

**NOTICE OF**

**STATE POST-SECONDARY EDUCATION COMMISSION MEETING**

**Date:** Thursday, April 18, 2019  
**Time:** 9:30 a.m.  
**Place:** Leeward Community College  
Education Building, Room 201 A/B  
96-045 Ala Ike Street  
Pearl City, Hawai'i 96782

**AGENDA**

- I. Call Meeting to Order**
- II. Public Comment Period:** All written testimony on agenda items received after posting of this agenda and up to 24 hours in advance of the meeting will be distributed to the board. Late testimony on agenda items will be distributed to the board within 24 hours of receipt. Written testimony may be submitted via US mail, email at [bor@hawaii.edu](mailto:bor@hawaii.edu), or facsimile at 956-5156. Individuals submitting written testimony are not automatically signed up for oral testimony. Registration for oral testimony on agenda items will be provided at the meeting location 15 minutes prior to the meeting and closed once the meeting begins. Oral testimony is limited to three (3) minutes. All written testimony submitted are public documents. Therefore, any testimony that is submitted verbally or in writing, electronically or in person, for use in the public meeting process is public information and will be posted on the board's website.
- III. Agenda Items**
  - A. Approval to Request the Governor's Approval to Hold a Public Hearing Regarding the Simultaneous Repeal of Hawai'i Administrative Rules Title 20, Chapter 40, "Rules of Practice and Procedure", and the Adoption of Chapter 40.1, "Rules of Practice and Procedure" for the State Post-Secondary Education Commission
- IV. Adjournment**



UNIVERSITY  
of HAWAII  
SYSTEM

UNIVERSITY OF HAWAII  
BOARD OF REGENTS

Office of the Vice President for Legal Affairs  
and University General Counsel

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April 12, 2019

RECEIVED

MEMORANDUM

'19 APR 12 AIO :06

TO: Members  
State Post-Secondary Education Commission

VIA: David Lassner *David Lassner*  
Administrative Officer of State Post-Secondary Education Commission  
UNIVERSITY OF HAWAII  
PRESIDENT'S OFFICE

FROM: Carrie K. S. Okinaga *Carrie Okinaga*  
Gary Y. Takeuchi *Gary Y. Takeuchi*  
Office of the Vice President for Legal Affairs and University General  
Counsel

SUBJECT: RECOMMEND APPROVAL TO REQUEST THE GOVERNOR'S  
APPROVAL TO HOLD PUBLIC HEARING REGARDING THE  
SIMULTANEOUS REPEAL OF HAWAII ADMINISTRATIVE RULES  
TITLE 20, CHAPTER 40, "RULES OF PRACTICE AND PROCEDURE",  
AND THE ADOPTION OF CHAPTER 40.1, "RULES OF PRACTICE AND  
PROCEDURE" FOR THE STATE POST-SECONDARY EDUCATION  
COMMISSION

SPECIFIC ACTION REQUESTED

The administration requests that the State Post-Secondary Education Commission ("Commission ") approve requesting the Governor's approval to hold a public hearing regarding the simultaneous repeal of Hawaii Administrative Rules ("HAR"), Title 20, Chapter 40, entitled "Rules of Practice and Procedure", and the adoption of Chapter 40.1, entitled "Rules of Practice and Procedure" for the Commission.

RECOMMENDED EFFECTIVE DATE

Upon approval.

PURPOSE

For the past two plus years, the University of Hawaii ("University") through its Board of Regents ("BOR") has been repealing or amending various chapters of Title 20 of the HAR, pertaining to the University. These actions have been part of an effort to improve management of the University by eliminating unnecessary or out-of-date rules, and

governing instead through policies established by the BOR at open meetings conducted in accordance with Hawai'i Revised Statutes ("HRS") Chapter 92, with its strict requirements for notice and transparency. Adopting BOR policies via HRS Chapter 92, instead of going through formal rulemaking via HRS Chapter 91, is consistent with the autonomy provided to the University in article X, section 6 of the Hawai'i Constitution and HRS § 304A-105 (Powers of regents; official name), and permits a governance structure more appropriate and responsive to the unique needs and configuration of the University, while maintaining transparency with the public as well as the University community

At its meeting of September 21, 2017, the BOR approved moving forward with various HAR repeals and amendments. One of the approved actions was to repeal HAR Chapter 20-40, rules of practice and procedure for the State Post-Secondary Education Commission ("Chapter 20-40"), and replace that chapter with a new HAR Chapter 20-40.1 ("Chapter 20-40.1"). Following that BOR approval, the proposed new Chapter 20-40.1 was submitted to the State Department of the Attorney General ("ATG") for review and concurrence prior to seeking the Governor's authorization to conduct public hearings on the new chapter. The ATG declined to approve further processing of proposed new Chapter 20-40.1, primarily on the basis that the pertinent statute (HRS § 304A-3152 (Commission's powers and authority)) authorizes the Commission, and not the BOR, to adopt appropriate rules for the Commission. Consequently, the ATG indicated that the BOR's approval to proceed with the adoption of the new Chapter 20-40.1 was insufficient, and the Commission should provide the approval instead.

Therefore, the purpose of this request is to recommend that the Commission approve requesting the Governor to approve the holding of a public hearing regarding the simultaneous repeal of HAR Title 20, Chapter 40, entitled "Rules of Practice and Procedure", and the adoption of Chapter 40.1, entitled "Rules of Practice and Procedure" for the Commission.

#### BACKGROUND INFORMATION

In 1974, the Hawai'i State Legislature established the Commission and the state post-secondary review program (the "review program") via HRS Chapter 305H. The Commission was placed within the University for administrative purposes, and the University had certain oversight responsibility for post-secondary education under the review program.

