

County of Hawai`i

Hawai'i County Workforce Investment Board

Rules of Practice and Procedure

February 22, 2005

RULES AND REGULATIONS OF THE
WORKFORCE INVESTMENT ACT (1998) PROGRAM
COUNTY OF HAWAI'I

RULE 1. GENERAL RULES

A. Purpose.

The Board is created to implement the Workforce Investment program as adopted by the Council pursuant to the Ordinance 00-43 and the Workforce Investment Act of 1998, United States Public Law 105-220-August 7, 1998 (112 Stat. 936) and 20 Code of Federal Regulations part 652 and parts 660.

B. Definitions.

Whatever used in these rules and regulations, the following terms shall be taken to have the following meaning:

1. "Charter" shall mean the Charter of the County of Hawai'i, State of Hawai'i.
2. "Council" shall mean the County Council of the County of Hawai'i, State of Hawai'i.
3. "Department" shall mean the Office of Housing and Community Development, County of Hawai'i, State of Hawai'i, the administrative agency supporting the HCWIB.
4. "Chairperson" shall mean the Chairperson of the HCWIB.

5. “Employees” shall mean personnel employed by the Department.
6. “Mayor” shall mean the Mayor of the County of Hawai’i, State of Hawai’i.
7. “Board” shall mean the Hawaii County Workforce Investment Board, created pursuant to County of Hawai’i Ordinance 00-43 and certified by the Governor of the State of Hawai’i.
8. “Members” shall mean members of the Board or Youth Council duly appointed by the Mayor, and shall include representatives of government agencies, education, labor and businesses pursuant to the Act.
9. “State” shall mean the State of Hawai’i.
10. “Department of Labor and Industrial Relations” or DLIR shall mean the Department of Labor and Industrial Relations, State of Hawai’i.
11. “Workforce Development” shall mean the Workforce Development Division of the Department of Labor and Industrial Relations, State of Hawai’i.
12. “Department of Labor” or DOL shall mean the United States Department of Labor.
13. “Act” shall mean the Workforce Investment Act of 1998, United States Public Law 105-220-August 7, 1998 (112 Stat. 936) and 20 Code of Federal Regulations part 652 and parts 660.
14. “Fund” shall mean the Workforce Investment Act Program Fund.
15. “Youth Council” shall mean the Hawaii County Youth Council created pursuant to County of Hawai’i Ordinance 00-43, an advisory body to the HCWIB.

C. The Board.

The Board shall be organized as follows:

1. COMPOSITION OF BOARD.

The Board shall consist of members appointed by the Mayor from private businesses, labor organizations, non-profit organizations, governmental agencies and any other organization or entity pursuant to the Act. The Mayor shall appoint members to assure that the composition of and the total number of members on the Board shall be sufficient to satisfy the Act. The Chairperson of the Youth Council becomes a voting member of the Board.

2. ELECTION OF CHAIRPERSON AND CO-VICE-CHAIRPERSON.

The Members of the Board shall elect a Chairperson and two (2) Co-Vice-Chairpersons on an annual basis, from the private business members, at the last regular meeting of a calendar year. The Vice-Chairperson shall perform all the duties of the Chairperson during the absence of the Chairperson. The HCWIB Executive Committee shall designate the successor to the Chairman between the Co-Vice-Chairpersons. If for any reason the Chairperson or any of the Co-Vice-Chairpersons cannot hold the position for the entire term a special election shall be held. In the absence of the Chairperson or Co-Vice-Chairpersons, the remaining members shall elect an acting chairperson.

3. TRANSACTION OF BUSINESS.

A majority of the members to which the Board is entitled shall be considered to be a quorum. A concurring vote of the majority of members to which the Board is entitled shall be necessary to take action unless otherwise required by law.

