from chapter 102. [L 1983, c 152, pt of §2; am L 1989, c 274, §3; am L 1991, c 288, §2; am L 2000, c 72, §7, c 253, §150, and c 297, §27; am L 2004, c 216, §27; am L 2017, c 69, §5; am L 2019, c 56, §8]

Revision Note

Paragraphs (12) and (16) to (32) redesignated pursuant to §23G-15.

§206M-3.4 Contracts for services necessary for management and operation of corporation. The corporation may contract with others, public or private persons, for the provision of all or a portion of the services necessary for the management and operation of the corporation. The corporation shall have the power to use all appropriations, grants, contractual reimbursements, and all other funds not appropriated for a designated purpose to pay for the proper general expenses and to carry out the purposes of the corporation. [L 2000, c 297, pt of §22(1)]

§206M-3.5 Annual reports. The development corporation shall report annually to the legislature twenty days prior to the convening of the session on the impact of the program on:
(1) Increasing the awareness of the federal small business innovation research program and the number of companies submitting proposals to federal agencies;
(2) Increasing the number of phase I awards received by Hawaii businesses under the small business innovation research program; and
(3) Increasing the number of phase I to phase II conversions by Hawaii businesses. [L 1989, c 196, §2]

§206M-4 Compliance with state and local law. The issuance of special purpose revenue bonds with respect to any project or industrial park under this chapter shall not relieve any qualified person or other user of the project or industrial park from the laws, ordinances, and rules of the State or any political subdivision thereof, or any department or board thereof with respect to the construction, operation, and maintenance of any project or industrial park, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project or industrial park, and the laws shall be applicable to the qualified person or the other user to the same extent they would be if the costs of the project or industrial park were directly financed by the qualified person. [L 1983, c 152, pt of §2; am L 2000, c 72, §8]

§206M-5 Development rules. Whenever the proceeds of special purpose revenue bonds are used to finance the cost of an industrial park, the board shall adopt rules under chapter 91 to be followed during the course of the development of any industrial park, which are to be known as development rules in connection with health, safety, building, planning, zoning, and land

use. The rules, upon final adoption of a development plan for an industrial park, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon within the industrial park. Rules adopted under this section shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good design, pleasant amenities, health, safety, and coordinated development. The corporation shall establish policies and procedures for monitoring and ensuring that the operation of the industrial park complies with these development rules and may establish fines and penalties or take any other means available under the law to eliminate any noncomplying action. [L 1983, c 152, pt of §2; am L 1985, c 112, §1; am L 2000, c 72, §9]

§206M-6 Use of public lands. The governor may set aside available public lands to the development corporation for the purposes specified in this chapter; provided that the setting aside would not impair any covenant between the State or any department or board thereof and holders of any bonds issued by the State or such department or board thereof. The development corporation also may lease available state lands from the department of land and natural resources. [L 1983, c 152, pt of §2; am L 2000, c 72, §10]

§206M-7 Conditions precedent to negotiating and entering into a project agreement. (a) The development corporation prior to entering into negotiations with respect to a project agreement or at any time during such negotiations shall require that as a condition to such negotiations or the continuation thereof the State shall be reimbursed for any and all costs and expenses incurred by it even though a project agreement may not be entered into and may further require the deposit of moneys with the development corporation as security for such reimbursement. Any amount of such deposit in excess of the amount required to reimburse the State shall be returned by the development corporation to the party which has made such deposit.

(b) The development corporation shall not enter into any project agreement with respect to any project or industrial park unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance a project or projects, an industrial park or industrial parks, or a multi-project program pursuant to section 206M-9, and the development corporation has thereafter found and determined either that:

(1) The qualified person is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or

(2) The obligations of the qualified person under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project or otherwise. [L 1983, c 152, pt of §2; am L 2000, c 72, §11]

§206M-8 Project agreement. (a) No special purpose revenue bonds shall be issued unless at the time of issuance the development corporation shall have entered into a project agreement with respect to the project or industrial park for the financing of which the special purpose revenue bonds are to be issued. Any project agreement entered into by the development corporation with a qualified person shall contain provisions unconditionally obligating the qualified person:

(1) To pay the development corporation during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project or industrial park to

which the project agreement relates is used or occupied by the qualified person, at the time or times and in the amount or amounts that will be at least sufficient:

(A) To pay the principal of, and premium, if any, and interest on all special purpose revenue bonds issued to finance the cost of the project, or an allocable portion of the special purpose revenue bonds issued to finance the industrial park, as the case may be, as and when the special purpose revenue bonds become due, including upon any required redemption thereof;

(B) To establish or maintain the reserves, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds, or an allocable portion of the reserves, if less than all of the proceeds of the special purpose revenue bonds are utilized for the qualified person;

(C) To pay the fees and expenses of the paying agents and trustees for the special purpose revenue bonds, or an allocable portion of the fees and expenses, if less than all of the proceeds of the special purpose revenue bonds are utilized for the qualified person; and

(D) To pay the expenses incurred by the development corporation in administering the special purpose revenue bonds or in carrying out the project agreement, or an allocable portion of the expenses, if less than all of the proceeds of the special purpose revenue bonds are utilized for the qualified person; and

(2) To operate, maintain, and repair the project as long as the project is used as provided in the project agreement and to pay all costs of the operation, maintenance, and repair.

(b) The development corporation in determining the cost of any project, may also include the following:

(1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of the project;

(2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for not exceeding twelve months thereafter;

(3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;

(4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;

(5) Other expenses incidental to determining the feasibility or practicability of the project;

(6) Administration expenses;

(7) Legal, accounting, consulting, and other special service fees;

(8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and

(9) Other costs, commissions, and expenses incidental to the acquisition, construction, improvement, installation, equipping, or development of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

(c) Any project agreement entered into by the development corporation may contain provisions as the development corporation deems necessary or desirable to obtain or permit the participation of the state and federal government in the project or industrial park or in the financing of the cost thereof.

(d) A project agreement also shall provide that the development corporation shall have all rights and remedies generally available at law or in equity to reenter and take possession of a project upon the breach or default by a qualified person of any term, condition, or provision of a project agreement.

(e) Each qualified person with a project agreement with the development corporation shall allow the development corporation full access to the qualified person's financial records. Upon the request of the development corporation for the examination of any financial records, the qualified person shall allow the development corporation to examine the requested records within a reasonably prompt time from the date of the request. If the development corporation requests copies of the records, the qualified person shall provide the copies.

(f) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this chapter, the development corporation shall require each qualified person with a project agreement with the development corporation to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(g) Each qualified person with a project agreement with the development corporation shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the development corporation and shall be uniform for each qualified person.

(h) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the development corporation shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (g).

(i) The development corporation shall adopt rules under chapter 91 for the purposes of this section.

(j) Moneys received by the development corporation pursuant to subsection (a)(1)(D) shall not be, nor be deemed to be, revenues or receipts derived under the project agreement which may be pledged as security for special purpose revenue bonds and shall be paid into the technology special fund.

A qualified person may comply with the unconditional obligation to make payments required by subsection (a), if the obligations are unconditionally guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person who is satisfactory to the development corporation. [L 1983, c 152, pt of §2; am L 2000, c 72, §12; am L 2001, c 55, §7; am L 2017, c 69, §5]

§206M-9 Issuance of special purpose revenue bonds; bond anticipation notes; refunding bonds. (a) In addition to the other powers that it may have, the development corporation may issue special purpose revenue bonds to finance, in whole or in part, the costs of projects of, for, or to loan the proceeds of the bonds to assist qualified persons. All revenue bonds issued under this chapter are special purpose revenue bonds and part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the development corporation and not in the name of the State.

The legislature finds and determines that the exercise of the powers vested in the development corporation by this chapter constitutes assistance to a technology industrial, manufacturing, or processing enterprise and that the issuance of special purpose revenue bonds to finance facilities of, for, or to loan the proceeds of the bonds to assist qualified persons, is in the public interest.

(b) The development corporation, with the approval of the governor, may issue special purpose revenue bonds for each single project or industrial park or multi-project program that has been authorized by the legislature by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of the special purpose revenue bonds is in the public interest. Special purpose revenue bonds shall be issued in principal amounts as may be authorized from time to time by law and at the time or times as the development corporation deems necessary and advisable to finance the cost of a project, industrial park, or multi-project program as authorized by law. With respect to the financing of a multi-project program with the proceeds of special purpose revenue bonds, the legislature may authorize the issuance from time to time in one or more series by the development corporation, in each case with the approval of the governor, of special purpose revenue bonds in the aggregate principal amount and during the period as the legislature shall provide. The principal of, premium, if any, and interest on the special purpose revenue bonds shall be payable:

(1) Exclusively from the revenues and receipts derived or to be derived by the development corporation under project agreements or from the revenues and receipts together with any grant from the government in aid of the project or industrial park financed from the proceeds of the bonds;

(2) Exclusively from the revenues and receipts derived or to be derived by the development corporation from a particular project agreement, whether or not the project or industrial park to which it relates is financed in whole or in part with the proceeds of the special purpose revenue bonds; or

(3) From revenues and receipts derived or to be derived by the development corporation generally.

Neither the board members nor any person executing the special purpose revenue bonds shall be liable personally on the bonds by reason of the issuance thereof.

All special purpose revenue bonds of the same issue (or, in the case of an authorized issue for a multi-project program, series), subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project for which the bonds have been issued, over and ahead of all special purpose revenue bonds of the issue (or series) payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the development corporation may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from the project agreement on a parity with the issue or series of special purpose revenue bonds theretofore issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this chapter.

(c) Special purpose revenue bonds issued pursuant to this chapter may be in one or more issues and in one or more series within an issue and shall

be further authorized pursuant to resolution of the board. The special purpose revenue bonds shall be dated, shall bear interest at the rate or rates, shall mature at the time or times not exceeding forty years from their date or dates, shall have the rank or priority, and may be made redeemable before maturity at the option of the development corporation, at the price or prices and under the terms and conditions, all as may be determined by the development corporation.

The development corporation shall determine the form of the special purpose revenue bonds, including interest coupons, if any, to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and, subject to the approval of the director of finance, the place or places of payment of principal and interest, which may be at any bank or trust company approved by the director of finance within or without the State.

The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the development corporation may determine, and provisions may be made for the registration of coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of special purpose revenue bonds registered as to both principal and interest. Subject to the approval of the director of finance, the development corporation may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(d) Prior to the preparation of definitive special purpose revenue bonds, the development corporation may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(e) Should any special purpose revenue bond issued under this chapter or any coupon appertaining thereto become mutilated, lost, stolen, or destroyed, the development corporation may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for the lost, stolen, or destroyed bond or coupon. The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon:

(1) Has paid the reasonable expenses and charges in connection therewith;

(2) In the case of a lost, stolen, or destroyed bond or coupon, has filed with the development corporation or its fiduciary evidence satisfactory to the development corporation or its fiduciary that the bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof; and

(3) Has furnished indemnity satisfactory to the development corporation.

(f) The development corporation in its discretion may provide that CUSIP identification numbers shall be printed on the special purpose revenue bonds. If the numbers are imprinted on the bonds:

(1) No such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and

(2) No liability shall attach to the development corporation or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for the bonds by reason of the numbers or any use made thereof, including any use thereof made by the development corporation, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The development corporation in its

discretion may require that all costs of obtaining and imprinting the numbers shall be paid by the purchaser of the bonds. For the purposes of this subsection, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

(g) Whenever the development corporation has authorized the issuance of special purpose revenue bonds under this chapter, special purpose revenue bond anticipation notes of the development corporation may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale thereof, for the purposes for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the development corporation, and the maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the moneys, rates, charges, and other revenues from which would be payable and by which would be secured the bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds that has been authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in this manner. The authorization, issuance, and the details of the notes shall be governed by this chapter with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this subsection, shall mature within five years from the date of the original note.

(h) To secure the payment of any of the special purpose revenue bonds issued pursuant to this chapter, and interest thereon, or in connection with the bonds, the development corporation shall have the power as to the bonds:

(1) To pledge all or any part of the revenues and receipts derived or to be derived by the development corporation as provided in this chapter to the punctual payment of special purpose revenue bonds issued with respect to the project or industrial park financed from the proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues and receipts to any other bonds or any other obligations of the development corporation for any other purpose, except as otherwise stated in the proceedings providing for the issuance of special purpose revenue bonds permitting the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues and receipts;

(2) To pledge and assign the interest and right of the development corporation under any project agreement and other agreements related to a project or industrial park, and the rights, duties, and obligations of the development corporation thereunder, including the right to receive revenues and receipts thereunder;

(3) To pledge or assign all or any part of the proceeds derived by the development corporation from proceeds of insurance or condemnation awards;

(4) To covenant as to the use and disposition of the proceeds from the sale of the special purpose revenue bonds;

(5) To covenant to set aside or pay over reserves and sinking funds for the special purpose revenue bonds and as to the disposition thereof;

(6) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default", the terms and conditions

upon which any or all of the bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which the declaration and its consequences may be waived;

(7) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by the development corporation of any covenant, condition, or obligation;

(8) Subject to the approval of the director of finance, to designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture, trust agreement, or indenture of mortgage with the trustee. The trustee may be authorized by the development corporation to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds and to apply the proceeds to the purposes for which the special purpose revenue bonds are issued, or to receive and receipt for, hold, and administer the revenues and receipts derived or to be derived by the development corporation under a project agreement or other agreement related to a project or industrial park, and to apply such revenues and receipts to the payment of the principal of and interest on the special purpose revenue bonds, or both, and any excess revenues and receipts to the payment of expenses incurred by the development corporation in administering the special purpose revenue bonds or in carrying out the project agreement or other agreement. If the trustee shall be appointed, any trust indenture, trust agreement, or indenture of mortgage entered into by the development corporation with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable in order to secure the special purpose revenue bonds. The development corporation may pledge and assign to the trustee the interest of the development corporation under a project agreement and other agreements related thereto and the rights, duties, and obligations of the development corporation thereunder, including the right to receive revenues and receipts thereunder. The development corporation may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform the functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the development corporation may deem necessary, advisable, or expedient, including, without limitation, the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with law;

(9) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties;

(10) To invest or provide for the investment of the proceeds of special purpose revenue bonds and revenues and receipts derived by the development corporation in the securities and in such manner as it deems proper; and

(11) To make such covenants and do any and all acts and things as may be necessary, convenient, or desirable in order to secure the special purpose revenue bonds, notwithstanding that the covenants, acts, or things may not be enumerated in this chapter.