In 2006, HRS Chapter 305H was repealed, and the statutory provisions governing the Commission were recodified in HRS §§ 304A-3151 to 3154. In 2013, the review program was moved to the Hawai'i Department of Commerce and Consumer Affairs ("DCCA"), when HRS Chapter 305J was enacted.

Pursuant to HRS § 304A-3151, the Commission “shall consist of the members of the board of regents of the university, the provisions of section 78-4 notwithstanding,<sup>1</sup> and four other members who shall be broadly and equitably representative of the general public and public and private nonprofit and proprietary institutions of post-secondary education in the State and shall be appointed in accordance with section 26-34.<sup>2</sup> The commission shall be placed within the university for administrative purposes, and its administrative officer shall be the president of the university.”

Currently, the four non-BOR Commission seats are vacant, and no one has been nominated to fill those seats. Nonetheless, the Commission can conduct meetings with a quorum, and take actions such as that requested here, so long as a majority of the members to which the Commission is entitled are in attendance.<sup>3</sup> Since the Commission consists of 19 members (15 BOR members plus four other members), at least 10 Commission members can have a meeting and take action.

HRS § 304A-3152 specifically provides that:

The commission may cooperate with the federal government to qualify the State to receive funds made available under the Higher Education Act of 1965, Public Law 89-329, as amended from time to time, and in addition may serve as the state agency for the receipt of federal funds when federal legislation dealing with higher education or post-secondary education requires, as a condition of state receipt of such funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the State and when agencies other than the commission created by this subpart may not qualify. **The commission shall adopt appropriate rules not inconsistent with this subpart as may be required to administer this subpart.** The rules shall be adopted in accordance with chapter 91. (Emphasis added.)

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<sup>1</sup> HRS § 78-4 concerns service on State boards and commissions, and provides among other things that no person shall serve on more than one state board or commission expressly created by a state statute or the state constitution.

<sup>2</sup> HRS § 26-34 concerns selection and terms of members of boards and commissions, and provides for gubernatorial appointment and Senate advice and consent.

<sup>3</sup> HRS § 92-15 provides that unless otherwise specified in the legislation creating a board or commission, 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.



Further, HRS § 91-2 requires each agency, including the Commission, to “[a]dopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.”

Thus, the Commission is required to maintain a set of rules of practice and procedure, which can be found in Chapter 20-40. The current version of Chapter 20-40 is attached as Exhibit 1. The administration, however, seeks to repeal the current Chapter 20-40 in its entirety and adopt in its place Chapter 20-40.1. Given the substantial amendment, rearrangement, and renumbering of sections proposed for Chapter 20-40, it is more efficient to simultaneously repeal the current chapter and adopt a new chapter, as permitted by §00-5-4.1 of the Hawai'i Administrative Rules Drafting Manual.

Chapter 20-40 was last amended in 1995. The proposed adoption of Chapter 20-40.1 would (1) retain certain portions of the existing Chapter 20-40, (2) update other portions of Chapter 20-40, and (3) streamline the rules to reflect the administrative functions of the Commission. Additionally, any rules relating to the review program (such as rules applicable to contested cases, currently in Subchapter 5 of Chapter 20-40), which is now under the jurisdiction of the DCCA, will be removed from Chapter 20-40.1. A draft version of the proposed repeal of the current Chapter 20-40 and adoption of a Chapter 20-40.1 in standard format is attached as Exhibit 2. Given that certain sections of the existing Chapter 20-40 remain in the proposed Chapter 20-40.1, attached as Exhibit 3 is a Ramseyer format version of Chapter 20-40.1, tracking changes to the current Chapter 20-40.

#### ACTION RECOMMENDED

It is recommended that the Commission approve requesting the Governor's approval to hold a public hearing, pursuant to HRS § 91-3, regarding the simultaneous repeal of the current Chapter 20-40, “Rules of Practice and Procedure” and adoption of Chapter 20-40.1, “Rules of Practice and Procedure” for the State Post-Secondary Education Commission. Upon approval by the Commission, the administration will seek the Governor's approval to hold the public hearing pursuant to Administrative Directive 18-02 setting forth rule-making procedures.

#### Attachments

- Exhibit 1 Current HAR Chapter 20-40, “Rules of Practice and Procedure”
- Exhibit 2 Standard Format of the Proposed Repeal of the Current HAR Chapter 20-40 and the Adoption of Chapter 20-40.1
- Exhibit 3 Ramseyer Format of Chapter 20-40.1

- c: Executive Administrator and Secretary to the Board of Regents  
Donald Straney, Vice President for Academic Planning and Policy

TITLE 20  
UNIVERSITY OF HAWAII  
SUBTITLE 3  
STATE POSTSECONDARY EDUCATION COMMISSION  
CHAPTER 40  
RULES OF PRACTICE AND PROCEDURE

Subchapter 1 Rules of General Applicability

- §20-40-1 Statement of policy
- §20-40-2 Definitions
- §20-40-3 The commission
- §20-40-4 Public records
- §20-40-5 Severability
- §20-40-6 Appearances before the commission
- §20-40-7 Filing of documents
- §20-40-8 Computation of time
- §20-40-9 Continuance or extension of time
- §20-40-10 Amendment of documents
- §20-40-11 Retention of documents by the commission
- §20-40-12 Counsel for the commission

Subchapter 2 Proceedings Before the Commission

- §20-40-13 General
- §20-40-14 Appearances in a proceeding
- §20-40-15 Commission decision
- §20-40-16 Consolidations