Pursuant to Section 92-3.5 of the Hawaii Revised Statutes, a meeting may be held by videoconferencing; provided that the videoconferencing system used shall allow both audio and visual interaction between all members of the Board participating in the meeting and the public attending the meeting, at any videoconferencing location. The notice required by Section 92-7 of the Hawaii Revised Statutes shall specify all locations at which Members will be physically present during the videoconference meeting and the public will be allowed to attend the meeting at any such site. Any member participating in a videoconference meeting shall be considered present at the meeting for the purposes of determining compliance with the quorum and voting requirements of the Board. A meeting held by videoconference shall be terminated if both audio and visual communication cannot be maintained at all locations where the meeting is being held, even if a quorum of the Board is physically present in one location.

4. BOARD MEETINGS.

The Board shall meet at least four times per calendar year at sites accessible to the public. The Board shall give written public notice of any regular, special, rescheduled, or executive meeting when requested in advance. The notice shall include an agenda, which lists all of the items to be considered at the forthcoming meeting, the date, time and place of meeting. The Board shall file the notice in the Office of the County Clerk and in the Department's office for public inspection at least six (6) calendar days before the meeting. The Board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed.

5. COMMITTEES.

The Chairperson may create committees and appoint members to committees with

the approval of the Board.

D. The Youth Council.

The Youth Council shall be organized as follows:

1. COMPOSITION OF YOUTH COUNCIL.

The Youth Council shall consist of members appointed by the Mayor from private businesses, labor organizations, non-profit organizations, governmental agencies and any other organization or entity pursuant to the Act. The Mayor shall appoint members to assure that the composition of and the total number of members on the Youth Council shall be sufficient to satisfy the Act. Members of the Youth Council become non-voting members of the Board upon appointment.

2. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON.

The Members of the Youth Council shall elect a Chairperson and a Vice-Chairperson on an annual basis, from the private business and non-profit organizations members, at the last regular meeting of a calendar year. The Vice-Chairperson shall perform all the duties of the Chairperson during the absence of the Chairperson. If for any reason the Chairperson or Vice-Chairperson cannot hold the position for the entire term a special election shall be held. In the absence of the Chairperson or Vice-Chairperson, the remaining members shall elect an acting chairperson.

3. TRANSACTION OF BUSINESS.

A majority of the members to which the Youth Council is entitled shall be present to be considered to be a quorum. A concurring vote of the majority of members

present at the meeting shall be necessary to take action unless otherwise required by law. Pursuant to Section 92-3.5 of the Hawaii Revised Statutes, a meeting may be held by videoconferencing; provided that the videoconferencing system used shall allow both audio and visual interaction between all members of the Youth Council participating in the meeting and the public attending the meeting, at any videoconferencing location. The notice required by Section 92-7 of the Hawaii Revised Statutes shall specify all locations at which Members will be physically present during the videoconference meeting and the public will be allowed to attend the meeting at any such site. Any member participating in a videoconference meeting shall be considered present at the meeting for the purposes of determining compliance with the quorum and voting requirements of the Youth Council. A meeting held by videoconference shall be terminated if both audio and visual communication cannot be maintained at all locations where the meeting is being held, even if a quorum of the Youth Council is physically present in one location.

4. YOUTH COUNCIL MEETINGS.

The Youth Council shall meet at least four times per calendar year at sites accessible to the public. The Youth Council shall give written public notice of any regular, special, rescheduled, or executive meeting when requested in advance. The notice shall include an agenda, which lists all of the items to be considered at the forthcoming meeting, the date, time and place of meeting. The Youth Council shall file the notice in the Office of the County Clerk and in the Department's office for public inspection at least six (6) calendar days before the meeting. The Youth Council shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed.

5. COMMITTEES.

The Chairperson may create committees and appoint members to committees with the approval of the Youth Council.