No holder or holders of special purpose revenue bonds issued under this chapter shall ever have the right to compel any exercise of the taxing power of the State or any political subdivision of the State to pay the special purpose revenue bonds or the interest thereon and no moneys other than the revenues pledged to the special purpose revenue bonds shall be applied to the payment thereof.

(i) Special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the development corporation. The special purpose revenue bonds shall contain a recital that they are issued pursuant to this chapter which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

(j) Subject to authorization by an act enacted by the legislature by an affirmative vote of two-thirds of the members to which each house is entitled, the development corporation may issue special purpose revenue bonds for the purpose of refunding special purpose revenue bonds then outstanding and issued under this chapter whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption. The development corporation may issue special purpose revenue bonds for the combined purposes of:

(1) Financing or refinancing the cost of a project or industrial park, or the improvement or expansion thereof; and

(2) Refunding special purpose revenue bonds that shall theretofore have been issued under this chapter and then shall be outstanding, whether or not the outstanding bonds have matured or then are subject to redemption.

Nothing in this subsection shall require or be deemed to require the development corporation to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded that were issued, in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any proceeding authorizing the issuance thereof, or, if the development corporation elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of the special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the development corporation with respect to the bonds, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

(k) If special purpose revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates which vary from time to time and with a right of holders to tender the bonds for purchase, the development corporation may contract for such support facility or facilities and remarketing arrangements as are required to market the special purpose revenue bonds to the greatest advantage of the development corporation upon such terms and conditions as the development corporation deems necessary and proper.

The development corporation may enter into contracts or agreements with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the development corporation under the contract or agreement on an annual basis shall be payable solely from the revenue and receipts of the project agreement and any obligation issued or arising pursuant to the terms of the contract or agreement in the form of special purpose revenue bonds,

notes, or other evidences of indebtedness shall only arise at such time as either:

(1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of special purpose revenue bonds issued pursuant to this chapter; or

(2) A like principal amount of the issue or series of special purpose revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility. [L 1983, c 152, pt of §2; am L 2000, c 72, §13; am L 2017, c 69, §5]

§206M-10 Authorization for loans; loan terms and conditions; loan procedure. (a) Notwithstanding any law to the contrary, the director of finance is authorized, with the approval of the governor, to make loans up to the aggregate sum of $1,000,000, or so much thereof as may be necessary, to the development corporation. The loans shall be made from the state general fund moneys which are in excess of the amounts necessary for immediate state requirements, and shall be used for the purpose of paying administrative and other costs associated with the development of industrial parks and other projects and activities that encourage the growth of the technology industry in Hawaii.

(b) The development corporation, to the extent moneys become available from bond proceeds or otherwise, shall repay the general fund the principal amount of any loan made by the director of finance. No interest shall be required for any such loan.

(c) Loans authorized by this section shall be drawn upon by the development corporation from time to time upon at least five days notice to the director of finance and upon the filing with the director of finance of a certificate of the chairperson of the board setting forth the amount being borrowed, the names of the persons, firms, or corporations to which moneys will be paid from the proceeds of such borrowing and the amount to be paid to each. In addition, the chairperson of the board shall file with the director of finance a copy of the resolution or resolutions of the board approving contracts for services which will be paid from the proceeds of the borrowing. [L 1983, c 152, pt of §2; am L 1991, c 288, §3; am L 2000, c 72, §14; am L 2017, c 69, §5]

§206M-11 Special purpose revenue bonds not a general or moral obligation of State. No holder or holders of special purpose revenue bonds issued under this chapter shall ever have the right to compel any exercise of the taxing power of the State to pay the bonds or the interest thereon and no moneys other than the revenues pledged to the bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this chapter shall recite in substance that the bond, including interest thereon, is not a general or moral obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that the bond is not secured, directly or indirectly, by the full faith and credit or the general credit of the State or by revenues or taxes of the State other than the revenues specifically pledged thereto. [L 1983, c 152, pt of §2; am L 2000, c 72, §15]

§206M-12 Special purpose revenue bonds exempt from taxation. Special purpose revenue bonds and the income therefrom issued pursuant to this chapter shall be exempt from all state taxation, except inheritance, transfer, and estate taxes. [L 1983, c 152, pt of §2; am L 2000, c 72, §16]

§206M-12.5 Federal tax-exempt status. Special purpose revenue bonds issued pursuant to this chapter, to the extent practicable, shall be issued to

comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes, environmental taxes, or other federal taxes or tax consequences may apply). The development corporation may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this chapter shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes. [L 2000, c 72, §2]

§206M-13 Special purpose revenue bonds as legal investments and lawful security. The special purpose revenue bonds issued pursuant to this chapter shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and the bonds shall be lawful and sufficient security for the deposits to the extent of their value when accompanied by all unmatured coupons, if any, appertaining thereto. [L 1983, c 152, pt of §2; am L 2000, c 72, §17]

§206M-14 Status of special purpose revenue bonds under the Uniform Commercial Code. Notwithstanding any of the provisions of this chapter or any recital in any special purpose revenue bond issued under this chapter, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration. [L 1983, c 152, pt of §2; am L 2000, c 72, §18]

§206M-15 Technology research and development loans and grants. (a) All moneys necessary to carry out the purposes of this section shall be allocated by the legislature through appropriations out of the state general fund. The development corporation shall include in its budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section. All moneys, interest charges, and other fees collected by the development corporation under this section shall be deposited to the credit of the state general fund. In making any expenditure under this section, the development corporation shall analyze each funding request to determine whether the project to be undertaken will be economically viable and beneficial to the State.

(b) The development corporation may provide grants to any business in Hawaii that:

(1) Receives a federal small business innovation research phase I or II award or contract from any participating federal agency, up to fifty per cent of the amount of the federal award or contract;

(2) Receives a federal small business technology transfer program award or contract from any participating federal agency, up to fifty per cent of the amount of the federal award or contract;

(3) Receives a federal small business innovation research phase III or small business technology transfer program phase III award or contract, up to fifty per cent of the amount of the award or contract funded by private sector or government sources outside of the program; or

(4) Applies for a small business innovation research federal grant or a small business technology transfer program federal grant, in an amount not to exceed $3,000,

subject to the availability of funds.

(c) The development corporation shall adopt rules pursuant to chapter 91 that:

(1) Specify the qualifications for eligibility of grant applicants;

(2) Establish priorities in determining eligibility in the event that insufficient funds are available to fund otherwise qualified applicants; and

(3) Give preference to all qualified businesses receiving their first award in one fiscal year over multiple award grantees.

The development corporation may adopt any other rules pursuant to chapter 91 necessary for the purposes of this section. [L 1983, c 152, pt of §2; am L 1989, c 196, §3; am L 1991, c 85, §1; am L 1992, c 63, §1; am L 1993, c 280, §18; am L 2000, c 72, §19; am L 2006, c 282, §2; am L 2009, c 136, §1; am L 2015, c 216, §2; am L 2017, c 69, §5; am L 2018, c 68, §2]

§206M-15.1 Manufacturing development program; established. (a) There is established the manufacturing development program, through which the development corporation may provide grants to any business in Hawaii that is a manufacturer in the State and requires assistance for any of the following items:

(1) Purchasing of manufacturing equipment;

(2) Training of employees on the use of manufacturing equipment;

(3) Improving existing energy efficiency manufacturing equipment or the purchase of improved energy efficiency equipment in the manufacturing process; or

(4) Studying or planning the implementation of a new manufacturing facility;

provided that no grant shall exceed twenty per cent of the cost of any of the above items, and no company shall receive a grant exceeding $100,000 in any given year.

(b) All moneys necessary to carry out the purposes of this section shall be appropriated by the legislature through appropriations out of the state general fund.

(c) In reviewing grant applications pursuant to this section, the development corporation shall analyze each application to determine whether the item to be undertaken will be economically viable and beneficial to the State.

(d) The development corporation shall submit a report to the legislature no later than twenty days prior to the convening of the regular session held in every even-numbered year. The report shall include the following items:

(1) The total number of grants provided;

(2) The sectors provided with grants;

(3) The total projected economic and employment growth facilitated by the grants provided; and

(4) The actual economic and employment growth that occurred as a result of the grants provided. [L 2015, c 215, §1]

§206M-15.2 Research and development program established. (a) There is established within the development corporation, the research and development program, to help Hawaii-based small businesses optimize research and development performed in Hawaii.

(b) Subject to available funds, the research and development program shall:

(1) Apply funds to support product development, technology transfer, and commercialization;
(2) Provide capital to support accelerated commercialization activities for qualified Hawaii-based small businesses;
(3) Provide capital to sustain high-potential infrastructure development to assist qualified Hawaii-based small businesses towards commercial success;
(4) Promote efforts that reverse the loss of qualified workers to other states by providing jobs to retain existing Hawaii technology employees and enable highly qualified scientists and engineers to return to living-wage jobs in Hawaii;
(5) Promote efforts that keep technology companies in Hawaii by limiting the need to seek out-of-state venture capital, which dilutes local ownership and increases the probability of high-potential technology companies moving from Hawaii; and
(6) Provide grants of up to $300,000 for critical product development that enables a qualified Hawaii-based small business to achieve significant product development and technical milestones.

(c) To receive funding, a Hawaii-based small business shall submit to the development corporation proof of the federal research and development tax credits received. Proof shall be in the form of copies of the small business Internal Revenue Service Form 6765 Credit for Increasing Research Activities as filed. The business shall be eligible to receive a grant in an amount equal to the average of the federal tax credit for the prior three tax years.

(d) In reviewing grant applications pursuant to this section, the development corporation shall analyze each application to determine whether the item to be undertaken will be economically viable and beneficial to the State.

(e) The development corporation may adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section.

(f) For purposes of this section:

"Hawaii-based small business" means a company:

(1) Headquartered in the State;
(2) Doing business in the State for not less than five years; and
(3) Employing fifteen or more residents with income subject to taxation pursuant to chapter 235.

"Resident" shall have the same meaning as in section 235-1. [L 2018, c 141, pt of §2; am L Sp 2021, c 9, §30]

§206M-15.3 REPEALED. L Sp 2021, c 9, §33.

§206M-15.5 Technology special fund. There is established in the state treasury a fund to be known as the technology special fund, into which shall be deposited, except as otherwise provided by section 206M-17:

(1) Any appropriations or other funds required to be deposited by law; and
(2) All moneys, fees, and equity from tenants, qualified persons, or other users of the development corporation's industrial parks, projects, other leased facilities, and other services and publications;

provided that the total amount of moneys in the fund shall not exceed $300,000 at the end of any fiscal year. All moneys in the fund are appropriated for the purposes of and shall be expended by the development corporation for the operation, maintenance, and management of its industrial parks, projects, facilities, services, and publications, and to pay the expenses in administering the special purpose revenue bonds of the development corporation or in carrying out its project agreements. [L 1989, c

274, pt of §1; am L 2000, c 72, §20 and c 297, §28; am L 2016, c 76, §3; am L 2017, c 69, §5; am L 2019, c 56, §16]

Note

L 2017, c 69, §9 provides:
"SECTION 9. This Act shall not affect the validity of any contract, lease, rule, other document, or appropriation that uses the term "high technology development corporation" or "high technology special fund.""

§206M-15.6 REPEALED. L Sp 2021, c 9, §34.

§206M-16 Exemption of development corporation from taxation and competitive bidding. (a) All revenues and receipts derived by the development corporation from any project or industrial park or under a project agreement or other agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the development corporation in any project or industrial park shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of a qualified person or other user of a project or industrial park under a project agreement or other agreements related to a project or industrial park shall not be exempt from taxation to a greater extent than it would be if the costs of the project or industrial park were directly financed by the qualified person or user.

(b) The development corporation shall not be subject to any requirement of law for competitive bidding for project agreements, construction contracts, lease and sublease agreements, or other contracts unless a project agreement with respect to a project or industrial park shall so require. [L 1983, c 152, pt of §2; am L 1989, c 274, §4; am L 2000, c 72, §21]

§206M-17 Revenue bond fund accounts. The development corporation shall establish separate special funds in accordance with section 39-62 for the deposit of the proceeds of special purpose revenue bonds and special facility revenue bonds authorized under this part and [part III] respectively. The development corporation shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

(1) To pay when due all special purpose revenue bonds and special facility revenue bonds, premiums, if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and

(2) To the extent not paid by the qualified person to provide for all expenses of administration, operation, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the development corporation shall not transfer the revenues derived from the project agreement to the technology special fund of the State. [L 1983, c 152, pt of §2; am L 1993, c 280, §16; am L 2000, c 72, §22; am L 2017, c 69, §5]

§206M-18 Assistance by state and county agencies. Every state or county agency may render services to the development corporation upon request of the development corporation. [L 1983, c 152, pt of §2]

§206M-19 Court proceedings; preferences. Any action or proceeding to which the development corporation, the State, or a county may be party, in which

any question arises as to the validity of this chapter, shall be preferred over all other civil causes, except election cases, without respect to position on the calendar. The same preference shall be given upon application of counsel for the development corporation in any action or proceeding questioning the validity of this chapter in which the development corporation has duly intervened. [L 1983, c 152, pt of §2]

§206M-20 Construction of this chapter. The powers conferred by this chapter shall be in addition and supplemental to other powers conferred by any other law. This chapter shall constitute and be enabling legislation for the development corporation, as an agency and instrumentality of the State, to issue special purpose revenue bonds in accordance with the provisions of the Constitution of the State of Hawaii and this chapter. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, this chapter shall be controlling. [L 1983, c 152, pt of §2]

§206M-21 Confidentiality of trade secrets or the like; disclosure of financial information. (a) Notwithstanding chapters 92, 92F, or any other law to the contrary, any documents or data made or received by any member or employee of the corporation shall not be a public record to the extent that the material or data:

(1) Consists of trade secrets;

(2) Consists of commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the corporation is empowered to render; or

(3) Relates to the competitive position of that applicant in a particular field of endeavor;

provided that if the corporation purchases a qualified security from an applicant, the commercial and financial information, excluding confidential business information, shall be deemed to become a public record of the corporation. If the information is made or received by any member or employee of the corporation after the purchase of the qualified security, it shall become a public record three years from the date the information was made or received.