Subchapter 3 Rules Applicable to Rulemaking Hearings

- §20-40-17 Notice of proposed rulemaking
- §20-40-18 Conduct of rulemaking hearing
- §20-40-19 Commission action
- §20-40-20 Emergency rulemaking
- §20-40-21 Petitions for adoption, amendment or repeal of rules
- §20-40-22 Filing and publication

Subchapter 4 Declaratory Rulings

- §20-40-23 Petition for declaratory rulings

Subchapter 5 Rules Applicable to Contested Cases

- §20-40-24 Delegation of powers

§20-40-1

§20-40-25 Procedure  
§20-40-26 Rules of evidence; official notice  
§20-40-27 Examination of evidence  
§20-40-28 Decisions and orders  
§20-40-29 Consultation by officials

Historical Note: This chapter is based substantially upon "Rules of Practice and Procedure" promulgated by the State postsecondary education commission. [Eff. 11/12/79; R JUN 22 1981]

## SUBCHAPTER 1

### RULES OF GENERAL APPLICABILITY

§20-40-1 Statement of policy. The following rules shall govern the practice and procedure before the State postsecondary education commission under chapter 91, HRS. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-2 Definitions. (a) As used in the rules prescribed by the commission, unless the context specifically requires otherwise:

"Administrative officer" means the president of the University of Hawaii.

"Chairperson" means the chairperson of the commission.

"Commission" means the State postsecondary education commission and for purposes of this rule shall not include committees of the commission.

"Committee" shall mean all committees of the commission including the executive committee of the commission and the committee of the whole.

"Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined by the commission after an opportunity for a hearing.

"Party" wherever used in these rules, shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a contested case.

"Persons" includes individuals, partnerships, corporations, association, or public or private organizations of any character other than agencies.

"Petitioner" refers to the party on whose behalf a petition or application is made in proceedings involving petitions or applications for permission or authorization which the commission may give under statutory or other authority delegated to it.

"Proceedings" as used in these rules, shall mean

the commission's elucidation of the relevant facts and applicable law, consideration thereof and action with respect to a particular subject within the commission's jurisdiction. It does not apply to rulemaking hearings, contested cases or committee meetings.

"Rule" as used in these rules means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the commission. The term does not include matters concerning only the operation and management of internal affairs of the commission not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, to intra-agency memoranda.

"Rulemaking hearings" as used in these rules, shall mean all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS. It shall not apply to commission meetings relating to the operation and management of internal affairs of the commission nor to hearings for contested cases.

"Secretary" means the secretary of the commission.

"University" means the University of Hawaii.

(b) Unless otherwise specifically stated, the terms used in rules promulgated by the commission pursuant to powers granted by statute shall have the meaning defined by such statute.

(c) A rule which defines a term without express reference to the statute or to the rules of a portion thereof, defines such terms for all purposes as used both in the statute and in the rules, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine gender. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-3 The commission. (a) Office. The office of the commission is in the office of the secretary of the commission, situated in Honolulu, Hawaii. All communications to the commission shall be addressed to the "State Postsecondary Education Commission, University of Hawaii, State of Hawaii, Honolulu, Hawaii 96822," unless otherwise specifically directed.

(b) Hours. The office of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except



holidays and unless otherwise provided by statute or executive order.

(c) Sessions. The commission shall meet annually and at such other times as required and may from time to time meet in each of the counties of Hawaii, Maui, and Kauai. The commission may meet in executive session, from which the public may be excluded as provided by chapter 92, HRS.

(d) Quorum and voting. A majority of the members to which the commission is entitled shall constitute a quorum at any proceeding or hearing. The concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid except for procedural action.

(e) Administrative officer. As stated in chapter 305H, HRS, the president of the University of Hawaii, as administrative officer of the commission, shall carry out the policies adopted by the commission.

(f) Unless otherwise provided in these rules, Robert's Rules of Order shall apply. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 80-1)

§20-40-4 Public records. (a) The term "public records" as used in this chapter is defined as in chapter 92, HRS.

(b) All public records of the commission shall be available for inspection during established office hours, subject to the limitations prescribed in chapter 92, HRS.

(c) All public records of the commission except as limited by chapter 92, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect public records or for copies of public records will be handled with the regard for the dispatch of other public duties. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2, 92-50, 92-51, 92-52) (Imp: HRS §§305H-2, 91-2, 92-50, 92-51, 92-52)

§20-40-5 Severability. If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-6 Appearances before the commission. (a)

An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer of a corporation or association may represent the corporation or association, and an officer or employee of an agency of the State or a political subdivision of the State may represent such agency before the commission.

(b) A person may be represented by or with counsel or other duly qualified representative before the commission.

(c) When an individual acting in a representative capacity appears in person or signs a paper in practice before the commission, the personal appearance or signature shall constitute a representation to the commission that under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf the action is taken. The commission may at any time require any person appearing before the commission in a representative capacity to show his authority and qualification to act in such capacity.

[Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-7 Filing of documents. (a) All documents required to be filed with the commission shall be filed with the secretary. Such documents may be sent by mail or hand carried to the commission's office in Honolulu, Hawaii, within the time limit, if any, for such filing. The date on which the documents are actually received by the commission shall be deemed to be the date of filing.

(b) All documents must be signed by the party or a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) The initial document filed by any person shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-8 Computation of time. In computing any period of time prescribed by these rules or by order of the commission, provisions of section 1-29, HRS, shall apply. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-9 Continuance or extension of time.

Whenever a person or agency is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the chairperson may

- (1) Before the expiration of the prescribed period, with or without notice, extend such period; or
- (2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to the chairperson to be the result of excusable neglect.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-10 Amendment of documents.