RULE 2. RULES RELATING TO ADMINISTRATIVE PROCEDURE

A. DEFINITIONS

For the purpose of this rule:

1. "Administrator" means the Housing Administrator of the Office of Housing and Community Development, County of Hawai'i when he is administering the Workforce Investment Act (1998) Program.
2. "OHCD" means the Office of Housing and Community Development, County of Hawai'i when it is administering the Workforce Investment Act (1998) Program, where applicable, the Workforce Investment Board and the Youth Council.
3. "Interested person" means a person having a direct and not merely a consequential interest in the matter of concern; a person with an interest which is greater than that of a member of the general public.
4. "Workforce Investment Act of 1998" means the United States Public Law 105-220- August 7, 1998 (112 Stat. 936) and 20 Code of Federal Regulations Part 652 and parts 660 through 671.
5. "WIAP" means the Workforce Investment Act Program.
6. "HRS" means Hawai'i Revised Statutes.

B. GENERAL APPLICABILITY

These rules shall regulate the practice and procedure before the OHCD and its Administrator, pursuant to the Workforce Investment Act of 1998, Chapter 91, Hawai'i Revised Statutes; the Charter of the County of Hawai'i; Chapter 2, Hawai'i County Code; and other related acts that may now or hereafter be administered by the Administrator of the OHCD. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

C. RULES SUBORDINATE TO OTHER LAWS

All rules of the OHCD are subordinate to the Charter of the County of Hawai'i, Chapter 2, Hawai'i County Code, the Workforce Investment Act of 1998 and any other applicable law related to the Workforce Investment Act Program. In the event any of these rules is contrary to or conflicts with these laws, the laws shall govern over any rule to the contrary.

D. METHODS WHEREBY PUBLIC MAY OBTAIN INFORMATION

1. Where Obtained

The public may obtain information as to matters within the jurisdiction of the HCWIB by inquiring at:

- a. The Office of the County Clerk, County Building;
or
- b. The Office of Housing and Community Development,
50 Wailuku Drive, Hilo, Hawai'i. All rules,
orders or opinions of the HCWIB are on file and available for public
inspection at the OHCD. Copies of compilations of rules and supplements

thereto are available to the public at a price to be fixed by the OHCD to cover mailing and publication costs.

2. Submittals or Requests for Information

Such inquiry may be made in person at said office during business hours, or by submitting a request for information in writing to the Administrator of the Office of Housing and Community Development, 50 Wailuku Drive, Hilo, Hawai'i 96720.

E. PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

1. Petition

Any interested person may petition the OHCD requesting the adoption, amendment or repeal of any rule of the HCWIB.

2. Submission

The petition shall be submitted in five (5) copies to the Office of Housing and Community Development, 50 Wailuku Drive, Hilo, Hawai'i. It shall include:

- a. A statement of the nature of the petitioner's interest.
- b. A draft of the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
- c. An explicit statement of the reasons in support of the proposed rule,

amendment or repeal.

3. Disposition of Petition

The HCWIB shall, within thirty (30) calendar days after the submission of the petition, either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with Section 91-3, Hawai'i Revised Statutes, for the adoption, amendment or repeal of the rule, as the case may be.

F. DECLARATORY RULINGS BY HCWIB

1. Petition

Any interested person may petition the Chairperson of the HCWIB for a declaratory order as to the applicability of any statute or ordinance relating to the HCWIB, or of any rule or order of the HCWIB.

2. Submission of Petition

The petition shall be submitted in five (5) copies to the Office of Housing and Community Development, 50 Wailuku Drive, Hilo, Hawai'i. It shall contain:

- a. The name, address and telephone number of the petitioner.
- b. A statement of the nature of petitioner's interest, including reasons for the submission of the petition.
- c. A designation of the specific provision, rule or order in question.
- d. A complete statement of facts.

- e. A statement of the position of contention of the petitioner.
- f. A memorandum of authorities, containing a full disclosure of the reasons, including any legal authorities, in support of such position or contention.

3. Rejection of Petition

Any petition which does not conform to the foregoing requirements may be rejected by the Chairperson.

