




STATE OF HAWAII
BOARD OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

October 16, 2012

TO: The Honorable Donald G. Horner, Chairperson
Board of Education

FROM:  Kathryn S. Matayoshi, Superintendent
Department of Education

 Liann Ebesugawa, Executive Director
Board of Education

SUBJECT: **Recommendation for Board Action to Proceed to Public Hearing on Proposed Amendments to Title 8, Subtitle 1, Chapter 3, Hawaii Administrative Rules, Relating to Rules Applicable to Rulemaking Proceedings**

1. RECOMMENDATION

It is recommended that the Board of Education (the "Board") approve the proposed amendment to Title 8, Subtitle 1, Chapter 3, Hawaii Administrative Rules, Relating to Rules Applicable to Rulemaking Proceedings (Chapter 8-3), as enclosed.

2. RECOMENDED EFFECTIVE DATE

It is recommended that Chapter 8-3 become effective ten (10) days after the filing with the Lieutenant Governor.

3. RECOMMENDED COMPLIANCE DATE

It is recommended that compliance with Chapter 8-3 begin as of the effective date of the rule.

4. DISCUSSION

A. Conditions leading to the recommendation

In reviewing the administrative rule processing through the Department of Education (the "Department") for increased efficiency, these rule amendments were suggested to expand capacity to preside over public hearings and to ensure that the current administrative rules comport with current law.

B. Previous action of the Board on the same or similar matter

None

C. Other policies affected

None

D. Arguments in support of the recommendation

The proposed amendment to Section 8-3-3(b) aids in the efficient processing of the promulgation of and amendments to administrative rules. The Department has found that mandating Board members preside over all public hearings fails to create an efficient and expeditious means of supporting the administrative rule adoption process. In order to further support the efficient processing of administrative rules, the Department believes that it is important to also allow the appropriate Department personnel to preside over public hearings.

The proposed amendment to Section 8-3-4 ensures that the current administrative rule is consistent with the amendment to Section 8-3-3(b).

The proposed amendments to Sections 8-3-1, and 8-3-5 ensure that the current administrative rule comports with current law.

E. Arguments against the recommendation

It may be argued that allowing Department personnel and not a Board member to preside over a hearing, where the public is afforded the opportunity to comment on the rule, would decrease the Board's ability to fully consider public comment. On the contrary, the public has multiple opportunities to communicate directly to the Board including at the Board meetings when the preliminary approval to go to public hearing is considered and at the Board meetings when final approval, after public hearing, is considered. At both points in time the rule is reviewed by the appropriate subject-matter committee and then by the full Board. Moreover, the public is enabled to provide testimony twenty-four hours a day, seven days a week directly to the Board through the Board's website and via email. Furthermore, a summary of the public hearing and all the testimony submitted prior to and at the public hearing are provided to the Board for consideration at the time of final approval.

It is also important to note that all administrative rules by their nature pertain to the operations of the agency. As such, it is appropriate for the Board to rely on the Department to consider the various stakeholder perspectives when developing administrative rule recommendations.

F. Other agencies or departments of the State of Hawaii involved in the action

None.

G. Possible reaction of the public, professional organizations, unions, Department staff and/or others to the recommendations

Please see item 4.E. above.

H. Educational implication

No direct educational implications.

I. Personnel implications

Department personnel would at times preside over a public hearing. The Department has created a division which is dedicated to overseeing the administrative rules processing to support the various divisions within the Department.

J. Facilities implications

None.

K. Financial implications

None.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

Enclosures: Chapter 8-3, Ramseyer, HAR
Chapter 8-3, Standard, HAR

HAR Chapter 8-3

RAMSEYER FORMAT

Chapter 3 Rules Applicable to Rulemaking Proceedings

HAWAII ADMINISTRATIVE RULES

TITLE 8 DEPARTMENT OF EDUCATION

SUBTITLE I RULES OF PRACTICE AND PROCEDURE

CHAPTER 3

RULES APPLICABLE TO RULEMAKING PROCEEDINGS

§8-3-1 Notice of proposed rulemaking

§8-3-2 Further notice of rulemaking

§8-3-3 Conduct of hearing

§8-3-4 Board action

§8-3-5 Emergency rulemaking

§8-3-6 Petitions for adoptions, amendment or repeal of rules

Historical Note: This chapter is based substantially upon Department of Education "Part I, Rules of Practice and Procedure, sub-part C, Rules Applicable to Rulemaking Proceedings." [Eff. 3/30/62; R JAN 30, 1984]

§8-3-1 Notice of proposed rulemaking.

(a) When pursuant to a petition therefor, or upon its own motion, the board proposes to adopt, amend or repeal a rule, notice of proposed rulemaking shall be published at least once statewide [~~in a newspaper of general circulation in the State~~] and posted on the Internet as provided in section 91-2.6, Hawaii Revised Statutes. The notice shall also be mailed to all persons who filed a timely written request with the board for advance notice of the board's rulemaking proceedings. All notices shall be issued at least [~~twenty~~] thirty days prior to the date set for public hearing. Where a written request for advance notice is

filed by a person less than [~~twenty~~] thirty days prior to the date set for public hearing, the notice shall be mailed to the person immediately upon receiving the written request.