If any document filed does not conform with the applicable rules of the commission as to the contents thereof, or is otherwise insufficient, the commission, on its own motion, or on motion of any interested person, may strike or dismiss such document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-11 Retention of documents by the

commission. All documents filed with or presented to the commission may be retained in the files of the commission. However, the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace documents.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-12 Counsel for the commission.

The attorney general or a representative, in the capacity as counsel for the commission, may be present at all proceedings, hearings or contested cases governed by these rules. The attorney general or a representative shall be designated as counsel for the commission.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 28-4)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE COMMISSION

§20-40-13 General. (a) The commission may on its own motion, or on petition of any interested person, group, organization or agency, hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the carrying out of its duties. For such purposes, it may call witnesses and call for the production of documents and other relevant statements. Procedures to be followed by the commission, shall, unless specifically prescribed in these rules, be such as in the opinion of the commission will best serve the purposes of such proceedings.

(b) Notice of any proceeding before the commission shall comply with section 92-7, HRS. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-14 Appearances in a proceeding. (a) No person shall be permitted to appear before the commission to speak on any matter which has been brought before a committee of the commission or which is listed as an exception under section 92-5, HRS, or which is not treated as a public record or not available to inspection under sections 92-50 and 92-51, HRS. This rule may be waived by a two-thirds vote of all commission members present at the meeting in question.

(b) Subject to the limitations of subsection (a) above, any person who wants to appear before the commission to present testimony must make a request to the secretary at least twenty-four hours prior to the meeting of the commission unless waived by a two-thirds vote of all commission members present at the meeting in question.

A written copy of such testimony must be submitted prior to the meeting unless waived by a two-thirds vote of all commission members present at the meeting in question.

The commission, upon two-thirds vote of all members present, shall have the authority to limit or terminate any testimony which it determines to be repetitious or made solely for purposes of delay. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-15 Commission decision. All final decisions of the commission in a proceeding shall be available for public inspection in the office of the commission or may be obtained upon request and upon



§20-40-15

payment of charges, if any. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-16 Consolidations. The commission, upon its own initiation or upon motion, may consolidate for consideration or for other purposes two or more issues which involve substantially the same persons, or issues which are the same or closely related, if it finds that such consolidations will be conducive to the proper dispatch of its business and will not unduly delay the proceeding. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

### SUBCHAPTER 3

#### RULES APPLICABLE TO RULEMAKING HEARINGS

§20-40-17 Notice of proposed rulemaking. (a) When pursuant to a petition therefor, or upon its own motion, the commission proposes to issue, amend or repeal a rule, notice of proposed rulemaking will be published in accordance with chapters 91 and 92, HRS.

(b) A notice of the proposed issuance, amendment, or repeal of a 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 issuance, amendment, or repeal of a rule is proposed.
- (3) A statement of the substance of the proposed rulemaking.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-18 Conduct of rulemaking hearing. (a) Public hearing. Unless otherwise specifically directed by the commission, all rulemaking hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed issuance, amendment, or repeal of a rule. However, the commission may hold such hearings on a neighbor island if a written request for such a hearing is received by the commission within the time specified in the public notice. In all cases, however, written testimony may be received by the commission in accordance with these rules.

When a matter affects only a county other than Oahu, then the hearing shall be held in that county.

(b) Presiding officer. Each such rulemaking hearing shall be presided over by the chairperson or a

member of the commission as designated by the chairperson. The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as 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 proceeding.

(c) Continuance of rulemaking hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but may 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.

(d) Order of hearing. 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 matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(e) Conduct of hearing. All interested persons shall be given reasonable opportunity to submit written or oral testimony or evidence with respect to the matters specified in the notice of hearing. The conduct of the hearing and filing of all documents shall be in accord with sections 20-40-6 through 20-40-12. The presiding officer shall confine the testimony to the questions before the hearing and is empowered to confine the testimony so as to keep order. Every person testifying may be subject to questioning by any member of the commission or its counsel, but questioning by private persons shall not be permitted unless the presiding officer expressly permits it.

(f) Transcript of the testimony. Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the hearing need not be reported verbatim. 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 fourteen copies of the exhibits shall be submitted. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)

§20-40-19 Commission action. At the final public hearing, the commission may make its decision or announce the date when its decision shall be made. The

commission will consider all relevant comments and material of record before taking final action in a rulemaking hearing. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-20 Emergency rulemaking. Notwithstanding the foregoing rules, if the commission 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 such finding, it may proceed without prior notice of hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty days without renewal. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)

§20-40-21 Petitions for adoption, amendment or repeal of rules. (a) Scope. Any interested persons, organization or agency may petition the commission for the issuance, amendment, modification or repeal of any rule as defined in this chapter.

(b) Form and contents. Petitions for rulemaking shall conform to the requirements of section 20-40-7. Such petition for rulemaking shall set forth the text of any proposed rule or amendment desired or shall specify the rule the repeal of which is desired and state 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 commission may also require the petitioner to serve other persons, organizations or agencies known to be interested in the proposed rulemaking. No request for the issuance, amendment, modification or repeal of a rule which does not conform to the requirements set forth above will be considered by the commission.

(c) Procedure. The commission shall within thirty days following the filing of the petition either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument or other form of proceedings will be held directly on any such decision, but if the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed will be as set forth in sections 20-40-17 through 20-40-19. Where the commission 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 or where the petition does not concern a rule, the commission shall deny the petition and the petitioner will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-6)

§20-40-22 Filing and publication. (a) The commission, after obtaining the approval of the governor of any rule, shall file certified copies of the rule with the lieutenant governor.