(b) Any discussion or consideration of trade secrets or commercial or financial information shall be held by the board, or the subcommittee of the board, in executive sessions closed to the public; provided that the purpose of any such executive session shall be set forth in the official minutes of the corporation, and business that is not related to that purpose shall not be transacted nor shall any vote be taken during the executive sessions. [L 2000, c 297, pt of §22(1)]

§206M-22 Limitation on liability. Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, against the State or its officers and employees, without regard to whether that person or entity receives any benefits under this chapter. The State and its officers and employees shall not be liable for the results of any investment, purchase of securities, loan, or other assistance provided pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the corporation in excess of any note, loan, or other specific indebtedness incurred by the corporation or in excess of any insurance policy acquired for the corporation or its employees. [L 2000, c 297, pt of §22(1)]

§206M-23 Hydrogen implementation coordinator. (a) The director of the Hawaii center for advanced transportation technologies of the development corporation shall serve as the state hydrogen implementation coordinator.

(b) The state hydrogen implementation coordinator, under the delegated authority of the chief energy officer of the Hawaii state energy office, shall facilitate the establishment of infrastructure and policies across all agencies of the State to promote the expansion of hydrogen-based energy in Hawaii. [L 2015, c 98, §1, am L 2019, c 122, §3]

§206M-24 Sustainable aviation fuel program; established. (a) There is established the sustainable aviation fuel program, through which the development corporation may provide matching grants to any small business in the State that is developing products related to sustainable aviation fuel or greenhouse gas reduction from commercial aviation operations and requires assistance for any of the following items:

(1) Business planning;

(2) Technology development;

(3) Engineering; or

(4) Research.

(b) In reviewing grant applications pursuant to this section, the development corporation shall analyze each application to determine whether the item to be undertaken will be economically viable and beneficial to the State.

(c) For the purposes of the program, product development activities eligible for matching funds grants shall reduce commercial aviation greenhouse gas emissions through:

(1) Sustainable aviation fuel production;

(2) Airborne operations fuel efficiency;

(3) Ground support equipment fuel replacement;

(4) Ground support equipment fuel efficiency; or

(5) Airport operations support to reduce overall jet fuel consumption.

(d) Hawaii jet fuel baseline carbon intensity shall be set at eighty-nine grams of carbon dioxide equivalent per megajoule, in line with the benchmark established by the International Civil Aviation Organization. This carbon intensity may be revised upon recommendation from the Hawaii state energy office based upon future revisions to the United States Department of Energy's Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation full life-cycle model; provided that carbon intensity shall be measured in the units of grams of carbon dioxide equivalent per megajoule.

(e) For the purposes of this section:

"Grant" means financial assistance provided to Hawaii small business innovation research, small business technology transfer, and other agency and private sector awardees and applicants under the terms and conditions provided in this chapter.

"Hawaii small business innovation research", "small business technology transfer", and "sustainable aviation fuel program" means the programs administered by the development corporation to encourage participation by enterprises in federal research and development programs.

"Other agency" means an entity that receives an award or contract granted by the United States Departments of Agriculture, Transportation, Energy, Defense, or Commerce, or other federal agencies for activities consistent with those defined in this section.

"Small business" shall have the same meaning as in section 201M-1.

"Sustainable aviation fuel" means American Society for Testing and Materials D7566-compliant renewable aviation turbine fuel derived from biofuels, as defined in section 269-91, and with a greenhouse gas lifecycle

carbon intensity lower than the baseline for jet fuel defined by the International Civil Aviation Organization. [L 2021, c 180, §2]

PART II. HAWAII SOFTWARE SERVICE CENTER--REPEALED

§§206M-31 to 206M-35 REPEALED. L 2017, c 69, §7.

PART III. SPECIAL FACILITY REVENUE BONDS

Revision Note

Enacted as part II, this part was renumbered as part III pursuant to §23G-15.

§206M-41 Definitions. As used in this part, unless the context clearly requires otherwise:

"Special facility" means one or more buildings, structures, or facilities and the land thereof located in an industrial park for the technology industry, including, without limitation, facilities for technology research, development, support, processing, and manufacturing, which are the subject of a special facility lease.

"Special facility lease" includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the same special facility.

"Special facility revenue bonds" means all bonds, notes, and other instruments of indebtedness of the State issued pursuant to this part and part III of chapter 39. [L 2000, c 72, pt of §1; am L 2017, c 69, §5]

§206M-42 Powers. In addition to any other powers granted to the development corporation by law, the development corporation may:

(1) Without compliance with chapter 103D, but with the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the development corporation agrees to acquire, construct, improve, install, equip, and develop a special facility solely for the use by another party to a special facility lease;

(2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any acquisition, construction, improvement, installation, equipping, and development of any special facility, including, subject to paragraph (6), the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this section shall not exceed $100,000,000;

(3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this refunding purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds that may be issued as provided in paragraph (2);

(4) Perform and carry out the terms and provisions of any special facility lease;

(5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, improve, install, equip, or develop any

special facility, or accept the assignment of any contract therefor entered into by the other party to the special facility lease;

(6) Construct any special facility on land owned by the State; provided that no funds derived herein shall be expended for land acquisition; and

(7) Agree with the other party to the special facility lease whereby any acquisition, construction, improvement, installation, equipping, or development of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. [L 2000, c 72, pt of §1; am L 2004, c 216, §28; am L 2006, c 292, §10]

§206M-43 Findings and determinations for special facility leases. The development corporation shall not enter into any special facility lease unless the development corporation, at or prior to the entering into of the special facility lease, shall find and determine:

(1) That the building, structure, or facility that is to be the subject of the special facility lease shall not be used to provide services, commodities, supplies or facilities that are then adequately being made available otherwise in the State;

(2) That the use or occupancy of the building, structure, or facility under the special facility lease would not result in the reduction of the revenues derived from the industrial parks or other properties of the development corporation to an amount below the amount required to be derived therefrom by section 39-61; and

(3) That the entering into of the special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State then outstanding. [L 2000, c 72, pt of §1]

§206M-44 Special facility lease. (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the development corporation shall at least contain provisions obligating the other party to the special facility lease:

(1) To pay to the development corporation during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other party, a rental or rentals at the time or times and in the amount or amounts that will be sufficient to:

(A) Pay the principal and interest on all special facility revenue bonds issued for the special facility;

(B) Establish or maintain any reserves for these payments; and

(C) Pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility;

(2) To pay to the development corporation:

(A) A ground rental, equal to the fair market rental of the land, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or

(B) A properly allocable share of the administrative costs of the development corporation in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility if the land

was acquired from the proceeds of the special facility revenue bonds;

(3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the development corporation all costs of operation, maintenance, and repair of the special facility;

(4) To:

(A) Insure, or cause to be insured, the special facility under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds;

(B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the development corporation and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in any way related to the special facility or occasioned by reason of occupancy by and the operations of the other person upon, in and around the special facility;

(C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and

(D) Provide insurance for workers' compensation and employers' liability for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law); provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the development corporation, the other party or the trustee for the special facility revenue bonds as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the other party; and provided further that the insurance shall name the development corporation, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and

(5) Indemnify, save, and hold the development corporation, the trustee, and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other party's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any:

(A) Condition of the special facility;

(B) Breach or default on the part of the other party in the performance of any of the party's obligations under the special facility lease;

(C) Fault or act of negligence of the other party or the party's agents, contractors, servants, employees, or licensees; or

(D) Accident to or injury or death of any person or loss of or damage to any property occurring in or about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other party.

Any moneys received by the development corporation pursuant to paragraphs (2) and (3) shall be paid into the technology special fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility that is the subject of the special facility lease, as estimated by the development corporation at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the development corporation shall be subject to chapter 171 and shall contain other terms and conditions that the development corporation deems advisable to effectuate the purposes of this part. [L 2000, c 72, pt of §1; am L 2017, c 69, §5]

§206M-45 Special facility revenue bonds. All special facility revenue bonds authorized to be issued under this part shall be issued pursuant to part III of chapter 39, except as follows:

(1) No revenue bonds shall be issued unless at the time of issuance, the development corporation has entered into a special facility lease with respect to the special facility for which the revenue bonds are to be issued;

(2) The revenue bonds shall be issued in the name of the development corporation and not in the name of the State;

(3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for the issuance;

(4) The revenue bonds shall be payable solely from and secured solely by the revenues derived by the development corporation from the special facility for which they are issued;

(5) The final maturity date of the revenue bonds shall not be later than either the estimated life of the special facility for which the revenue bonds are issued or the expiration of the initial term of the special facility lease;

(6) If deemed necessary or advisable by the development corporation, or to permit the obligations of the other party to the special facility lease to be registered under the U.S. Securities Act of 1933, the development corporation, with the approval of the director of finance, may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with the trustee. The trustee may be authorized by the development corporation to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply the revenues to the payment of the principal and interest on the revenue bonds. In the event that any trustee shall be appointed, any trust indenture or trust agreement entered into by the development corporation with the

trustee may contain the covenants and provisions authorized by part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in that part read "trust indenture or trust agreement".

The covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust indenture or trust agreement. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the development corporation pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939. The development corporation may pledge and assign to the trustee the special facility lease and the rights of the development corporation including the revenues thereunder;

(7) If the development corporation, with the approval of the director of finance, shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the provisions of section 39-68, the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the revenue bonds, or may elect to limit the functions the director of finance shall perform as the fiscal agent. The development corporation, with the approval of the director of finance, may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform the functions with respect to payment, purchase, registration, transfer, exchange, and redemption, that the development corporation may deem necessary, advisable, or expedient, including, without limitation, the holding of the revenue bonds and coupons, if any, that have been paid and the supervising and conducting of the destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or construed as a limitation upon the powers granted in paragraph (6) to the development corporation with the approval of the director of finance to appoint the trustee, or granted in sections 36-3, 39-13, and 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower the fiscal agents, paying agents, and registrars to perform the functions referred to in paragraph (6) and sections 36-3, 39-13, and 39-68, it being the intent of this paragraph to confirm that the director of finance may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director of finance shall perform as the fiscal agent, that the director of finance may deem necessary, advisable, or expedient;

(8) The development corporation may sell the revenue bonds either at public or private sale;

(9) If no trustee is appointed to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued, the revenues shall be held in a separate account in the treasury of the State, separate and apart from the technology special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing the revenue bonds;

(10) If the resolution, certificate, trust indenture, or trust agreement provides that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of the revenue bonds, the signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures;

(11) Proceeds of the revenue bonds may be used and applied by the development corporation to reimburse the other party to the special facility lease for all preliminary costs and expenses, including architectural and legal costs; and

(12) If the special facility lease requires the other party to operate, maintain, and repair the special facility that is the subject of the lease, at the other party's expense, the requirement shall constitute compliance by the development corporation with section 39-61(a)(2), and none of the revenues derived by the development corporation from the special facility shall be required to be applied to the purposes of section 39-62(2). Sections 39-62(4), 39-62(5), and 39-62(6) shall not apply to the revenues derived from a special facility lease. [L 2000, c 72, pt of §1; am L 2017, c 69, §5]

PART IV. HIGH TECHNOLOGY INNOVATION CORPORATION--REPEALED

§§206M-51 to 206M-59 REPEALED. L 2012, c 240, §§6, 8.

PART V. STRATEGIC DEVELOPMENT PROGRAMS

A. General Provisions

§206M-61 Strategic development programs; purpose; powers. The purpose of the strategic development programs is to encourage economic development and diversification in Hawaii through innovative actions in cooperation with private enterprises. The development corporation shall establish programs to stimulate private capital investment in Hawaii toward investments that promote the welfare of citizens in this State, economic growth, employment, and economic diversification. The development corporation may use public funds to provide incentives to private investment activity, by co-investing public funds in private financial organizations to increase the impact of the public investment while utilizing the investment acumen of the private sector, and by using public funds to reduce the risks of private investments. The development corporation shall have the flexibility to provide various types of financial assistance. When providing financial assistance, the development corporation shall make provision for the recovery of its expenditures, as far as possible. [L 2019, c 56, pt of §2]

§206M-62 Strategic development programs revolving fund. There is established the strategic development programs revolving fund. The following moneys shall be deposited into the strategic development programs revolving fund and shall not be considered part of the general fund: all moneys appropriated by the legislature, received as repayments of loans, earned on investments, received pursuant to a venture agreement, received as royalties, received as premiums or fees charged by the development corporation, or otherwise received by the development corporation. [L 2019, c 56, pt of §2]

§206M-63 Hydrogen investment special fund. (a) There shall be established the hydrogen investment special fund, into which shall be deposited:

(1) Appropriations made by the legislature to the fund;

(2) All contributions from public or private partners;
(3) All interest earned on or accrued to moneys deposited in the special fund; and
(4) Any other moneys made available to the special fund from other sources.

(b) Moneys in the fund shall be expended by the development corporation:

(1) To provide seed capital for and venture capital investments in private sector and federal projects for research, development, testing, and implementation of the Hawaii renewable hydrogen program, as set forth in section 196-10; and
(2) For any other purpose deemed necessary to carry out the purposes of section 196-10. [L 2019, c 56, pt of §2]

§206M-64 Contracts for services necessary for management and operation of the strategic development programs. The development corporation may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the strategic development programs. The development corporation may use all appropriations, grants, contractual reimbursements, and all other funds not appropriated for a designated purpose to pay for the proper general expenses and to carry out the purposes of the strategic development programs. [L 2019, c 56, pt of §2]

§206M-65 Actions of the development corporation; guidelines. (a) All actions taken by the development corporation shall be necessary to achieve the purposes and objectives of this part. The development corporation shall evaluate all programs after three years to determine their effectiveness. The development corporation shall establish rules to assure equal opportunity to minority-owned businesses, and shall encourage the development of minority-owned businesses. The development corporation shall support and encourage participation by Hawaii companies in federal grant programs, such as the Small Business Innovation Research Program.

(b) Financial participation shall be made on the condition that the recipient of the assistance shall utilize the money to assist economic development projects within the State that have potential for creating new jobs or retaining current jobs within the State.

(c) Financial participation by the development corporation in private financial investment funds shall be made with the provision that the private fund shall make investments in Hawaii in amounts at least equal to the amount of state participation.

(d) The development corporation shall not make direct investments in individual businesses except upon a two-thirds vote of the board in each case considered. When deciding whether to enter into a direct investment, the development corporation shall consider whether:

(1) The project is economically sound;
(2) The project can be successfully completed;
(3) The project will promote economic diversification;
(4) The project is located in or will locate in the State and has a reasonable potential to create desirable employment opportunities for residents of the State;
(5) The project has been unable to obtain sufficient funding on reasonable terms through ordinary means; and
(6) The project can be partially financed through ordinary means at reasonable terms.