4. Refusal to Issue Declaratory Ruling

The HCWIB may, for good cause, refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the HCWIB may so refuse where:

- a. The question presented is speculative or purely hypothetical and does not involve existing fact, facts which can reasonably be expected to exist in the near future, or facts which are in issue.
- b. The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief.
- c. The issuance of the declaratory ruling may adversely affect the interest of the County, the HCWIB or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.
- d. The matter is not within the jurisdiction of the HCWIB.

5. Referral to Other Agencies

Where any question of law is involved, the HCWIB shall refer the matter to the Corporation Counsel of the County of Hawai'i or his agent or assigns. The HCWIB may also obtain the assistance of other agencies, where necessary or desirable.

6. Notification of Petitioner

Upon the disposition of his petition, the petitioner shall be promptly informed thereof by the HCWIB.

7. Status of Orders

Orders disposing of petitions shall have the same status as other HCWIB orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist.

RULE 3. RULES RELATING TO CONFIDENTIALITY

A. PURPOSE

The purpose of these rules shall be to define the conditions under which the HCWIB may disclose information relating to participants of housing assistance programs.

B. DEFINITIONS

For the purpose of this rule:

1. "Participant" means any applicant, business, educational institution, or other entity

that participates in the WIAP.

C. MAINTENANCE OF RECORDS

1. The OHCD/HCWIB shall keep records to document information acquired about participants in the administration of the WIAP.
2. This information shall:
 - a. Substantiate the expenditure of public funds; and
 - b. Be kept in confidential records and files of the OHCD/HCWIB.

D. RESTRICTIONS AGAINST DISCLOSURE OF INFORMATION TO PERSONS
OTHER THAN PARTICIPANTS

1. The following information shall be confidential and shall not be disclosed except as provided in Section D (2):
 - a. Names and addresses of participants, and assistance provided. This includes prohibition against release of information to any federal, state, municipal, or local committee or legislative body;
 - b. Information related to the social, economic and financial condition or circumstances of a particular individual, whether or not a participant;
 - c. OHCD's evaluation of recorded or unrecorded information about a particular participant;
 - d. Medical, psychological, or psychiatric data, including diagnosis and past

history of disease or disability of a particular participant;

e. Correspondence concerning a particular participant; and

f. The name of the worker or unit in which the case is or was active.

2. The use or disclosure of any of the information specified in Section D(1) shall be limited to the following persons or purposes and, unless otherwise stated, this excludes inspection of their case record:

a. Disclosure for purposes directly connected with the administration of the WIAP.

(1) Only the employees of the OHCD and DOL in the performance of the employees' official duties shall have access to the entire case record.

(2) Disclosure shall be allowed to the extent necessary to provide services and to determine eligibility or amount of assistance for participants identified in Section C. Disclosure to the following agencies shall be permitted:

(i) Social service agencies from which the participant receives services, and

(ii) Agencies administering programs under the Social Security Act.

(3) When disclosure to individuals or agencies other than those specified above is necessary and permitted and the participant has a

choice as to whether disclosure is to be made (does not include situations such as fraud, theft, deception, forgery), the participant shall be presented with the following options:

- (i) Permit the OHCD to disclose the participant's status with the OHCD and secure the information needed;
- (ii) Secure appropriately documented information independently;
or
- (iii) Have application, assistance, or services denied or terminated or specific services not rendered.

b. Disclosure for purposes directly connected with any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of the housing assistance programs. Under this paragraph, disclosure shall be permitted:

- (1) To Police Departments, Prosecutor's Offices, the Attorney General's Office, the Ombudsman's Office, or any other Federal, state, or municipal agency; and
- (2) For such purposes as:
 - (i) The detection, investigation, or prosecution of violations of applicable State and Federal laws or regulations in connection with these programs, including any and all aspects of theft, fraud, deception, and overpayment