(b) The commission shall also keep a compilation of all such rules adopted by the commission which are still in effect. Such compilation shall be supplemented, revised and made available to the public as provided by these rules and chapters 91 and 92, HRS. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-4, 91-5)

#### SUBCHAPTER 4

#### DECLARATORY RULINGS

§20-40-23 Petition for declaratory rulings. (a) Form and contents. On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. Petitions for the issuance of such orders shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of section 20-40-7.

(b) Additional data and supporting authorities. The commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) Dismissal. The commission may, without notice or hearing, dismiss a petition or declaratory ruling which fails in material respect to comply with the requirements of this chapter.

(d) Request for hearing. Although in the usual



course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission may at its discretion order such proceeding set down for hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in a request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence will not permit the fair and expeditious disposition of the petition. In addition, to the extent that such request for hearing is dependent upon factual assertion, the petitioner shall accompany the request with an affidavit establishing such facts. In the event a hearing is ordered by the commission, sections 20-40-24 and 20-40-25 shall govern the proceedings.

(e) Declaratory ruling on commission's own motion. Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice or hearing, issue a written declaratory order to terminate a controversy or to remove uncertainty. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-7, 91-8)

## SUBCHAPTER 5

### RULES APPLICABLE TO CONTESTED CASES

§20-40-24 Delegation of powers. The commission shall have the power to delegate the power to hear contested cases. The decision of said delegate shall be deemed to be the decision of the commission but may be subject to review by the commission on its own motion. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-25 Procedure. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

- (b) The notice shall include a statement of:
- (1) The date, time, place, and nature of hearing.
  - (2) The legal authority under which the hearing is to be held.
  - (3) The particular sections of the statutes and rules involved.
  - (4) An explicit statement in plain language of the issues involved and the facts alleged by the commission in support thereof; provided that, if the commission is unable to state such issues and facts in detail at the time the notice is served, the initial notice may

be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.

(5) The fact that any party may retain counsel if so desired.

(c) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

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

(e) For the purpose of decisions, the record shall include:

(1) All pleadings, motions, intermediate rulings.

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.

(3) Offers of proof and rulings thereon.

(4) Proposed findings and exceptions.

(5) Report of the officer who presided at the hearing.

(6) Staff memoranda submitted to members of the commission in connection with their consideration of the case.

(f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(g) No matters outside the record shall be considered by the agency in making its decision except as provided in this chapter.

(h) Any contested cases provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case hearing procedure required by federal or State law or regulation shall take precedence over the procedures established by this subchapter or by any rule or regulation established by the commission.

[Eff. JUN 22 1980] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-9)

§20-40-26 Rules of evidence; official notice. In contested cases: (a) Any oral or documentary evidence may be received but the hearing board or officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The hearing board

or officer shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) The hearing board or officer may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Any documents filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff. JUN 22 1980] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10)

§20-40-27 Examination of evidence. Whenever in a contested case the official who is to render the final decision has not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the commission itself, shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party adversely affected to file exceptions and present argument to the official who is to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties. [Eff. JUN 22 1980] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-28 Decisions and orders. Every decision and order adverse to a party to the proceeding, rendered by the commission in a contested case, shall be in writing or stated in the record and shall be

accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)

§20-40-29 Consultation by officials. No official of the commission who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)



STATE POST-SECONDARY EDUCATION COMMISSION

Amendments to Chapters 20-40 and 20-41 and  
Adoption of Chapter 20-42, Hawaii Administrative Rules

(12/16/94)

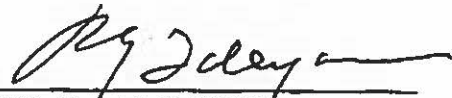
SUMMARY

1. The heading of chapter 20-40 is amended.
2. §20-40-2 is amended.
3. §20-40-4 is amended.
4. §20-40-14 is amended.
5. §§20-40-24 to 20-40-29 are amended.
6. The heading of chapter 20-41 is amended.
7. §20-41-3 is amended.
8. A new chapter 20-42, Hawaii Administrative Rules, entitled "Hawaii State Postsecondary Review Program", is adopted.

STATE POST-SECONDARY EDUCATION COMMISSION

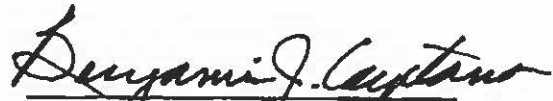
Amendments to the heading of chapter 20-40, §§20-40-2, 20-40-4, 20-40-14, 20-40-24, 20-40-25, 20-40-26, 20-40-27, 20-40-28, 20-40-29, heading of chapter 20-41, §20-41-3, and addition of a new chapter 20-42, Hawaii Administrative Rules, were adopted on April 21, 1995, following public hearings held on April 17, 18, 19, and 20, 1995, after public notice was given in The Honolulu Advertiser on March 10, 1995.

The amendments and addition shall take effect ten days after filing with the Office of the Lieutenant Governor.



ROY Y. TAKEYAMA  
Chairperson  
State Post-Secondary  
Education Commission

APPROVED:



BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

Dated: July 6, 1995

APPROVED AS TO FORM:



Deputy Attorney General

JUL 14 1995

~~JUL 24 1995~~ *BL*

Filed

JUL 14 11 48 AM '95

LIEUTENANT GOVERNOR'S  
OFFICE

1847

TITLE 20  
UNIVERSITY OF HAWAII  
SUBTITLE 3  
STATE POST-SECONDARY EDUCATION COMMISSION  
CHAPTER 40  
RULES OF PRACTICE AND PROCEDURE

§20-40-2 Definitions. (a) As used in the rules prescribed by the commission, unless the context specifically requires otherwise:

\*\*\*

"Commission" means the State post-secondary education commission and for purposes of this rule shall not include committees of the commission.