The development corporation shall not acquire securities to an extent that would provide the development corporation effective voting control of any

enterprise after giving effect to the conversion of all outstanding convertible securities of the enterprise.

(e) Investments by the development corporation to persons shall be made on the basis of solicitation and a competitive technical review process, subject to the availability of funds allocated to the development corporation for making investments. Investments by the development corporation shall not be subject to chapter 42F. Any organization applying for an investment shall meet the following standards:

(1) Have bylaws or policies that describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations;

(2) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments;

(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, or physical handicap; and

(4) Comply with other requirements as the board may prescribe. [L 2019, c 56, pt of §2]

§206M-66 Business and industry evaluation and priorities for job opportunity and economic development. The development corporation shall develop procedures to set priorities as to which types of businesses and industries are most likely to provide significant opportunities for economic development and diversification in the State, consistent with the purposes of this subpart. This evaluation shall take into account the guidelines provided by the state plan for economic development. Based on these findings, the development corporation shall establish targets by which the operations and programs of the development corporation under this part shall be guided. [L 2019, c 56, pt of §2]

§206M-67 Confidentiality of trade secrets or the like; disclosure of financial information. Notwithstanding chapter 92, 92F, or any other law to the contrary, any documents or data made or received by any member or employee of the development corporation under this part, to the extent that the material or data consist of trade secrets, commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the development corporation is empowered to render, or regarding the competitive position of that applicant in a particular field of endeavor, shall not be a public record; provided that if the development corporation purchases a qualified security from an applicant, the commercial and financial information, excluding confidential business information, shall be deemed to become a public record of the development corporation. If the information is made or received by any member or employee of the development corporation after the purchase of the qualified security, it shall become a public record three years from the date the information was made or received. Any discussion or consideration of trade secrets or commercial or financial information, shall be held by the board, or any subcommittee of the board, in executive sessions closed to the public; provided that the purpose of any such executive session shall be set forth in the official minutes of the development corporation and business which is not related to that purpose shall not be transacted, nor shall any vote be taken during the executive sessions. [L 2019, c 56, pt of §2]

§206M-68 Requests for assistance from the development corporation; procedure. (a) The board shall approve or disapprove requests for assistance within ninety days of receiving a written application under this

part. Upon written request by an applicant, the board may reconsider its denial of an application for assistance or may waive the ninety-day deadline for approving or disapproving an application.

(b) Any person who submits any statement, report, application, or other document to the development corporation under this part that is known to the person to be false in any material respect shall be guilty of a class C felony.

(c) The development corporation may condition any assistance of any type under this part by placing restrictions on the recipient in regard to the recipient's assets or indebtedness or in any other manner deemed appropriate by the development corporation. A recipient who accepts assistance from the development corporation under this part shall be deemed to agree to be bound by any conditions or restrictions imposed by the development corporation. [L 2019, c 56, pt of §2]

§206M-69 Private sector financial support. Significant private sector financial support shall be associated with any economic development project for which the development corporation provides assistance under this part. [L 2019, c 56, pt of §2]

§206M-70 Limitations on debt owed to the development corporation. Not more than $5,000,000 in financial assistance, excluding rights and royalties under a venture capital agreement, shall be provided to any one enterprise at any time under this part. The direct investments of the development corporation shall not exceed five per cent of the assets of the development corporation, excluding rights and royalties under a venture capital agreement; provided that by a two-thirds vote of the board, this amount may be increased to a limit of twenty-five per cent of the total assets of the development corporation. [L 2019, c 56, pt of §2]

§206M-71 Limitation on liability. Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this part shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, without regard to whether that person or entity receives any benefits under this part, against the State or its officers and employees. The State and its officers and employees shall not be liable for the results of any investment, purchase of securities, loan, or other assistance provided pursuant to this part. Nothing in this part shall be construed as authorizing any claim against the development corporation in excess of any note, loan, or other specific indebtedness incurred by the development corporation or in excess of any insurance policy acquired for the development corporation or its employees. [L 2019, c 56, pt of §2]

§206M-72 HI growth initiative; report to legislature. The development corporation shall submit an annual report to the legislature no later than twenty days prior to the convening of a regular session on the specific annual outcome achieved through the activities and expenditures of the HI growth initiative. [L 2019, c 56, pt of §2]

§206M-73 Annual audit. The books and records of the strategic development programs shall be subject to an annual audit by an independent auditor. [L 2019, c 56, pt of §2]

B. Program for Seed Capital Assistance

§206M-74 Establishment. The development corporation shall establish a program for seed capital assistance. [L 2019, c 56, pt of §2]

§206M-75 Seed capital investments. Subject to this subpart, the development corporation may invest in:

(1) A certified development company under sections 501 to 503 of the Small Business Investment Act of 1958 (15 U.S.C. 695 to 697) and the regulations adopted under those sections;

(2) A small business investment company under the Small Business Investment Act (15 U.S.C. 631 to 634, 636 to 649) and the regulations adopted under those sections;

(3) A minority enterprise small business investment corporation or equivalent venture capital corporation;

(4) A similar entity that may leverage its capital under a federal program; or

(5) A seed capital fund or partnership. [L 2019, c 56, pt of §2]

§206M-76 Purposes and terms of investments. (a) Investments may be used for any purpose consistent with the purposes and objectives of this part, including but not limited to:

(1) Developing a working prototype;

(2) Preparing a development plan;

(3) Performing an initial market analysis;

(4) Organizing a management team; and

(5) Any other purpose reasonably related to an economic development project.

(b) Investments may be made on such terms and conditions as the development corporation shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this part. [L 2019, c 56, pt of §2]

C. Program for Venture Capital Assistance

§206M-77 Establishment. The development corporation shall establish a program for venture capital. [L 2019, c 56, pt of §2]

§206M-78 Venture capital investments. Subject to this subpart, the development corporation may invest in:

(1) A certified development company under sections 501 to 503 of the Small Business Investment Act of 1958 (15 U.S.C. 695 to 697) and the regulations adopted under those sections;

(2) A small business investment company under the Small Business Investment Act (15 U.S.C. 631 to 634, 636 to 649) and the regulations adopted under those sections;

(3) A minority enterprise small business investment corporation or equivalent venture capital corporation;

(4) A similar entity that may leverage its capital under a federal program; or

(5) A venture capital fund or partnership. [L 2019, c 56, pt of §2]

§206M-79 Purposes and terms of investments. (a) Investments may be used for any purpose consistent with the purposes and objectives of this part.

(b) Investments may be made on such terms and conditions as the development corporation shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this part. [L 2019, c 56, pt of §2]

D. Program for Capital Access

§206M-80 Establishment. The development corporation shall establish a program for capital access. [L 2019, c 56, pt of §2]

§206M-81 Financial assistance. The development corporation, through the program for capital access, may:

(1) Procure insurance, a guarantee, or a letter of credit from any source for all or a part of a loan, debenture, or lease of others, public or private, or a revenue bond issue of the State or other entity or authority authorized by law to issue revenue bonds; and

(2) Procure insurance, a guarantee, or a letter of credit for either a single loan, debenture, or lease or for any combination of loans, debentures, or leases, or a single revenue bond issue or for all or a part of any combination of revenue bond issues. [L 2019, c 56, pt of §2]

§206M-82 Purposes and priorities required in the procuring of insurance, loan guarantees, or letters of credit. (a) Insurance, guarantees, or letters of credit procured pursuant to section 206M-81 shall be procured only for economic development projects within the State that are consistent with the purposes and objectives of this part.

(b) The development corporation shall give paramount priority in procuring insurance, guarantees, and letters of credit to economic development projects that have the greatest potential for creating new jobs or retaining current jobs within the State. [L 2019, c 56, pt of §2]

§206M-83 Conditions for procuring of insurance, loan guarantees, or letters of credit. (a) Insurance, guarantees, or letters of credit shall not be procured pursuant to section 206M-81 unless the development corporation is assured that the loans, debentures, or leases insured, or guaranteed, or for which letters of credit are issued, shall be used to assist economic development projects that also have significant private sector financial support.

(b) Insurance, guarantees, or letters of credit may be procured on such terms and conditions as the development corporation, in its sole discretion, shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this part.

(c) The development corporation shall charge the lender or the borrower, or both, a fee or premium for procuring loan, debenture, or lease insurance, guarantee, or a letter of credit. Rules for premiums or fees shall be established by the corporation. [L 2019, c 56, pt of §2]

§206M-84 Program for capital access participation agreements. The development corporation shall enter into agreements with lenders for participation in the program for capital access that shall include but not be limited to:

(1) Authorization for the lender to determine, collect, and transmit to the development corporation a fee or premium charge within a specified range established consistent with the purposes and objectives of the development corporation;

(2) Specification of whether the premium charge shall be paid by the lender, the borrower, the development corporation, or by a combination thereof in specified proportions;

(3) The procedure by which a lender may make a claim upon the development corporation upon default by the borrower, and the conditions under which a claim may be made; and

(4) The maximum amount of claims a lender may make upon the development corporation, which amount may be equal to or less than the proportion of the total premiums contributed by the development corporation. [L 2019, c 56, pt of §2]

§206M-85 Establishment of special funds to secure loan insurance obligations; source of funds. The development corporation may establish a special fund or funds for capital access into which fees or premiums collected by the development corporation are deposited. [L 2019, c 56, pt of §2]

HIGH TECHNOLOGY DEVELOPMENT CORPORATION

Adoption of Chapter 30
Hawaii Administrative Rules

September 26, 1984

SUMMARY

Chapter 30, Hawaii Administrative Rules, entitled "High Technology Development Corporation Rules of Practice and Procedure", is adopted.

HAWAII ADMINISTRATIVE RULES
TITLE 15 DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

SUBTITLE 6 HIGH TECHNOLOGY DEVELOPMENT CORPORATION

CHAPTER 30
HIGH TECHNOLOGY DEVELOPMENT CORPORATION

RULES OF PRACTICE AND PROCEDURE

Subchapter 1 Rules of General Applicability

Subchapter 2 Proceedings Before the Development Corporation

Subchapter 3 Rulemaking Procedure

Subchapter 4 Contested Cases

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-30-1 Purpose. This chapter governs procedures before the high technology development corporation under chapter 206M, HRS, and shall be construed to effectuate the purpose of the chapter and to secure the just and efficient determination of every proceeding. [Eff DEC 24 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Board" means the board of directors who constitute the governing body of the development corporation, as provided by section 206M-2(b), HRS;

"Contested case" means a proceeding in which the legal rights, duties, or priviliges of specific parties are required by law to be determined after an opportunity for hearing;

"Chairperson" means the person elected by the board to serve as chairperson of the board;

"Designated representative" means any person designated in writing by the state director of planning and economic development, or the state director of finance, to represent the designator as an ex officio voting member of the board;

"Development corporation" means the high technology development corporation established by section 206M-2(a), HRS, to develop industrial parks and facilities for high technology enterprises;

"Ex officio member" means the state director of planning and economic development, or the state director of finance;

"Executive director" means the chief administrative officer of the development corporation appointed by the board pursuant to section 206M-2(d), HRS;

"HRS" means the Hawaii Revised Statutes;

"Meeting" means the convening of the board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter under the supervision or control of the board;

"Petitioner" means any person or agency that petitions the board, or on whose behalf a petition is made to the board, and concerning which the board may take action under statutory or other powers granted to it;

"Proceeding" means any matter brought before the board which is given consideration in light of the powers and duties of the board as provided by law. [Eff DEC 2 4 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-3 Office and office hours. (a) The office of the development corporation is located at 220 South King Street, Central Pacific Plaza, Suite 252, Honolulu, Hawaii 96813. All communications to the development corporation shall be directed to the above address or to P.O. Box 2359, Honolulu, Hawaii 96804, unless otherwise directed.

(b) The office of the development corporation shall be open from 7:45 a.m. to 4:30 p.m. Monday through Friday, unless otherwise provided by statute or executive order. [Eff DEC 2 4 1984] (Auth: HRS §§80-1, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-4 Meetings; conduct of meetings. (a) The board may meet and exercise its powers in any part of the State of Hawaii. All meetings of the board shall be open to the public except executive meetings. Public notice of all meetings, except emergency meetings, shall be made pursuant to section 92-7, HRS. The parliamentary procedure to be utilized by the board in the conduct of its meetings shall be based on Robert's rules of order, newly revised, 1981 edition. Minutes of the board's meetings shall be kept in accordance with section 92-9, HRS.

(b) The board may hold an executive meeting from which the public may be excluded, for those purposes permitted by section 92-5, HRS, but only if there is an affirmative vote of at least two-thirds of the members present at the meeting. The reason for holding the executive meeting and the vote of the members shall be recorded and entered into the minutes of the meeting. No ruling, rule, contract, appointment, or decision shall be finally acted upon in an executive meeting.

(c) The board may call an emergency meeting under conditions permitted by section 92-8, HRS.

(d) The chairperson may remove any person who wilfully disrupts a meeting. [Eff DEC 24 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-5 Quorum and number of votes necessary for a decision; designated representatives. (a) The power of the development corporation shall be vested in the members of the board in office from time to time. A quorum shall consist of a majority of all the members the board is entitled to by statute, and the affirmative vote of at least that number of members shall be necessary to make any action of the board valid.