- (ii) Another Public Housing Agency's or the OHCD's claims against participants;
 - (iii) Responding to requests for information in connection with lawsuits challenging the administration of housing assistance programs; and
 - (iv) Providing information to the Ombudsman's Office investigating complaints about the administration of housing assistance programs.
- c. Disclosure for purposes of the administration of other Federal or Federally-assisted programs which provide assistance, in cash or in kind, or services directly to participants on the basis of need. Under this paragraph, disclosure shall be permitted for purposes of administering programs such as:
 - (1) Social Security - Supplemental Security Income; and Public Housing and other low income housing programs.
- d. Disclosure to banks, financial institutions or any other payer of a housing assistance warrant or check. Under this paragraph, disclosure shall be limited to information indicating that a housing assistance warrant or check honored by the bank, institution, or payer has been forged or otherwise wrongfully presented for payment.
- e. Disclosure to individuals or agencies other than those specified above only when written authorization has been obtained from the participant. The written authorization shall specifically include the participant's or legal guardian's consent to have the information released or the record reviewed.

- (1) When individuals other than participants or legal guardians of participants wish to obtain information, or to review a record, the individual shall submit a statement, signed and dated by the participant or legal guardian of the participant specifying:
 - (a) The name of the individual authorized to receive the information or to review the record, and the individual's OHCD connection, if any;
 - (b) The purpose for which the information is being sought;
 - (c) Participant's social security number or birthdate, and address; and
 - (d) Specific period of time the authorization is valid, not to exceed ninety days.
 - (2) Reproduced copies of information requested shall be provided at a cost related to the cost of reproduction. When the information is required for the purpose of presenting the participant's fair hearing appeal, there shall be no charge. In either case, actual postage cost shall be charged.
- f. Disclosure to owners or their designated agents of Federally-funded projects. Under this paragraph, disclosure shall be permitted only for participants of Federally-funded projects and only to facilitate the provision of services or financial assistance to the participants.

E. DISCLOSURE OF INFORMATION TO PARTICIPANTS

1. Case records shall be reviewed only in designated areas within the OHCD's office. The records shall not be removed from the premises.
2. Information from records shall be released to the participant or legal guardian of the participant upon the individual's request provided that a signed and dated written request is received.
3. When the information requested contains or consists of coded or abbreviated material such as computer input on input and output forms, the OHCD shall provide translations of the codes or abbreviations, if requested.

F. PARTICIPANT'S RIGHT TO CORRECT CASE RECORD

1. Each participant shall have the right to have any factual error in the participant's case record corrected and any misrepresentation or misleading entry in the record amended by the OHCD.
2. The participant shall make the request in writing specifying the information the participant wishes corrected.
3. Within twenty working days after the receipt of the written request, the OHCD shall acknowledge the request in writing and:
 - a. Make the requested correction or amendment; and
 - b. Inform the participant in writing if information is not to be corrected or amended, the reason for the refusal, and the participant's right to request a review of the refusal by the OHCD.

G. PENALTY

1. Any person who fails to safeguard confidential information or who violates rules governing the confidential nature of HCWIB information may be prosecuted.

Violators shall include, but shall not be limited to:

- a. Any person, including any person who acquires information through authorized inspection, who, knowing the information to have been acquired from the records or files of the department, intentionally divulges the information other than as authorized by law; and
- b. A person who intentionally and knowingly aids or abets an authorized person in the inspection of the records or files.

If the court determines that the OHCD acted in a willful and intentional manner in failing to properly maintain the case record, the provisions of Section 92F-17, HRS, shall apply.

RULE 4. RULES AND REGULATIONS OF THE WORKFORCE INVESTMENT ACT PROGRAM

A. DISQUALIFICATION FROM PARTICIPATION

1. If the HCWIB determines that a participant has violated program polices and requirements, such participant may be disqualified from participation in the program for such period as deemed appropriate by the HCWIB. The participant shall be notified in writing of the disqualification and shall be entitled to a hearing.

Nothing in this rule is intended to give any owner any right to participate in the program.