\*\*\*

"SPRE" means the commission acting as the State of Hawaii's State Postsecondary Review Entity, as defined in 34 C.F.R. §667.4, pursuant to HRS §305H-12 and chapter 20-42.

\*\*\* [Eff 6/22/1981; am JUL 24 1995 ]  
(Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 305H-11 to 305H-16, 91-2)

§20-40-4 Government records. (a) The term "government records" as used in this chapter is defined as in chapter 92F, HRS.

(b) All government records of the commission shall be available for inspection during established office hours, subject to the limitations prescribed in chapter 92F, HRS.

(c) All government records of the commission except as limited by chapter 92F, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect government records or for copies of government records will be handled with the regard for the dispatch of other public duties. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2, chapter 92F) (Imp: HRS §§305H-2, 91-2, chapter 92F)



§20-40-14 Appearances in a proceeding. (a) Any person shall be afforded an opportunity to present oral testimony to the commission at a meeting on any agenda item.

(b) In order to ensure an orderly and efficient meeting, any person who wants to appear before the commission to present testimony is requested to notify the secretary of the commission at least twenty-four hours prior to the meeting of the commission and, if possible, submit a written copy of the testimony to the secretary prior to the meeting.

(c) The chairperson of a meeting shall have the authority to limit or terminate any testimony which the chairperson determines to be repetitious or made solely for purposes of delay. Further, the chairperson of the meeting shall have authority to remove any person who wilfully disrupts the conduct of a meeting and to impose other reasonable conditions to ensure an orderly and efficient meeting. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

SUBCHAPTER 5

RULES APPLICABLE TO CONTESTED CASES

§20-40-24 Delegation of powers. The commission shall have the power to delegate the power to hear contested cases to a designated hearing officer. The proposed decision of the hearing officer shall be subject to review by the commission pursuant to the process set forth in section 20-40-27. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-25 Procedure. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

- (b) The notice shall include a statement of:
  - (1) The date, time, place, and nature of hearing.
  - (2) The legal authority under which the hearing is to be held.
  - (3) The particular sections of the statutes and rules involved.
  - (4) An explicit statement in plain language of the issues involved and the facts alleged by the commission or SPRE in support thereof; provided that, if the commission or SPRE is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.
  - (5) The fact that any party may retain counsel if so desired.

(c) At least fifteen days before the hearing, a written notice of hearing shall be provided to all parties to the proceeding by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card).

(d) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

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

(f) For the purpose of decisions, the record shall include:

- (1) All pleadings, motions, intermediate rulings.
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.
- (3) Offers of proof and rulings thereon.
- (4) Proposed findings and exceptions.
- (5) Report of the officer who presided at the hearing.
- (6) Staff memoranda submitted to members of the commission in connection with their consideration of the case.

(g) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(h) No matters outside the record shall be considered by the commission and the hearing officer in making a decision, except as provided in this chapter.

(i) Any contested case provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case hearing procedure required by federal or State law or regulation shall take precedence over the procedures established by this subchapter or by any rule or regulation established by the commission.

[Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-9, 91.9.5)

§20-40-26 Rules of evidence; official notice.

(a) Any oral or documentary evidence may be received but the commission and hearing officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission and hearing officer shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) The commission and hearing officer may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Any document filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff 6/22/81; am JUL 24 1995 ]  
(Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10)



§20-40-27 Examination of evidence. Whenever in a contested case the hearing is not held by the commission, but delegated to a hearing officer, and the commission has not heard and examined all of the evidence, the decision shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party to the proceeding adversely affected by the proposed decision, other than the commission or SPRE itself, to file exceptions to the proposed decision and present argument to the commission. The members of the commission shall personally consider the whole record of the contested case or such portions thereof as may be cited by the parties. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-11)

§20-40-28 Decisions and orders. Every decision and order rendered by the commission in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. [Eff 6/22/81; am <sup>JUL 24 1995</sup> ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)

§20-40-29 Consultation by officials. No official or member of the commission who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)

UNIVERSITY OF HAWAII

Repeal of Chapter 20-40 and  
Adoption of Chapter 20-40.1  
Hawaii Administrative Rules

( \_\_\_\_\_ )

SUMMARY

1. Chapter 20-40, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is repealed.
2. Chapter 20-40.1, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 3

STATE POSTSECONDARY EDUCATION COMMISSION

CHAPTER 40

RULES OF PRACTICE AND PROCEDURE

REPEALED

~~§§20-40-1 to 20-40-29~~ Repealed. [R ]



HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 3

STATE POST-SECONDARY EDUCATION COMMISSION

CHAPTER 40.1

RULES OF PRACTICE AND PROCEDURE

§20-40.1-1	Statement of policy
§20-40.1-2	Definitions
§20-40.1-3	The commission; administrative officer; other officers
§20-40.1-4	Office; hours
§20-40.1-5	The commission's powers and authority
§20-40.1-6	Meetings
§20-40.1-7	Quorum and voting; Robert's Rules of Order
§20-40.1-8	Government records; inspection; cost of copies
§20-40.1-9	Counsel for the commission
§20-40.1-10	The University's administrative practice and procedure
§20-40.1-11	Severability

§20-40.1-1 **Statement of policy.** The following rules set forth the practices and procedures

§20-40.1-1

established by the State post-secondary education commission for carrying out its functions pursuant to sections 304A-3151 through 304A-3154, HRS. [Eff  
] (Auth: HRS §§91-2, 304A-3152) (Imp:  
HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-2 **Definitions.** (a) As used in this chapter, unless the context specifically requires otherwise:

"Administrative officer" means the president of the University of Hawaii.