(b) A designated representative shall serve as a voting member when representing an ex officio member. [Eff DEC 24 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§92-15; 206M-3)

§15-30-6 Authentication of board actions. All actions, decisions, and orders of the board requiring authentication shall be signed by the chairperson, or, in the chairperson's absence, by an officer of the development corporation or by such other person as provided by the bylaws. [Eff DEC 24 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-7 Submittals and requests of petitioners. All submittals and requests requiring action by the board which may be taken at a board meeting shall be made in writing and filed with the office of the development corporation at least ten calendar days before the date of a scheduled meeting. [Eff DEC 24 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-8 Inspection of public records; requests for public information. All public records of the development corporation shall be available for inspection by any person during office hours unless public inspection of the records is in violation of any state or federal law, or of any court order. Requests for inspection of public records and for public information shall be referred to the executive director, or to a subordinate staff member designated

by the executive director. As used in this section, the term "public records" shall be as defined by section 92-50, HRS. [Eff DEC 2 4 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-9 Duties of executive director. The board shall appoint an executive director to serve as the chief administrative officer of the development corporation. The executive director shall be directly responsible to the board, and shall have control over and responsibility for the execution of the board's policies, the administration of its affairs, and the supervision of its staff. [Eff DEC 2 4 1984] (Auth: HRS §206M-2) (Imp: HRS §206M-3(5))

§15-30-10 Delegation of administrative duties. The board may delegate to the executive director any power or authority vested in the board as it deems reasonable and proper for the effective administration of chapter 206M, HRS, except the power to adopt, amend, or repeal rules; and any power or authority expressly reserved to the board by statute or rule.
[Eff DEC 2 4 1984] (Auth: HRS §206M-3) (Imp: HRS §206M-3)

§15-30-11 Appointment of hearing officer to hold hearing. The board by written resolution adopted by the board, may appoint a hearing officer to hold a hearing as provided by this chapter. Responsibilities of the hearing officer shall be described in section 92-16(3), HRS. A hearing officer shall not be used to hold a hearing in any contested case.
[Eff DEC 2 4 1984] (Auth: HRS §§91-2, 206M-3) (Imp. HRS §92-16)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE DEVELOPMENT CORPORATION

§15-30-14 General rule. All petitioners shall comply with this chapter when appearing before the board. Procedures to be followed by the board, unless specifically prescribed in this chapter or by chapter 91, HRS, shall be those which, in the opinion of the board, will best serve the purposes of the

proceeding. For good cause shown, the board may waive or suspend this chapter. [Eff DEC 2 4 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-15 Appearances before the board. (a) Any party to any proceeding before the board may appear pro se or be represented by an authorized representative.

(b) When an individual acting in a representative capacity appears in person or signs a paper submitted to the board, the personal appearance or signature of that individual shall constitute a representation to the board that under the provisions of this chapter and the applicable statute, the individual is authorized and qualified to represent that particular person or entity. The board, at any time, may require any person transacting business with the development corporation in a representative capacity to authenticate the person's authority and qualification to act. [Eff DEC 2 4 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-16 Disqualification of board members. Up to five calendar days before the scheduled hearing or meeting a petitioner may file an affidavit alleging that one or more of the board members has a personal bias or prejudice. Every affidavit shall state the facts and reasons for the belief that bias or prejudice exists. Any member against whom the affidavit is filed may answer the affidavit. The chairperson shall decide whether that member should be disqualified from acting upon the proceeding. [Eff DEC 2 4 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-17 Filing of papers. (a) All requests, submittals, petitions, reports, maps, exceptions, plans, memoranda, and other papers required to be filed with the development corporation pursuant to any proceeding shall be filed within the time limits prescribed by the applicable law, rules, or by order of the board. The date on which the papers are received by personal service or by mail shall be regarded as the date of filing.

(b) All papers filed with the development corporation shall be:

(1) Written in black ink, typewritten, photocopied, mimeographed, or printed;

(2) Plainly legible; and,

(3) On strong, durable paper not larger than 8-1/2" x 11" in size, except that maps, charts, tables, and other like documents may be larger, folded to the size of the papers to which they are attached.

(c) Reproduction may be by any process, provided all copies are clear and permanently legible.

(d) The original of each paper shall be signed in ink by the party.

(e) All papers shall be signed by the petitioner. The signature shall constitute a verification that the paper has been read and that to the best knowledge, information, and belief of that person:

(1) Every statement contained therein is true;

(2) No statement is misleading; and,

(3) That the paper is not interposed for delay.

(f) Unless otherwise required by this chapter or the board, there shall be filed with the development corporation an original and nine copies of each paper. Additional copies shall be promptly provided if requested by the chairperson or executive director.

(g) If any paper filed with the development corporation is not in substantial conformity with the applicable rules of the development corporation, the board, on its own motion or on motion of any party, may strike the paper or require its amendment. If amended, the paper shall be effective as of the date of the receipt of the amendment.

(h) Papers filed with the development corporation shall be retained for a reasonable time by the board in its files. [Eff DEC 24 1984]
(Auth: HRS §§91-2, 206M-3) (Imp: HRS §§91-2, 206M-3)

§15-30-18 Continuances or extensions of time. Whenever a person or agency is required to take action within the period prescribed or allowed by this

chapter, or by notice given under this chapter, or by an order, the chairperson may:

(1) With or without notice, extend the period before the expiration of the prescribed period; or

(2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable.

[Eff DEC 24 1984] (Auth: HRS §§91-2, 206M-3(5)) (Imp: HRS §§91-2, 206M-3)

§15-30-19 Hearing procedures. (a) Any public hearing before the development corporation shall be presided over by the chairperson, or, in the chairperson's absence, by another member or hearing officer designated by the board. A quorum of the board shall not be required in the conduct of a hearing, except in contested cases. Interested individuals and agencies shall have a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. A clear and orderly record shall be obtained. The presiding officer may administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in the order the presiding officer prescribes.

(d) To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.

(e) Any person who wilfully disrupts a hearing to prevent or compromise the conduct of the hearing shall be removed from the hearing room.

(f) Before proceeding to testify, witnesses shall state their name, address, and whom they

represent at the hearing, and shall give any information respecting their appearance as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Witnesses shall be subject to questioning by the members of the board or by any other representative of the board.

(g) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and nine copies shall be required when submitting written comments, recommendations, or replies.

(h) Any party to the hearing upon request shall be allowed to be represented by counsel and be allowed reasonable rights of examination and cross examination of witnesses.

(i) Unless otherwise specifically ordered by the board, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that furnishing copies is impracticable, an original and nine copies of the exhibits shall be submitted. [Eff DEC 24 1984] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6, 92-16)

§15-30-20 Declaratory ruling by the development corporation. (a) Any person may petition the development corporation for a declaratory order as to the applicability of any statutory provision or of any rule or order of the development corporation, by submitting a signed letter to the chairperson. The letter of the petitioner shall contain:

(1) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
(2) A designation of the specific statutory provision, rule, or order in question;
(3) A statement of the relevant facts;

(4) A statement of the interpretation given the statutory provision, rule, or order by the petitioner, including any legal authorities, in support of the interpretation of the petitioner;

(5) A statement that the petition is being made pursuant to this section; and

(6) The name, address, and telephone number of the petitioner.

Any petition which does not conform to the requirements of this section may be rejected by the development corporation.

(b) Upon receipt of the petition, the development corporation shall to cause it to be dated to establish the date of receipt. Within thirty days of the date of receipt, the development corporation shall notify the petitioner of the date, time, and place when the development corporation shall hold a hearing to consider the petition, the petitioner's privilege of personal appearance, with or without counsel as the petitioner may elect; and the petitioner's privilege of presenting evidence in support of the petition.

(c) The development corporation for good cause may refuse to issue a declaratory order. Good cause may include, but shall not be limited to, any of the following:

(1) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;

(2) The petitioner's interest is not the type which would give the petitioner standing to maintain an action in a court of law;

(3) The issuance of the declaratory order may adversely affect the interest of the development corporation or the State of Hawaii in any litigation which is pending or may reasonably be expected to arise;

(4) The matter is not within the jurisdiction of the development corporation.

(d) Within thirty days after a hearing is held, the development corporation shall inform the petitioner in writing that the petition is denied and shall state reasons therefor, or that a declaratory

order will be issued within sixty days from the date of the hearing. If a petition is denied, the petitioner may seek judicial review pursuant to chapter 91, HRS, and applicable rules of court. [Eff DEC 24 1984] (Auth: HRS §§91-2, 206M-3) (Imp: HRS §91-8)

SUBCHAPTER 3

RULEMAKING PROCEDURE

§15-30-21 Initiation of rulemaking procedure. (a) The adoption, amendment, or repeal of any rule of the development corporation may be made by the board on its own motion, or by petition of any interested person or agency.

(b) Petitions for rulemaking shall conform to the requirements of section 15-30-17 and shall contain:

(1) The name, address, and telephone number of each petitioner;
(2) The signature of each petitioner;
(3) A draft of the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired;
(4) A statement of the petitioner's interest in the subject matter; and
(5) A statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) Within thirty days after the filing of a petition for rulemaking, the board shall either deny the petition or initiate rulemaking proceedings. [Eff DEC 24 1984] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6)

§15-30-22 Denial of petition. Any petition that fails in any material respect to comply with this chapter or fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings shall not be considered by the board. The board shall notify the petitioner in writing of the denial, stating the reasons therefor. Denial of a petition shall not operate to prevent the board from acting, on its own motion, upon any matter disclosed in the petition. The petitioner may seek judicial

review of denial pursuant to chapter 91, HRS, and applicable rules of court. [Eff DEC 24 1984] (Auth: HRS §91-6) (Imp: HRS §91-6)

§15-30-23 Acceptance of petition. If the board determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rule making proceedings, the procedures to be followed shall be as set forth in this chapter and chapter 91, HRS. [Eff DEC 24 1984] (Auth: HRS §91-6) (Imp: HRS §91-6)

§15-30-24 Notice of public hearing. (a) Whenever, pursuant to a petition or upon its own motion, the board proposes to adopt, amend, or repeal any rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State. The notice shall also be mailed to all agencies or persons who have made timely written requests for advance notice of the development corporation's rulemaking proceedings. All notices shall be published at least twenty days prior to the date set for public hearing.

(b) A notice of the proposed adoption, amendment, or repeal of any rule shall include:

(1) A statement of the date, time, and place where the public hearing will be held;

(2) Reference to the authority under which the adoption, amendment, or repeal of the rule is proposed; and

(3) A statement of the substance of the proposed rulemaking.

(c) The public hearing shall be conducted in accordance with procedures of section 15-30-19. [Eff DEC 24 1984] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6, 92-41)

§15-30-25 Board action. The board shall consider all relevant comments and materials of record before taking final action in a rulemaking proceeding. Final action shall be taken within a reasonable amount of time following:

(1) The final public hearing; or

(2) The expiration of any extension period for submission of written comments or recommendations, whichever occurs later. [Eff DEC 24 1984] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6)

§15-30-26 Emergency rulemaking. The board may adopt emergency rules pursuant to section 91-3(b), HRS. [Eff DEC 24 1984] (Auth: HRS §91-2) (Imp: HRS §91-3)

SUBCHAPTER 4

CONTESTED CASES

§15-30-31 Contested case procedures and requirements. (a) Sections 91-9 to 91-13, HRS, shall be followed by the board in any contested case.

(b) A quorum of the board shall be required to hold a hearing on a contested case. [Eff DEC 24 1984] (Auth: HRS §§91-2, 206M) (Imp: HRS §§91-9 - 91-13)

STATE OF HAWAII
DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Chapter 30, of Title 15, State of Hawaii Department of Planning and Economic Development Administrative Rules, on the Summary Page dated September 26, 1984, was adopted on September 26, 1984, following a public hearing held on September 21, 1984, after public notice was given in the Honolulu Advertiser on September 1, 1984, and in the Honolulu Star Bulletin on September 1, 1984.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

K. Tim Yee, Chairperson
High Technology Development
Corporation Board of
Directors

APPROVED:

George R. Ariyoshi
Governor
State of Hawaii

Dated: Dec 8, 1989

APPROVED AS TO FORM:

Special Deputy Attorney General

Filed

RECD. BY

LIEUTENANT GOVERNOR'S OFFICE

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Adoption of Chapter 15-31
Hawaii Administrative Rules

January 24, 1987

SUMMARY

Chapter 15-31, Hawaii Administrative Rules, entitled "High Technology Development Corporation", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

SUBTITLE 6 HIGH TECHNOLOGY DEVELOPMENT CORPORATION

CHAPTER 31

GENERAL RULES REGARDING DEVELOPMENT

Subchapter 1 Rules of General Applicability

Subchapter 2 Development Proposals

Subchapter 3 Development Process

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

Sec. 15-31-1 Purpose. This chapter is adopted pursuant to chapter 91 HRS to implement chapter 206M HRS pertaining to the development of high technology enterprises in the State through the High Technology Development Corporation (hereinafter referred to as the development corporation) which has the authority to develop or to assist in the development of industrial parks for the location of high technology enterprises and to assist in the development and construction of facilities for high technology enterprises through the issuance of special purpose revenue bonds and through other means or assistance, including the establishment of rules pertaining to health, safety, building, planning, zoning and land use laws, ordinances, codes, or designations on its own behalf or for qualified persons. [Eff MAR 20 1987] (Auth: HRS Secs. 206M-3, 206M-5) (Imp: HRS Secs. 206M-3, 206M-5)

Sec. 15-31-2 Definitions. As used in this chapter, terms shall be as defined in section 206M-1, HRS, unless a different meaning clearly appears in the context. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-3 Objectives. The High Technology Development Corporation shall have the following general objectives:

(1) To promote high technology as a viable and desirable industry in the State;
(2) To develop industrial parks for the location of high technology enterprises and supporting commercial enterprises and activities;
(3) To assist high technology enterprises and supporting commercial enterprises and activities in connection with the construction and equipping of facilities;
(4) To issue special purpose revenue bonds to provide financing for the development, construction and equipping of industrial parks, high technology enterprises and supporting commercial enterprises and activities;
(5) To encourage high technology enterprises to locate in the State. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Secs. 206M-3)

Sec. 15-31-4 Office. The office of the development corporation is located at 220 South King Street, Central Pacific Plaza, Honolulu, Hawaii 96813. All communications to the development corporation shall be addressed to the above address or to post office box 2359, Honolulu, Hawaii 96804, unless otherwise specifically directed. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-5 Office hours. The office of the development corporation shall be open from 7:45 a.m. to 4:30 p.m. Monday through Friday, unless otherwise provided. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-6 Public records. All public records shall be available for inspection in the development corporation's office. Any request for public records in the custody and possession of the development office shall be in writing. Copies of such public records may be made upon payment of fees established by the board from time to time. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-7 Public information. The chief administrative officer may disseminate information about the development corporation so that the provisions of chapter 206M, HRS, may be understood and effectively implemented. [Eff MAR 2 : 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

SUBCHAPTER 2

DEVELOPMENT PROPOSALS

Sec. 15-31-11 Development by the development corporation. The development corporation may develop on its own or may provide financial and other assistance to qualified persons for the development of industrial parks and projects. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-12 Development by qualified persons. The development of industrial parks or projects initiated by qualified persons shall be processed in accordance with these rules. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-13 Initial proposal. Persons interested in seeking financial or other assistance from the development corporation for the development of an industrial park or project shall submit three initial proposals to the development corporation. Unless otherwise specified, the form of the initial proposal should be typewritten on 8 1/2 x 11 inch paper and shall be signed by the interested person under penalties of perjury. Exhibits to the initial proposal may be larger than 8 1/2 x 11 inches provided they are neatly submitted and identified. The initial proposal shall include the following information:

(1) The identity and address of the applicant and the principal members of the applicant;
(2) The expertise, experience and background of the applicant and principal members of the applicant in connection with the development and operation of an industrial park or project;

(3) Current certified financial statement of the applicant and of the principal members of the applicant who will be guaranteeing any of the financial obligations of the applicant;

(4) The location and description of the proposed industrial park or project and the names and addresses of all current legal or equitable owners of the land upon which such proposed industrial park or project will be situated. A description of current health, safety, building, planning, zoning and land use matters currently affecting the land;

(5) The development concept of the industrial park or project;

(6) The identity and addresses of the applicant's proposed development team;

(7) Market and feasibility studies and projections on the industrial park or project;

(8) The proposed sources of interim and permanent financing for the project and any financial assistance and other assistance, such as research, facilities, or health, safety, building, planning, zoning, and land use matters, which the development corporation will be requested to assist with or to take action upon;

(9) A statement of the community's position with regard to the proposed industrial park or project and how the industrial park or project will be integrated into the immediate surrounding area;

(10) Environmental concerns environmental assessment or environmental impact statement as deemed necessary;

(11) Other supporting exhibits and information, including preliminary cost estimates, feasibility studies, marketability studies, surveys, plans and specifications, maps, and the management and disposal of any hazardous wastes;

(12) The applicant's agreement with respect to the following matters:

(A) To pay all costs, expenses or liabilities which the development corporation incurs or becomes liable for in connection with the proposed

development of the industrial park or project, and, if required by the development corporation, to deposit funds in advance with the development corporation which the development corporation can use without restriction in connection with evaluating the development of the industrial park or project;

(B) To agree that the development corporation is not under any obligation to issue any commitment to the applicant nor is the development corporation liable to the applicant for any costs, expenses or other liability;

The development corporation may require that an industrial proposal fee be paid at the time that the initial proposal is submitted to cover the development corporation's cost for reviewing the industrial proposal.

Any item of information, which is not applicable, is not available, or has been estimated, should be identified as such. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-14 Evaluation and selection of initial proposals. (a) The development corporation shall time stamp initial proposals as they are received. The development corporation's staff shall review and analyze each initial proposal as to whether the initial proposal is potentially feasible in terms of appropriateness, technical compliance and feasibility, and availability of funds or other resources from the development corporation. The staff shall also analyze whether the initial proposal will best fulfill the intent of chapter 206M, HRS, and can meet minimum standards of health, safety, building, planning, zoning and land use matters. The staff may request that the applicant submit additional information to the development corporation. After reviewing an initial proposal, the development corporation staff shall make one the following recommendations to the chief executive officer:

(1) The initial proposal is potentially feasible;
(2) The initial proposal should be rejected;
(3) Action on the initial proposal should be deferred or referred for further review.

(b) The chief executive officer shall review the staff's recommendation and make a recommendation to the board. The chief executive officer is not bound by the staff's recommendation.

(c) The board will review and consider the chief executive officer's recommendation. Not later than ninety days after the last of any information which the applicant has submitted or has been requested to submit has been received by the development corporation, the board will inform the applicant of the board's decision. The board reserves the right to request the applicant to submit additional information. The board is not required to accept the chief executive officer's recommendation. Any applicant whose initial proposal is rejected by the board may reapply or resubmit to the development corporation the same or revised proposal. The resubmission shall occur within sixty days following the board's rejection of the initial proposal. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

SUBCHAPTER 3

DEVELOPMENT PROCESS

Sec. 15-31-20 Formal proposal. If the board determines that an initial proposal is potentially feasible, the board shall notify the applicant of such determination and shall request the applicant to file a formal proposal. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-21 Content of formal proposal. The formal proposal will contain all of the information contained in the initial proposal. In addition the formal proposal will contain plans, specifications and technical information relating to the development of the proposed industrial park or project. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: Sec. 206M-3)

Sec. 15-31-22 Updating formal proposal. The applicant shall be under a continuing duty to update the information which is submitted in the formal

proposal to the development corporation on its own and upon request by the development corporation. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-23 Processing formal proposal. After the applicant's formal proposal has been received, the development corporation staff will proceed to review and analyze the formal proposal and enter into negotiations with the applicant for a project agreement. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-24 Conditions, covenants, and restrictions. The use and operation of industrial parks and projects for high technology shall be monitored and enforced through a written agreement duly recorded with the bureau of conveyances between the qualified person and the development corporation. The agreement shall contain conditions, covenants, and restrictions governing the use and operation of the industrial park or project that are acceptable to the development corporation and provisions affording the development corporation to exercise any and all rights provided by law, including without limitation the assessment of fines and penalties with respect to any breach of any covenants, conditions, and restrictions by the qualified person or occupants of the park. The development corporation shall also have the right to bring an action at law or in equity, including seeking injunctive relief, for the purpose of enforcing its rights, under the project agreement and conditions, covenants and restrictions. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-25 Bonds. (a) As contained in section 206M-9, HRS, the development corporation may finance all or a part of the cost of developing, constructing and equipping a project or industrial park with loans, including construction and permanent loans, to qualified persons with funds raised through the issuance of bonds.

(1) If the development and construction of an industrial park, a project or a multi-project program is proposed to be

financed through the issuance of bonds, the development corporation shall submit to the governor of the State a request that bonds be issued.

(2) If the governor's approval is obtained, the request that bonds be issued for the industrial park, project or multi-project program shall be submitted to the legislature for its authority to issue bonds.

(b) As part of any request seeking the governor's approval and the legislature's authority to issue bonds to finance all or a part of the cost of developing, constructing or equipping an industrial park, the development corporation may also include a request for the governor's approval and the legislature's authorization to issue additional bonds, which the development corporation anticipates will be necessary and advisable for the purpose of having financing available to persons, who desire to finance the cost of developing, constructing and equipping all or a part of any project in the industrial park through bond financing and who will be applying for such financial assistance as a qualified person under these rules. The development corporation may issue such additional bonds in such principal amounts as the governor has approved and the legislature has authorized at such time or times as the development corporation deems necessary and advisable to finance all or part of the cost of any project in the industrial park. [Eff MAR 20 1981] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-26 Development rules. (a) The development corporation shall review the qualified person's development concept and shall adopt development rules in accordance with section 206M-5, HRS, to be followed during the course of the development of any industrial park, project or multi-project program:

(1) Whenever the proceeds of bonds are used to finance all or any part of the cost of an industrial park, project or multi-project program; or

(2) Upon the qualified person's request and upon the development corporation's determination that the adoption of development rules is

desirable and in furtherance of the purposes and objectives of the development corporation.

(b) From time to time if all or any portion of the land already meets or complies with health, safety, building, planning, zoning, and land use ordinances or rules of the county in which the industrial park, project or multi-project program is situated, designations of the use or uses shall follow those rules accordingly and be a part of the development rules for the industrial park. If any portion of the land does not meet or comply with health, safety, building, planning, zoning and land use codes or regulations of the county in which the industrial park, project or multi-project program is situated, the development corporation shall adopt development rules on health, safety, building, planning, zoning and land use which relate to the proposed development of the industrial park upon finding that the proposed industrial park is consistent with the purpose and intent of chapter 206M and meet minimum requirements of design, pleasant amenities, health, safety and coordinated development. The development rules shall be exempt from and shall supersede all inconsistent laws, ordinances and rules relating to the use, zoning, planning, and development of land. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-27 Initiation of development rulemaking. During the course of the development of any industrial park, the development corporation shall initiate development rulemaking proceedings in accordance with the provisions of Chapter 91 and section 206M-5, HRS. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-28 Rules. The rules shall define and establish matters relating to the health, safety, building, planning, zoning and land use, as applicable, and describe how such rules will apply to the industrial park. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-29 Notice. (a) Notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State and in each county affected by the proposed rule.

(b) The notice of proposed issuance, amendment or repeal of a rule shall include:

(1) A statement of the date, time, and place where the public hearing shall be held. The hearing shall be held at a time which is not less than twenty days but not more than forty-five days after the date the notice is first published;

(2) Reference to the authority under which the issuance, amendment or repeal or a rule is proposed;

(3) A statement of the substance of the proposed rulemaking;

(4) In the case of establishing development rules under section 206M-5, HRS, a statement of the time and place where information pertaining to the development of the industrial park or project may be inspected prior to the public hearing.

(c) A copy of the notice shall be given to the legislative body and to the planning department of the county in which the industrial park or project is situated, to adjoining landowners and to any person having an interest in the property upon which the proposed industrial park, project or multi-project program is situated.

(d) The development corporation may require more than one publication of notice or proposed rulemaking in a newspaper of general circulation.

[Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-30 Time and place. Hearings shall be held at the time and place set in the notice of hearing, but may at that time and place be continued by the board from day to day or adjourn to a later date or to a different place without notice other than the announcement at the hearing. Where the proposed rulemaking affects only one county, the public hearing will be held in that county. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-31 Conduct of rulemaking hearings. (a) Each hearing shall be presided over by the chairperson of the board or by its designated representative. The hearing shall be conducted in such a way as to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) At the commencement of the hearing, the presiding officer shall read the pertinent portions of the notice of the hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in the order the presiding officer shall prescribe.

(c) All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness may, before proceeding to testify, be sworn, and may be required thereafter to state the witness' name, address, and whom the witness represents at the hearing, and give any other information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any other representatives of the board, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it.

(d) All interested persons or agencies of the State or its political subdivisions shall be afforded an opportunity to submit data, views or arguments which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the board within fifteen days following the close of public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. Persons designated by the presiding officer shall be furnished with copies of any written protest or other comments or recommendations, and they shall be afforded a reasonable time within which to file their comments in reply to the original protest, comments, or

recommendations. Written protest, comments, or recommendations or replies thereto shall not be accepted unless an original and ten copies (or lesser number of copies as may be specifically agreed to by the presiding officer) are filed. The period for filing written protest, comments, or recommendations may be extended by the presiding officer for good cause.

(e) Unless otherwise specifically ordered by the board or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of the required number of copies impracticable and reduces the number, eleven copies of the exhibits shall be submitted.

(f) At the close of the final public hearing, the board shall announce the date when its decision shall be announced, or the board may, if it so desires, make the decision at the public hearing. The board shall consider all relevant comments and material of record before taking final action in a rulemaking proceeding.

(g) The board shall adopt the development rules as is or with modifications and direct the chief executive officer to implement such development rules. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-32 Emergency rulemaking. Notwithstanding sections 15-31-1 to 15-31-31, if the board finds that an imminent peril to public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reason for the finding, it may proceed without prior notice or hearing or upon an abbreviated notice and hearing to adopt an emergency rule to be effective for a period not longer than one-hundred and ten days without renewal. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-33 Petitions for adoption, amendment, or repeal of rules. (a) Any interested person or any

agency of the State or county government may petition the board for the issuance, amendment, modification, or repeal of any rule which is designed to implement, interpret, or prescribed by law, policy, organization, procedure, or practice requirement of the board.

(b) Petitions for rulemaking shall set forth the text of any proposed rule or amendment desired or specifying the rule the repeal of which is desired and stating concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the issuance, amendment, or repeal of the rule and shall include any facts, views, arguments, and data deemed relevant by petitioner. The board may require the petitioner to adequately and properly notify persons or governmental agencies known to be interested in the proposed rulemaking of the existence of the filed petition. No request for the issuance, amendment, modification, or repeal of a rule which does not conform to the requirements set forth above shall be considered by the board. Where the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in material respect to comply with the requirements of these rules, the petitioner shall be so notified together with the grounds for the denial. The provisions of this section shall not operate to prevent the board, on its own motion, from acting on any matter disclosed in any petition. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3).

SUBCHAPTER 4

MISCELLANEOUS

Sec. 15-31-40 Severability. If any part, section, sentence, clause, or phrase of these rules, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of these rules, or the application of these rules to other persons or transactions or circumstances shall not be affected. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Sec. 206M-3)

Sec. 15-31-41 Compliance with laws. The board may waive any provision of these rules to comply with applicable federal or state laws, ordinances, etc., which have not been preempted. [Eff MAR 20 1987] (Auth: HRS Sec. 206M-3) (Imp: HRS Secs. 206M-4 and 206M-5)

STATE OF HAWAII
DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Chapter 15-31, Hawaii Administrative Rules, on the Summary Page dated January 24, 1987, was adopted on January 24, 1987, following a public hearing held on November 24, 1986, after public notice was given in the Honolulu Advertiser on November 3, 1986, and in the Honolulu Star Bulletin on November 3, 1986.

This chapter shall take effect ten days after filing with the Office of the Lieutenant Governor.

K. Tim Yee, Chairperson
High Technology Development
Corporation Board of
Director

APPROVED:

John Waihee
Governor
State of Hawaii

Dated: MAR 09 1987

APPROVED AS TO FORM:

Deputy Attorney General

Filed

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

SUBTITLE 6

HAWAII TECHNOLOGY DEVELOPMENT CORPORATION

CHAPTER 32

HAWAII SMALL BUSINESS INNOVATION RESEARCH AND SMALL BUSINESS TECHNOLOGY TRANSFER GRANT PROGRAM

Subchapter 1 Rules of General Applicability

Subchapter 2 Eligibility and Selection Process

Subchapter 3 Inspection and Completion

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Amendment and Compilation of Chapter 15-32
Hawaii Administrative Rules

November 1, 2018

SUMMARY

1. Subtitle is amended

2. §§15-32-2 is amended.

3. §§15-32-8 is amended.

4. Chapter 32 is compiled.

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-32-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Hawaii small business innovation research and small business technology transfer grant program authorized by chapter 206M, HRS. [Eff 12/21/89; am and comp 12/13/12; comp 3/11/16; comp FEB 03 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-2 Definitions. As used in this chapter, unless a different meaning clearly appears in context:

"Board" means the board of directors of the development corporation.

"Development corporation" means the Hawaii technology development corporation established by chapter 206M, HRS.

"Grant" means financial assistance provided to SBIR and STTR awardees and applicants under the terms and conditions provided in this chapter.

"Hawaii Small Business Innovation Research and Small Business Technology Transfer Grant Program" means the programs administered by the development corporation to encourage participation by Hawaii companies in the federal SBIR and STTR programs.