2. The federal government has instituted an administrative or judicial action against the participant for violation of the Americans with Disabilities Act or other federal equal opportunity requirements;
3. The participant has violated any contractual obligations under the WIAP;
4. The participant has committed fraud, bribery or any other corrupt or criminal act in connection with any government program;
5. The participant has a history or practice of non-compliance with any rules, laws or requirement of the WIAP; or
6. The participant has not paid local, State or federal taxes, fines or assessments.

B. INFORMAL SETTLEMENT OF DISPUTES

In the event a participant disputes any action taken by the HCWIB and claims that such actions adversely affect the rights, duties, welfare or status of the participant, they may present a written complaint to the HCWIB so that the dispute may be discussed informally and settled without a hearing. (The complaint must be filed within ten (10) business days after the dispute arose or, if there was a written notification which gave rise to the dispute, within ten (10) business days from the date on the written notice.) A summary of the discussion shall be prepared within ten (10) business days and one copy shall be given to the complainant. The summary shall specify the names of the participants, dates of meetings, the nature of the proposed disposition of the dispute and the specific reasoning therefore, and shall specify the procedures by which a hearing under Section C may be obtained if the complainant is not satisfied.

C. HEARING ON DISPUTE

1. Request for a Hearing:

a. If a complainant is not satisfied with the disposition of a dispute in the informal discussion, he may submit a written request for a hearing to the HCWIB within ten (10) business days after receipt of the written summary of the informal discussion.

b. Form and Content of Written Request:

(1) The written request shall contain each of the following:

- (i) Name, address and telephone number of the complainant;
- (ii) A designation of the specific statutory provision, rule, or order in question, together with a statement of the dispute involved;
- (iii) A statement of the complainant's position or contention;
- (iv) A memorandum of points and authorities, containing a full discussion or reasons or legal authorities in support of such position or contention; and
- (v) The action or relief sought.

2. Person Conducting Hearing:

The Chairperson of the HCWIB or his duly authorized representative shall conduct

the hearing.

3. Notice and Conduct of Hearing; Judicial Review:

The notice and conduct of hearing and the request for judicial review shall be made pursuant to Chapter 91, Hawai'i Revised Statutes.

D. CONTESTED CASE PROCEDURE

1. Purpose.

This rule governs contested case procedure before the Board whenever it is required by law; provided that any procedure in a contest case may be modified or waived by stipulation of the parties, and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. This procedure shall be used in all cases where action of the Board is the final action of a County official or agency, prior to the opportunity to appeal to the Circuit Court, whenever it is required. It shall therefore be followed in all cases where State statutes provide for direct appeal from the Board to Circuit Court.

2. Presiding Officer.

- a. Presiding person. In all hearings before the Board, the Chairperson of the Board, one of its Members, or a hearing officer duly appointed and designated, shall preside at the hearing.
- b. Powers. The presiding officer controls the course of hearings, administers oaths, receives and rules on questions of evidence, holds appropriate conferences before or during hearings, rules upon all objections or motions which do not involve a final determination of the proceeding, receives

offers of proof, fixes the time for the filing of briefs, deposes of any other matter that normally and properly arises in the course of a hearing, and takes all other actions authorized by law that are deemed necessary for the orderly and just conduct of a hearing.

- c. Continuance. The presiding officer may, in the presiding officer's discretion, postpone or continue any hearing.

3. Notice of Hearing.

Unless otherwise provided by law, the notice of hearing will be served on all parties and persons on the mailing list for this purpose at their last recorded addresses at least fifteen (15) calendar days before the date of the hearing via registered or certified mail with return receipt requested.

Unless otherwise provided by law, if service by registered or certified mail is not made because of the refusal to accept service or the Board has been unable to ascertain the address of the party after a reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last notice shall appear at least fifteen days prior to the date of the hearing.