(b) A notice of the proposed adoption, amendment or repeal of a rule shall include[~~:~~] all information required by statute.

~~[(1) A statement of the date, time, and place where the public hearing shall be held;~~

~~(2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed;~~

~~(3) A statement of the substance of the proposed rulemaking; and~~

~~(4) Docket number assigned to the proceeding.]~~

[Eff. JAN 30, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§91-2, 302A-1112)

§8-3-2 Further notice of rulemaking. In any rulemaking proceeding where the board deems it warranted, a further notice of proposed rulemaking may be issued by publication thereof in a newspaper of general circulation in the State.] [Eff. JAN 30, 1984] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-3-3 Conduct of hearing.

(a) Unless otherwise specifically directed by the board, all public hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed adoption, amendment or repeal of a rule. When a matter affects only an island or district other than Oahu, then the hearing shall be held on that island or in that district.

(b) Each hearing shall be presided over by a presiding officer who shall be a department staff person as determined appropriate by the Superintendent or a member of the board as approved by the board's chairperson. The hearing shall be conducted in a way as to afford 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 other actions which are necessary to the orderly conduct of the hearing.

(c) Each hearing shall be held at the date, time and place set in the notice of hearing, but, thereafter, may be continued by the presiding officer from day to day at the same time and place or to a later date or to a different place without notice other than the announcement at the previous hearing.

(d) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then

be received with respect to the proposed rulemaking in the order prescribed by the presiding officer.

(e) All interested persons, organizations or agencies shall be given a reasonable opportunity to offer evidence, submit data, views or arguments with respect to the proposed rulemaking. Every witness shall, before proceeding to testify, state the witness' name, address, and whom the witness represents, if any, at the hearing, and shall give 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, other board members, or the board's attorney, but cross-examination by private persons shall not be permitted except with the express permission of the presiding officer.

(f) Persons, organizations, or agencies may also file with the board within the time period specified in the notice of proposed rulemaking a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. The period for filing may be extended by the board by publishing a notice at least once statewide [~~in a newspaper of general circulation in the State~~].

(g) Unless otherwise specifically ordered by the board or the presiding officer, testimony given at the hearing shall be reported verbatim and shall be approved by the board. All supporting written statements and 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 copies is impracticable, an original and twelve copies of all exhibits shall be submitted. [Eff. JAN 30, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§91-9, 92-16, 302A-1112)

§8-3-4 Board action. At the final public hearing, the board may make its decision or the presiding officer shall announce the date when [~~its~~] the board's decision shall be made. The board shall consider all relevant comments and material of record before taking final action in a rulemaking proceeding. [Eff. JAN 30, 1984] (Auth: HRS §302A-1112)(Imp: HRS §302A-1112)

§8-3-5 Emergency rulemaking. Notwithstanding sections 8-3-1 through 8-3-4, 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~~] thirty days' notice of hearing, and states in writing its reason for the finding, it may proceed without prior notice or hearing or upon abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal. [Eff. JAN 30, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§91-3, 302A-1112)

§8-3-6 Petitions for adoption, amendment or repeal of rules.

(a) Any interested person, organization or agency may petition the board for the adoption, amendment, or repeal of any rule, which is designed to implement, interpret, or prescribe law, policy, organization, procedure or practice requirements of the board.

(b) Petitions for rulemaking shall conform to the requirements of section 8-2-2. A petition for rulemaking shall set forth the text of any proposed rule or amendment or specify the rule proposed to be repealed; shall state concisely the nature of petitioner's interest in the subject matter and petitioner's reasons for seeking the adoption, amendment or repeal of the rule; and shall include any facts, views, arguments and data deemed relevant by the petitioner. A request for the adoption, amendment, or repeal of a rule which does not conform to the requirements set forth in this section may not be considered by the board.

(c) Petitions for rulemaking shall be given a docket number and shall become matter of public record upon filing. The board shall within thirty days following the filing of the petition either deny the Petition in writing or initiate public rulemaking proceedings as set forth in sections 8-3-1 to 8-3-4. No public hearing or other proceedings shall be held with respect to such determination. Where the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking proceedings, or where the petition for rulemaking fails, in material respect, to comply with the requirements of these rules, the board shall deny the petition and the petitioner shall be so notified together with the grounds for denial. The provisions of this section, however, shall not operate to prevent the board, on its own motion, from acting on any matter disclosed in any petition. [Eff. JAN 30, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§91-6, 302A-1112)

HAR Chapter 8-3

STANDARD FORMAT

Chapter 3 Rules Applicable to Rulemaking Proceedings

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