"HRS" means the Hawaii Revised Statutes.

"Recipient" means any business receiving a grant under this chapter.

"SBIR" means Small Business Innovation Research.

"SBIR phase I award" means an award or contract granted by an agency of the federal government for preliminary investigation under the Small Business Innovation Research Program.

"SBIR phase II award" means an award or contract granted by an agency of the federal government for further investigation of selected SBIR phase I projects.

"SBIR phase III award" means an award or contract funded by the private sector or government source outside of the SBIR program, for the small business to pursue commercialization objectives resulting from SBIR phase I or phase II research and development activities.

"State" means the State of Hawaii.

"STTR" means Small Business Technology Transfer.

"STTR phase I award" means an award or contract granted by an agency of the federal government for preliminary investigation under the Small Business Technology Transfer Program.

"STTR phase II award" means an award or contract granted by an agency of the federal government for further investigation of selected STTR phase I projects.

"STTR phase III award" means an award or contract funded by the private sector or government source outside of the SBIR program, for the small business to pursue commercialization objectives resulting from STTR phase I or phase II research and development activities. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; am and comp FEB 03 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-3 Purpose of program. The purpose of the Hawaii small business innovation research and small business technology transfer grant program is to provide funds to complement federal SBIR and STTR awards to increase the competitiveness of small businesses in Hawaii and to enhance their prospects for bringing subsequent SBIR and STTR awards of federal funds into the State, including awards that assist the businesses in surpassing the research and development level and transforming their research into innovative and commercial products and services. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; comp FEB 03 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-4 Grants; purpose; use of. (a) The development corporation may provide grants in accordance with section 206M-15, HRS.

(b) Grants may be used by any recipient for any of the following purposes:

(1) To purchase equipment or services, augment staff to add expertise required to expedite or enhance the quality of the SBIR or STTR program work, prepare an SBIR or STTR program proposal, or prepare for subsequent SBIR or STTR program activities;

(2) To establish financial responsibility and to undertake the approved SBIR or STTR program work while awaiting funding from the federal agency granting the SBIR or STTR award; or

(3) To serve as a "bridge" to permit the recipient to continue its operations during the time period between the completion of the SBIR or STTR award submission and receipt of subsequent SBIR or STTR award funds.

(c) Grants shall not be used by any recipient for any of the following purposes:

(1) Where the direct or indirect purpose or result of the grant would be to:
  (A) Repay a creditor or creditors of the recipient for any reason; or
  (B) Provide funds directly or indirectly as a loan to owners, partners, or shareholders of the recipient;
(2) Effect a change in ownership of the recipient;
(3) Provide or free funds for acquisition of any kind of real property;
(4) Entertainment or lobbying activities; or
(5) Payment for goods or services for which moneys were granted under the manufacturing development program pursuant to section 206M-15.1, HRS, or the alternative energy research and development program pursuant to Act 67, Session Laws of Hawaii 2018. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; am and comp FEB 03 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

SUBCHAPTER 2

ELIGIBILITY AND SELECTION PROCESS

§15-32-5 Eligibility requirements. Any business applying for a grant shall meet all of the following qualifications:

(1) Either:
  (A) Receive an SBIR or STTR phase I, phase II, or phase III award and furnish appropriate documentation as determined by the development corporation that the award has been made; or
  (B) Apply for an SBIR or STTR federal grant and furnish appropriate documentation as determined by the development corporation that the application has been made;
(2) Conduct the SBIR or STTR phase I program activities and any related SBIR or STTR phase II program activities in the State. The SBIR or STTR program activities must be in progress at some time during the calendar year in which the grant is awarded;
(3) Agree that if selected for an SBIR or STTR Phase II award, it will continue to perform the program activities in the State, and that if selected for an SBIR or STTR Phase III award, it will maintain its principal place of business and conduct a substantial portion of its operations in the State;
(4) Either be incorporated under the laws of the State, or be registered

to do business in the State;

(5) Has bylaws or policies that describe the manner in which the activities or services for which the grant is awarded shall be conducted or provided;

(6) Be licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant is awarded;

(7) Comply with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability; and

(8) Allow the development corporation, legislative committees and their staff, and the auditor full access to its records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditures of the grant. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; comp FEB 03 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-6 Application procedure. Any business applying for a grant shall, as applicable, either:

(1) Upon receipt of notification by the awarding federal agency that an SBIR or STTR phase I, phase II, or phase III award has been approved and funded, forward a copy of the accepted proposal and a copy of the notification of award to the chief executive officer of the development corporation as part of the application; or

(2) Forward a copy of its application for an SBIR or STTR federal award and a copy of the federal agency's acknowledgment of receipt of a completed application to the chief executive officer of the development corporation as part of the application. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; comp FEB 03 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-7 Consideration and review of applications. (a) The development corporation shall cause the review of the application and resolution of any questions relating to the application through contact with the grant applicant.

(b) Following such review and resolution, the board shall consider and make a decision on qualified applications. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; comp FEB 0 3 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-8 Preferences and priorities in awarding grants. (a) If available funds are insufficient to award all qualified applicants, preference shall be given to:

(1) Qualified businesses that have received their first federal SBIR or STTR award;

(2) Qualified businesses receiving their first award from the development corporation in the current fiscal year over multiple award grantees; and

(3) Qualified businesses that have completed an I-Corps or SBIR Commercialization Assistance Program.

(b) The development corporation shall not grant more than one Phase II or Phase III award to any business in a fiscal year unless funding remains available in the last quarter of the fiscal year.

(c) The development corporation shall be guided by the nature and economic significance of the innovation and research activity of each grant application, the importance of the grant to the activity's success, and the potential economic advantage or job creation prospects offered to the State in determining the distribution of funds. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; am and comp FEB 0 3 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-9 Maximum grant amount; disbursement. (a) Maximum grant amounts shall be in accordance with section 206M-15, HRS, and shall not exceed $500,000 per award.

(b) For awards greater than $150,000 the grant amount shall be disbursed as payments based on milestones approved by the chief executive officer of the development corporation. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; comp FEB 0 3 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

SUBCHAPTER 3

INSPECTION AND COMPLETION

§15-32-10 Inspection of premises and records. The development corporation shall have the right to inspect at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any grant applicant either in the processing of the grant application or in the administration of the grant to the recipient. [Eff 12/21/89; am and comp 12/13/12; comp 3/11/16; comp FEB 0 3 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-11 Completion of research activities. (a) Upon completion of the SBIR or STTR program activities, recipients shall forward to the development corporation a copy of the transmittal letter that forwarded the completed report to the federal agency.

(b) Recipients shall complete surveys from the development corporation designed to measure the economic impact of the SBIR or STTR program and to assist the National Institute of Standards and Technology's Manufacturing Extension Partnership program. Recipients shall complete the surveys annually during the term of their SBIR or STTR program activities and for five years following the completion of their program activities.

(c) The development corporation may request recipients to provide information regarding issues encountered with the Hawaii small business innovation research and small business technology transfer grant program and recommendations for its improvement. [Eff 12/21/89; am and comp 12/13/12; am and comp 3/11/16; comp FEB 0 3 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

§15-32-12 Acknowledgment. Recipients shall acknowledge the development corporation in a proper and appropriate manner as a funder in all promotional publications, press releases, and other informational materials relating to the recipient's SBIR and STTR awards for a period of two years following award. Recipients shall provide such materials to the development corporation prior to their release to the public. [Eff and comp 3/11/16; comp FEB 0 3 2019] (Auth: HRS §206M-15) (Imp: HRS §206M-15)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Amendments to and compilation of chapter 32, Title 15, Hawaii Administrative Rules, on the Summary Page dated November 1, 2018 were adopted on November 1, 2018 following a public hearing held on October 30, 2018, after public notice was given in Star Advertiser, West Hawaii Today, The Garden Island, Hawaii Tribune Herald, and the Maui News on September 28, 2018.

They shall take effect ten days after filing with the office of the Lieutenant Governor.

DEREK LAU
Chair, Hawaii Technology Development Corporation, Board of Directors

LUIS P. SALAVERIA
Director, Department of Business, Economic Development, and Tourism

APPROVED:

DAVID Y. IGE
Governor, State of Hawaii

Dated: 01-23-2019

Filed

APPROVED AS TO FORM:

Deputy Attorney General

'19 JAN 24 A8:53

LIEUTENANT GOVERNOR'S OFFICE

B317

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Adoption of Chapter 15-33
Hawaii Administrative Rules

January 7, 2016

SUMMARY

Chapter 15-33, Hawaii Administrative Rules, entitled "Hawaii Manufacturing Development Program" is adopted.

3173

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

SUBTITLE 6

HIGH TECHNOLOGY DEVELOPMENT CORPORATION

CHAPTER 33

HAWAII MANUFACTURING DEVELOPMENT PROGRAM

Subchapter 1 Rules of General Applicability

Subchapter 2 Eligibility and Selection Process

Subchapter 3 Inspection and Completion

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-33-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Hawaii manufacturing development program authorized by chapter 206M, HRS. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-2 Definitions. As used in this chapter, unless a different meaning clearly appears in context:

"Board" means the board of directors of the development corporation.

"Development corporation" means the high technology development corporation established by chapter 206M, HRS.

"Grant" means financial assistance provided to manufacturers in the State of Hawaii under the terms and conditions provided in this chapter.

"HRS" means the Hawaii Revised Statutes.

"Manufacturer" means a business categorized as a manufacturer, including primary, secondary, or tertiary codes, as defined by the federal North American Industry Classification System (NAICS) codes 31, 32, and 33;

"Manufacturing equipment" means equipment integral to the manufacturing process.

"Recipient" means any business receiving a grant under this chapter.

"State" means the State of Hawaii. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-3 Purpose of program. The purpose of the Hawaii manufacturing development program is to provide grants to businesses in Hawaii that are manufacturers in the State and require assistance for specific activities related to manufacturing that shall result in economic and employment growth in Hawaii. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-4 Grants; purpose; use of. (a) The development corporation may provide grants in accordance with section 206M-15.1, HRS.

(b) Grants may be used by any recipient for any of the following purposes:

(1) Purchase of manufacturing equipment;
(2) Training of employees on the use of manufacturing equipment;
(3) Improving existing energy efficiency manufacturing equipment or the purchase of improved energy efficiency equipment in the manufacturing process; or
(4) Studying or planning the implementation of a new manufacturing facility.

(c) Grants shall not be used by any recipient for any of the following purposes:

(1) Travel that is not directly related to, and necessary for, the purposes set forth in subsection (b);
(2) Expenses related to general operations of the manufacturing facility;
(3) Wage, compensation, or allowance for employees of the business;
(4) Effect a change in ownership of the recipient;
(5) Provide or free up funds for acquisition of any kind of real property;
(6) Entertainment or lobbying activities; or
(7) Payment for goods or services for which moneys were granted under the Hawaii small business innovation research and small business technology transfer program pursuant to section 206M-15, HRS, or the alternative energy research and development program pursuant to Act 159, Session Laws of Hawaii 2015.

[Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

SUBCHAPTER 2

ELIGIBILITY AND SELECTION PROCESS

§15-33-5 Eligibility requirements. (a) Any business applying for a grant shall meet all of the following qualifications:

(1) Conducts manufacturing activities in the State;
(2) Is categorized as a manufacturer as defined by the federal North American Industry Classification System (NAICS) codes 31, 32, and 33;
(3) Agrees that if selected for an award for manufacturing equipment,

it will own and operate the equipment in the State for a minimum of two years;

(4) Can demonstrate financial viability of the business and the ability to cover the balance of the cost of the good or service for which the business is applying for a grant;

(5) Is either incorporated under the laws of the State, or registered to do business in the State;

(6) Has bylaws or policies that describe the manner in which the activities or services for which the grant is awarded shall be conducted or provided;

(7) Is licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant is awarded;

(8) Complies with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability; and

(9) Allows the development corporation, legislative committees and their staff, and the auditor full access to its records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditures of the grant.

(b) The minimum grant application amount that will be considered is $1,500. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-6 Grant procedure. Any business applying for a grant shall provide prior to the receipt of any award funds, as applicable:

(1) A Dun and Bradstreet number;

(2) For the purchase of new manufacturing equipment – cost justification, proof of purchase, and financing documentation;

(3) For the purchase of used manufacturing equipment – cost justification, proof of purchase, and financing documentation;

(4) For the training of employees on the use of manufacturing equipment – cost justification, training curriculum details, hours, number of employees, third party instructor biography, resume, or curriculum vitae, and proof of purchase;

(5) For the improvement of existing energy efficiency manufacturing equipment or the purchase of improved energy efficiency equipment in the manufacturing process – cost justification, analysis from a third party consultant proving the foregoing, and proof of purchase; or

(6) For studying or planning the implementation of a new manufacturing facility – cost justification, contract for services of third party consultant, and proof of purchase. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-7 Consideration and review of applications. (a) The development corporation shall cause the review of the application and resolution of any questions relating to the application through contact with the grant applicant.

(b) Following such review and resolution, the board shall consider and make a decision on qualified applications. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-8 Preferences and priorities in making grants. (a) In determining the distribution of funds, the development corporation shall be guided by the nature and economic significance of the activity of each grant application, the importance of the grant to the activity's success, and the potential economic advantage or job creation prospects offered to the State.

(b) Preference shall be given to businesses receiving their first manufacturing development program award.

(c) The development corporation shall not grant more than one manufacturing development program award to any business in a fiscal year. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

SUBCHAPTER 3

INSPECTION AND COMPLETION

§15-33-9 Inspection of premises and records. The development corporation shall have the right to inspect at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any grant applicant either in the processing of the grant application or in the administration of the grant to the recipient. [Eff MAR 11 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-10 Completion of surveys. (a) Recipients shall complete surveys from the development corporation designed to measure the economic and employment impact of this program and to assist the National Institute of Standards and Technology's Manufacturing Extension Partnership program. Recipients shall complete the surveys annually for five years following the award.