4. Prehearing Conference.

The presiding officer may hold a prehearing conference with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting schedules, exchanging names of witnesses, limitation of number of witnesses, and any other matters that may expedite the orderly conduct and disposition of the proceeding.

a. Limiting Testimony.

To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.

b. Removal from Proceedings.

Any person who willfully disrupts a hearing to prevent or compromise the conduct of the hearing shall be removed from the hearing room.

c. Order of Procedure.

The appellant shall open and close. Other parties shall be heard in such order as the presiding officer directs.

d. Co-Counsel.

Where a party is represented by more than one counsel or representative, only one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.

e. Cross-Examination.

Each party shall have the right to conduct such cross-examination of the witnesses as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence.

f. Request for Subpoenas.

Subpoena Of A Witness. Any request for the issuance of a subpoena,

requiring the attendance of a witness for the purpose of taking oral testimony before the Board shall be in writing and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only a party or a member of the Board may request a subpoena.

- a. Subpoena Of Documents. Any request for the issuance of a subpoena for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produce; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.
- b. Who May Issue A Subpoena – A subpoena may be issued by the chair of the Board or the presiding officer. No subpoena shall be issued unless the party requesting the subpoena has complied with these rules and gives the name and address of the desired witness. Signed and sealed blank subpoenas will not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. The subpoena shall show at whose instance the subpoena is issued.
- c. Fees and Mileage – Any witness summoned shall be paid the same fees and mileage as are paid to witnesses in the circuit court of the State of Hawai'i, and such fees and mileage shall be paid by the party at whose request the witness appears.
- d. Oath – Each witness shall be placed under oath or affirmation prior to testifying.

g. CONSOLIDATION.

The Board, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if the Board finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

h. SUBSTITUTION OF PARTIES.

Upon motion and for good cause shown, the Board may order the substitution of a party, except that in the case of death of party, substitution may be ordered without the filing of a motion.

i. MOTIONS.

a. Timing – Motions may be made before, during, or after a hearing.

b. Form and Contents - Any motion, other than one made during a hearing, shall be made in writing to the Board and shall state the relief sought and

shall be accompanied by an affidavit or legal memorandum setting forth the grounds upon which the motion is based.

c. Service of Motions – The moving party shall serve a copy of all motion papers on all other parties and shall file with the Board the original with proof of service.

d. Memorandum in Opposition – A memorandum in opposition or counter

affidavits shall be served on all parties and the original and proof of service shall be filed with the Board within seven days after being served with the motion. The chair of the Board may order the memorandum in opposition to be filed earlier than the seven-day period.

- e. Waiver – Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion. A party who does not oppose the motion shall notify the chair and opposing counsel or party promptly.

j. EVIDENCE.

- a. Form and Admissibility – The Board shall not be bound by the rules of evidence relating to the administration or rejection of evidence, but may exercise its own discretion in such matter with a view to doing substantial justice.
- b. Ruling – The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the Board in determining the matter of the merits.
- c. Objections and Exceptions – When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.
- d. Prepared Testimony – With the approval of the presiding officer, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all counsel or parties. Admissibility shall be subject to the rules governing oral

testimony. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the Board fifteen days before the hearing or such prior service is waived to permit proper cross examination of the witness on matters contained in the prepared testimony.

e. Documentary Evidence – If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded an opportunity to examine the document and to offer in evidence other portions thereof believed material and relevant.

k. Exhibits.

a. Form and Size – Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2” x 11” in size or bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and dated and other figures shall be set forth in tabular form.

b. Copies – When exhibits are offered in evidence, the original and ten copies shall be furnished to the presiding officer with a copy to each party to the proceeding other than the Board, unless such copies have been previously furnished, or the presiding officer directs otherwise.

1. BOARD RECORDS

If any matter contained in a document on file as a public record with the Board is offered in evidence, unless directed otherwise by the presiding officer, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and otherwise competent, relevant, and material. If testimony in any proceeding, other than the one being heard, is offered in evidence, a copy of the testimony shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

m. OFFICIAL NOTICE OF FACTS

Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawai'i. Official notice may also be taken of generally recognized technical or scientific facts within the Board's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

n. ADDITIONAL EVIDENCE.