"Board" means the board of regents of the University of Hawaii.

"Chairperson" means the chairperson of the commission.

"Commission" means the State post-secondary education commission.

"Persons" includes individuals, partnerships, corporations, association, or public or private organizations of any character other than agencies.

"President" means the president of the University of Hawaii.

"Rule" as used in these rules means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the commission. The term does not include matters concerning only the operation and management of internal affairs of the commission not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, nor intra-agency memoranda.

"Rulemaking hearings" mean all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS.

"University" means the University of Hawaii.

(b) Unless otherwise specifically stated, the terms used in rules adopted by the commission pursuant to powers granted by statute shall have the meaning defined by that statute.

(c) A rule which defines a term without express reference to the statute or to the rules of a portion thereof, defines such terms for all purposes as used both in the statute and in the rules, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine and neuter gender. [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-3 **The commission; administrative officer; other officers.** (a) The commission shall consist of the members of the board and four other members who shall be appointed in accordance with section 26-34, HRS.

(b) The president shall be the administrative officer of the commission. The administrative officer shall carry out the policies adopted by the commission.

(c) The commission may elect a chairperson and/or such other officers from among the members of the commission as may be necessary to exercise and perform such other powers and duties as may from time to time be assigned by the commission. [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-4 **Office; hours.** (a) The office of the commission is in the office of the administrative officer, situated in Honolulu, Hawaii. All

§20-40.1-4

communications to the commission shall be addressed to the "State Postsecondary Education Commission, University of Hawaii, Office of the President, Bachman Hall 202, 2444 Dole Street, Honolulu, Hawaii 96822," unless otherwise specifically directed.

(b) The office of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except holidays and unless otherwise provided by statute or executive order. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-5 **The commission's powers and authority.** The commission may cooperate with the federal government to qualify the State to provide administrative action and/or receive funds made available under the Higher Education Act of 1965, Public Law 89-329, as amended from time to time, and in addition may serve as the state agency for the receipt of federal student information and/or federal funds when federal legislation dealing with higher education or post-secondary education requires, as a condition of state receipt of such funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the state and when agencies other than the commission may not qualify.

The commission may exercise and perform any other powers and duties that the commission considers necessary, proper, or desirable in order to carry out effectively the duties and responsibilities of the commission as prescribed in this chapter or by statute. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-6 **Meetings.** The commission shall meet as needed for administrative action and/or the receipt of federal student information and/or federal funds.

The commission may from time to time meet in each of the counties of Hawaii, Maui, and Kauai. The commission may meet in executive session, from which the public may be excluded as provided by chapter 92, HRS.

(b) The commission may, at the request of the administrative officer or the members of the commission, hold meetings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in carrying out its duties. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-7 **Quorum and voting; Robert's Rules of Order.** (a) A majority of the members to which the commission is entitled shall constitute a quorum at any commission meeting. The concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid.

(b) The current (or most recent) edition of *Robert's Rules of Order* shall guide the conduct of the commission meetings except where in conflict with this chapter. No action of the commission shall be invalid or ineffective by reason of noncompliance with *Robert's Rules of Order*. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-8 **Government records; inspection; cost of copies.** (a) The term "government record" as used in this chapter is defined as in chapter 92F, HRS.

(b) All government records of the commission shall be available for inspection during established office hours of the administrative officer, subject to the limitations prescribed in chapter 92F, HRS.

(c) All government records of the commission except as limited by chapter 92F, HRS, shall be



§20-40.1-8

available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect government records or for copies of government records will be handled with due regard for the dispatch of other public duties, subject to chapter 92F, HRS. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 92F-11, 92F-12, 304A-3152) (Imp: HRS §§91-2, 92-21, 92F-11, 92F-12, 304A-3151, 304A-3152)

§20-40.1-9 **Counsel for the commission.** The university general counsel shall be designated as legal counsel for the commission. The university general counsel or the university general counsel's representative, in the capacity as legal counsel for the commission, may be present at all meetings and hearings governed by this chapter. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-1005, 304A-3152) (Imp: HRS §§91-2, 304A-1005, 304A-3151, 304A-3152)

§20-40.1-10 **The university's administrative practice and procedure.** The rules applicable to rulemaking hearings and declaratory rulings, as set forth in the rules of practice and procedure of the board of regents for the university, as amended, shall be incorporated by reference and made a part of this chapter. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-11 **Severability.** If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the

provisions of these rules are severable. [Eff  
] (Auth: HRS §§91-2, 304A-3152) (Imp:  
HRS §§91-2, 304A-3151, 304A-3152)

UNIVERSITY OF HAWAII

The repeal of chapter 20-40 and the adoption of chapter 20-40.1, Hawaii Administrative Rules, on the Summary Page dated \_\_\_\_\_, were adopted on \_\_\_\_\_, following a public hearing held on \_\_\_\_\_, after public notice was given in the \_\_\_\_\_ on \_\_\_\_\_.