(b) The development corporation may request recipients to provide information regarding issues encountered with the manufacturing development program and recommendations for its improvement. [Eff MAR 1 1 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

§15-33-11 Acknowledgment. Recipients shall acknowledge the development corporation in a proper and appropriate manner as a funder in all promotional publications, press releases, and other informational materials relating to the recipient's award for a period of two years following the award. Recipients shall provide such materials to the development corporation prior to their release to the public. [Eff MAR 1 1 2016] (Auth: HRS §206M-3) (Imp: HRS §206M-15.1)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Chapter 33, Title 15, Hawaii Administrative Rules, on the Summary Page dated January 7, 2016 were adopted on January 7, 2016 following a public hearing held on January 5, 2016, after public notice was given in the Star Advertiser, West Hawaii Today, The Garden Island, Hawaii Tribune Herald and the Maui News on December 3, 2015.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

RACE RANDLE, Chair
High Technology Development Corporation

LUIS P. SALAVERIA
Director, Department of Business, Economic Development, and Tourism

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Dated: FEB 25 2016

APPROVED AS TO FORM:

Deputy Attorney General

Filed

LIEUTENANT GOVERNOR'S OFFICE
'16 FEB 30 A8:43

3173

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

SUBTITLE 6

HAWAII TECHNOLOGY DEVELOPMENT CORPORATION

CHAPTER 34

ALTERNATIVE ENERGY RESEARCH AND DEVELOPMENT PROGRAM

Subchapter 1 Rules of General Applicability

Subchapter 2 Eligibility and Selection Process

Subchapter 3 Inspection and Completion

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Amendments and compilation of Chapter 15-34
Hawaii Administrative Rules

November 1, 2018

SUMMARY

1. Subtitle amended.

2. §§15-34-1 is amended.

3. §§15-34-4 to 15-34-6 are amended.

4. §§15-34-8 and 15-34-9 are amended.

5. Chapter 15-34 is compiled.

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-34-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the alternative energy research and development program authorized by Act 67, Session Laws of Hawaii 2018. [Eff 3/11/16; am and comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-2 Definitions. As used in this chapter, unless a different meaning clearly appears in context:

"Board" means the board of directors of the development corporation.

"Development corporation" means the Hawaii technology development corporation established by chapter 206M, HRS.

"Grant" means financial assistance provided to qualified companies in the State of Hawaii conducting research of alternative energy and energy efficiency technologies in the fields of geothermal, solar, wind, ocean power, hydrodynamics, bioenergy, biomass, solid waste, smart grids, transportation, or demand response, evidenced by a contract from the United States Department of Defense Office of Naval Research, under the terms and conditions provided in this chapter.

"HRS" means the Hawaii Revised Statutes.

"Recipient" means any business receiving a grant under this chapter.

"State" means the State of Hawaii. [Eff 3/11/16; comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-3 Purpose of program. The purpose of the alternative energy research and development program is to provide grants to businesses that are developing clean energy solutions in Hawaii with a high technology readiness level or high potential for implementation as evidenced by an award of a competitive contract from the United States Department of Defense Office of Naval Research. [Eff 3/11/16; comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-4 Grants; purpose; use of. (a) The development corporation may provide grants in accordance with Act 67, Session Laws of Hawaii 2018.

(b) Grants may be used by any recipient to purchase equipment or services, augment staff to add expertise required to expedite or enhance the quality of the program work, or prepare for subsequent program activities leading to commercialization of the technology.

(c) Grants shall not be used by any recipient for any of the following purposes:

(1) Where the direct or indirect purpose or result of the grant would be to:
   (A) Repay a creditor or creditors of the recipient for any reason; or
   (B) Provide funds directly or indirectly as a loan to owners, partners, or shareholders of the recipient;
(2) Effect a change in ownership of the recipient;
(3) Provide or free up funds for acquisition of any kind of real property;
(4) Entertainment or lobbying activities; or
(5) Payment for goods or services for which moneys were granted under the Hawaii small business innovation research and small business technology transfer program pursuant to section 206M-15, HRS, or the manufacturing development program pursuant to section 206M-15.1, HRS. [Eff 3/11/16; am and comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

SUBCHAPTER 2

ELIGIBILITY AND SELECTION PROCESS

§15-34-5 Eligibility requirements. Any business applying for a grant shall meet all of the following qualifications:

(1) Has been awarded a competitive contract from the United States Department of Defense Office of Naval Research related to the research of alternative energy and energy efficiency technologies in the fields of geothermal, solar, wind, ocean power, hydrodynamics, bioenergy, biomass, solid waste, smart grids, transportation, or demand response;

(2) Is sixty per cent or more resident-owned. For purposes of this section, "resident" shall have the same meaning as defined in section 235-1, HRS;
(3) Is a for-profit entity organized under the laws of the State;
(4) Has been doing business in the State for a minimum of one year;
(5) Agrees to expend all grant funds awarded under the alternative energy research and development program in the State;
(6) Conducts research in alternative energy that has a high technology readiness level or high potential for implementation as evidenced by a contract, funded by moneys designated by the United States Congress as funding for alternative energy and a national defense budget funding directive, with the United States Department of Defense Office of Naval Research that is active or was awarded after July 1, 2015;
(7) Has not obtained any other State grant for the same research at the time of or during the duration of the alternative energy research and development program grant;
(8) Has bylaws or policies that describe the manner in which the activities or services for which the grant is awarded shall be conducted or provided;
(9) Is licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant is awarded;
(10) Complies with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability; and
(11) Allows the development corporation, legislative committees and their staff, and the auditor full access to its records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditures of the grant. [Eff 3/11/16; am and comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-6 Application procedure. Any business applying for a grant shall provide as part of the application a copy of a contract awarded to the applicant by the United States Department of Defense Office of Naval Research relating to the research of alternative energy and energy efficiency technologies in

the fields of geothermal, solar, wind, ocean power, hydrodynamics, bioenergy, biomass, solid waste, smart grids, transportation, or demand response. The contract, or accompanying documentation, shall show that it is existing and active or was awarded after July 1, 2015, and that it was awarded by competitive means. [Eff 3/11/16; am and comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-7 Consideration and review of applications. (a) The development corporation shall cause the review of the application and resolution of any questions relating to the application through contact with the grant applicant.

(b) Following such review and resolution, the board shall consider and make a decision on qualified applications. [Eff 3/11/16; comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-8 Preferences and priorities in awarding grants. (a) In determining the distribution of funds, the development corporation shall be guided by the nature and significance of the activity of each grant application in relation to the research and development of renewable energy in the State, the importance of the grant to the activity's success, and the potential economic advantage or job creation prospects offered to the State.

(b) Preference shall be given to qualified businesses receiving their first alternative energy research and development program award.

(c) The development corporation shall not grant more than one award to any business in a fiscal year unless funding remains available in the last quarter of the fiscal year. [Eff 3/11/16; am and comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-9 Maximum grant amount; disbursement. (a) Maximum grant amounts shall not exceed $500,000 or fifty per cent of the amount of the grant awarded to the business by the United States Department of Defense Office of Naval Research, whichever is less.

(b) For awards greater than $150,000, the grant amount shall be disbursed as payments based on milestones approved by the chief executive officer of the

development corporation. [Eff 3/11/16; am and comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

SUBCHAPTER 3

INSPECTION AND COMPLETION

§15-34-10 Inspection of premises and records. The development corporation shall have the right to inspect at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any grant applicant either in the processing of the grant application or in the administration of the grant to the recipient. [Eff 3/11/16; comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-11 Completion of surveys. (a) Recipients shall complete surveys from the development corporation designed to measure the renewable energy, economic, and employment impact of this program and, as applicable, to assist the National Institute of Standards and Technology's Manufacturing Extension Partnership program. Recipients shall complete the surveys annually for five years following the award.

(b) The development corporation may request recipients to provide information regarding issues encountered with the alternative energy research and development program and recommendations for its improvement. [Eff 3/11/16; comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

§15-34-12 Acknowledgment. Recipients shall acknowledge the development corporation in a proper and appropriate manner as a funder in all promotional publications, press releases, and other informational materials relating to the recipient's award for a period of two years following the award. Recipients shall provide such materials to the development corporation prior to their release to the public. [Eff 3/11/16; comp] (Auth: Act 67, SLH 2018) (Imp: Act 67, SLH 2018)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Amendments to and compilation of chapter 34, Title 15, Hawaii Administrative Rules, on the Summary Page dated November 1, 2018 were adopted on November 1, 2018 following a public hearing held on October 30, 2018, after public notice was given in the Star Advertiser, West Hawaii Today, The Garden Island, Hawaii Tribune Herald, and the Maui News on September 28, 2018.

They shall take effect ten days after filing with the office of the Lieutenant Governor.

_____
DEREK LAU
Chair, Hawaii Technology Development Corporation, Board of Directors

_____
LUIS P. SALAVERIA
Director, Department of Business, Economic Development, and Tourism

APPROVED:

_____
DAVID Y. IGE
Governor, State of Hawaii

Dated: _____

_____
Filed

APPROVED AS TO FORM:

_____
Deputy Attorney General

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

SUBTITLE 6

HAWAII TECHNOLOGY DEVELOPMENT CORPORATION

CHAPTER 38

HAWAII RESEARCH AND DEVELOPMENT PROGRAM

Subchapter 1 Rules of General Applicability

Subchapter 2 Eligibility and Selection Process

Subchapter 3 Inspection and Completion

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Adoption of Chapter 15-38
Hawaii Administrative Rules

March 7, 2019

SUMMARY

Chapter 15-38, Hawaii Administrative Rules, entitled "Hawaii Research and Development Program", is adopted.

3338

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-38-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Hawaii research and development program authorized by chapter 206M, HRS. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-2 Definitions. As used in this chapter, unless a different meaning clearly appears in context:

"Board" means the board of directors of the development corporation.

"Development corporation" means the Hawaii technology development corporation established by chapter 206M, HRS.

"Grant" means financial assistance provided to small businesses for optimizing research and development activities performed in the State of Hawaii under the terms and conditions provided in this chapter.

"Hawaii-based small business" shall have the same meaning as in section 206M-15.2(f) HRS.

"HRS" means the Hawaii Revised Statutes.

"Recipient" means any business receiving a grant under this chapter.

"Resident" shall have the same meaning as in section 235-1, HRS.

"State" means the State of Hawaii. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-3 Purpose of program. The purpose of the Hawaii research and development program is to build on the successes of Hawaii's science and technology industries and turn research and development into commercially viable products and services to expand and diversify Hawaii's economy. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-4 Grants; purpose; use of. (a) The development corporation may provide grants in accordance with section 206M-15.2, HRS.

(b) Grants may be used by any recipient for product development that

enables a qualified Hawaii-based small business to achieve significant product development and technical milestones.

(c) Grants shall not be used by any recipient for any of the following purposes:

(1) Entertainment or lobbying activities; or

(2) Payment for goods or services for which moneys were granted under the Hawaii small business innovation research and small business technology transfer program pursuant to section 206M-15, HRS, the alternative energy research and development program pursuant to Act 67, Session Laws of Hawaii 2018, or the manufacturing development program pursuant to section 206M-15.1, HRS. [Eff] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

SUBCHAPTER 2

ELIGIBILITY AND SELECTION PROCESS

§15-38-5 Eligibility requirements. (a) Any business applying for a grant shall meet all of the following qualifications:

(1) Headquartered in the State;

(2) Doing business in the State for not less than five years;

(3) Employing fifteen or more residents with income subject to taxation pursuant to chapter 235, HRS;

(4) Can demonstrate financial viability of the business;

(5) Is either incorporated under the laws of the State, or registered to do business in the State;

(6) Has bylaws or policies that describe the manner in which the activities or services for which the grant is awarded shall be conducted or provided;

(7) Is licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant is awarded;

(8) Complies with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability; and

(9) Allows the development corporation, legislative committees and

their staff, and the auditor full access to its records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditures of the grant.

(b) The business shall be eligible to receive a grant in an amount up to the average of the federal tax credit received for the prior three tax years; [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-6 Application procedure. Any business applying for a grant shall provide as part of the application, copies of the small business Internal Revenue Service Form 6765 Credit for Increasing Research Activities as filed for the past three tax years as proof of the federal research and development tax credits received. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-7 Consideration and review of applications. (a) The development corporation shall cause the review of the application and resolution of any questions relating to the application through contact with the grant applicant.

(b) Following such review and resolution, the board shall consider and make a decision on qualified applications. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-8 Preferences and priorities in making grants. (a) In determining the distribution of funds, the development corporation shall be guided by the nature and economic significance of the activity of each grant application, the importance of the grant to the activity's success, and the potential economic advantage or job creation prospects offered to the State.

(b) Preference shall be given to businesses receiving their first research and development program award.

(c) Preference shall be given to businesses that agree to not claim the Hawaii tax credit for research activities for the same year that a Hawaii research and development program grant is awarded. [Eff AUG 17 2019] (Auth: HRS §206M-) (Imp: HRS §206M-15.2)

§15-38-9 Maximum grant amount; disbursement. (a) Maximum grant amounts shall not exceed $300,000 or the average of the federal tax credit received for the prior three tax years, whichever is less.

(b) For awards greater than $150,000, the grant amount shall be disbursed as payments based on milestones approved by the chief executive officer of the development corporation. [Eff] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

SUBCHAPTER 3

INSPECTION AND COMPLETION

§15-38-10 Inspection of premises and records. The development corporation shall have the right to inspect at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any grant applicant either in the processing of the grant application or in the administration of the grant to the recipient. [Eff] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-11 Completion of surveys. (a) Recipients shall complete surveys from the development corporation designed to measure the economic and employment impact of this program. The awardees names will be made public in an annual report provided to the legislature. Recipients shall complete the surveys annually for five years following the award.

(b) The development corporation may request recipients to provide information regarding issues encountered with the research and development program and recommendations for its improvement. [Eff] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-12 Acknowledgment. Recipients shall acknowledge the development corporation in a proper and appropriate manner as a funder in all promotional publications, press releases, and other informational materials relating to the recipient's award for a period of two years following the award.

Recipients shall provide such materials to the development corporation prior to their release to the public." [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Chapter 15-38, Hawaii Administrative Rules, on the Summary Page dated March 7, 2019 was adopted on March 7, 2019 following a public hearing held on January 22, 2019, after public notice was given in the Star Advertiser, West Hawaii Today, The Garden Island, Hawaii Tribune Herald, and the Maui News on December 19, 2018.

The adoption of chapter 15-38 shall take effect ten days after filing with the office of the Lieutenant Governor.

DEREK LAU
Chair, Hawaii Technology Development Corporation, Board of Directors

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

APPROVED:

DAVID Y. IGE
Governor, State of Hawaii

Dated: 08-07-2019

APPROVED AS TO FORM:

Deputy Attorney General

Filed

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LIEUTENANT GOVERNOR'S OFFICE

3338