At the hearing, the presiding officer may require the production of further evidence upon any issue.

Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving an exhibit number therefore.

5. BRIEFS.

The presiding officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the Board in writing, and a copy thereof served upon or mailed to the other parties to the proceeding. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the Board.

7. ORAL ARGUMENTS.

The Board or the presiding officer may direct or permit the presentation of oral argument with appellant or officer opening and concluding the argument. Not more than one-half hour on each side of the proceeding will be allowed for argument without special leave of the Board. If more than one party is participating on a side of the proceeding, the parties so concerned shall divide the hour for that side.

a. CLOSE OF HEARING.

At the end of the presentation of the evidence, submission of briefs and oral arguments, if any, the Board or the hearing officer shall close the hearing.

b. TIME LIMIT FOR BOARD'S DECISION.

The Board shall render its decision, order, or ruling within a period of not more than ninety days after the close of the hearing, unless a longer period of time is agreed upon by all parties.

c. ISSUANCE OF DECISIONS AND ORDERS.

A proceeding shall stand submitted for decision by the Board after the taking of evidence, and the filing of such briefs or the presentation of such oral argument as may have been prescribed by the presiding officer or hearing officer. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. The proposed decision and order and findings of fact shall be served on each party to the proceeding, and each party shall have fifteen days from date of service thereof to submit written comments or objections to the Board. The Board shall render a written decision and order in every contested case, which shall include separate findings of fact and conclusions of law.

d. SERVICE OF DECISIONS AND ORDERS.

Decisions and orders shall be served by mailing certified copies thereof to the parties or records. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to a proceeding has appeared by a representative, service upon such representative or counsel shall be deemed to be service upon the party.

e. RECONSIDERATION OF DECISION AND ORDER.

A party may seek reconsideration of the Board's decision and order by filing a motion for reconsideration within thirty (30) days of the date of the decision and order. The Board may consider its decision for the following reasons:

- a. Mistake, inadvertence, surprise or excusable neglect;
- b. Newly discovered evidence which due diligence could not have discovered;

- c. Fraud, misrepresentation or misconduct by an adverse party;
 - d. Judgment is void; or
 - e. Judgment has been satisfied, released or discharged.
- f. APPEAL FROM THE BOARD'S DECISION.

Any person aggrieved by a final decision and order by the Board may seek judicial review pursuant to Section 91-14, Hawai'i Revised Statutes.

D. EQUAL OPPORTUNITY REQUIREMENTS

Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and all rules, regulations, and requirements issued pursuant thereto.

E. SEVERABILITY

If any rule, section, sentence, clause or phrase of the rules and regulations or its application to any person or circumstances or property is held to be unconstitutional or invalid, the remaining portions of these rules and regulations or the application of these rules and regulations to other persons or circumstances or property shall not be affected. The HCWIB hereby declares that it would have adopted these rules and regulations, and each and every rule, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other rules, sections, sentences, clauses, or phrases is declared unconstitutional or invalid.

HAWAI'I COUNTY WORKFORCE
INVESTMENT BOARD

By _____
ALAN GARSON
Its Chairperson
Date: _____

Notice of Public Hearing:

Hawai'i Tribune-Herald: April 17, 2005

West Hawai'i Today: April 17, 2005

Dates and Places of Public Hearings: Big Island Workplace Connection, May 18, 2005

APPROVED:

HARRY KIM, Mayor
County of Hawai'i
Date: _____

APPROVED AS TO FORM:

GERALD TAKASE
Assistant Corporation Counsel
Date: _____

I hereby certify that the foregoing Rules of Practice and Procedure of the Hawai'i County Workforce Investment Board was received and filed in my office this _____ day of _____, 2005.

County Clerk