The repeal of chapter 20-40 and the adoption of chapter 20-40.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

---

DAVID LASSNER  
Administrative Officer,  
State Post-Secondary  
Education Commission

APPROVED:

---

DAVID Y. IGE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

---

Filed

APPROVED AS TO FORM:

University of Hawaii

---

Carrie K. S. Okinaga, Esq.  
Vice President for Legal Affairs and  
University General Counsel

Department of the Attorney General

---

Patricia Ohara, Esq.  
Deputy Attorney General

UNIVERSITY OF HAWAII

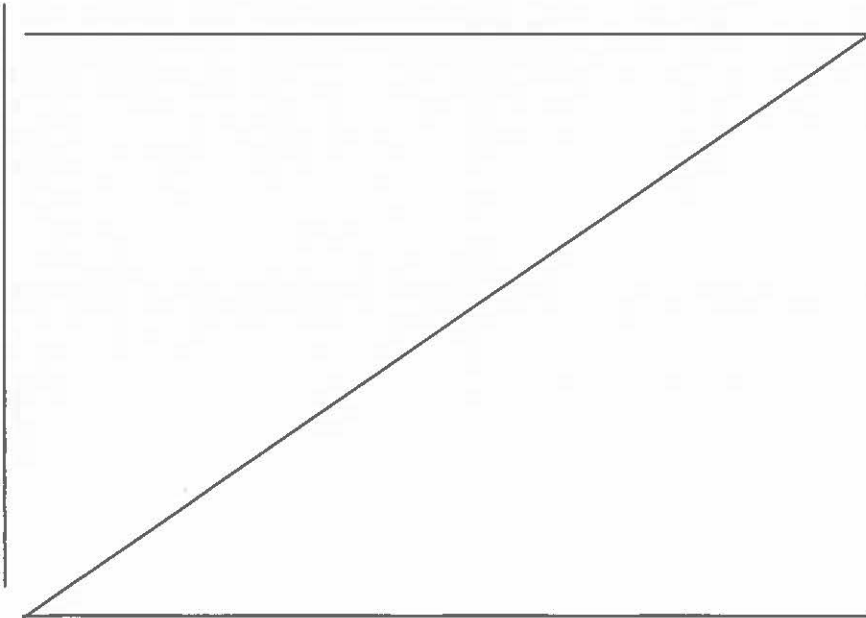
Repeal of Chapter 20-40 and  
Adoption of Chapter 20-40.1  
Hawaii Administrative Rules

( \_\_\_\_\_ )

SUMMARY

1. Chapter 20-40, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is repealed.

2. Chapter 20-40.1, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is adopted to read as follows:



40.1-1

"HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 3

STATE POST-SECONDARY EDUCATION COMMISSION

CHAPTER 40.1

RULES OF PRACTICE AND PROCEDURE

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~~SUBCHAPTER 1~~

~~RULES OF GENERAL APPLICABILITY~~

~~§20-40.1-1~~ **Statement of pPolicy.** The following rules ~~shall govern~~set forth the practices and



~~procedures before established by the State post-secondary education commission for carrying out its functions under chapter 91, pursuant to sections 304A-3151 through 304A-3154, HRS. [Eff. 06/22/81, am and comp \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)~~

~~§20-40.1-2 **Definitions** [TTT1]. (a) As used in the rules prescribed by the commission this chapter, unless the context specifically requires otherwise:~~

~~"Administrative officer" means the president of the University of Hawaii.~~

~~"Board" means the board of regents of the University of Hawaii.~~

~~"Chairperson" means the chairperson of the commission.~~

~~"Commission" means the State post-secondary education commission and for purposes of this rule shall not include committees of the commission.~~

~~"Committee" shall mean all committees of the commission including the executive committee of the commission and the committee of the whole.~~

~~"Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined by the commission after an opportunity for a hearing.~~

~~"Party" wherever used in these rules, shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a contested case.~~

~~"Persons" includes individuals, partnerships, corporations, association, or public or private organizations of any character other than agencies.~~

~~"Petitioner" refers to the party on whose behalf a petition or application is made in proceedings involving petitions or applications for permission or authorization which the commission may give under statutory or other authority delegated to it.~~

~~"Proceedings" as used in these rules, shall mean the commission's elucidation of the relevant facts and applicable law, consideration thereof and action with~~

~~respect to a particular subject within the commission's jurisdiction. It does not apply to rulemaking hearings, contested cases or committee meetings.~~

"President" means the president of the University of Hawaii.

"Rule" as used in these rules means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the commission. The term does not include matters concerning only the operation and management of internal affairs of the commission not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, nor ~~to~~ intra-agency memoranda.

~~"Rulemaking hearings" as used in these rules, shall mean all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS. It shall not apply to commission meetings relating to the operation and management of internal affairs of the commission nor to hearings for contested cases.~~

~~"Secretary" means the secretary of the commission.~~

~~"SPRE" means the commission acting as the State of Hawaii's State Postsecondary Review Entity, as defined in 34 C.F.R. 5667.4, pursuant to HRS §305H-12 and chapter 20-42.~~

"University" means the University of Hawaii.

(b) Unless otherwise specifically stated, the terms used in rules ~~promulgated~~ adopted by the commission pursuant to powers granted by statute shall have the meaning defined by ~~such that~~ statute.

(c) A rule which defines a term without express reference to the statute or to the rules of a portion thereof, defines such terms for all purposes as used both in the statute and in the rules, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine and neuter gender. [Eff ~~06/22/81; am 07/24/95; am and comp~~



\_\_\_\_\_ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**§20-40.1-3 The commission; administrative officer; other officers.** (a) The commission shall consist of the members of the board and four other members who shall be appointed in accordance with section 26-34, HRS.

(b) The president shall be the administrative officer of the commission. The administrative officer shall carry out the policies adopted by the commission~~(TTT2)~~.

(c) The commission may elect a chairperson and/or such other officers from among the members of the commission as may be necessary to exercise and perform such other powers and duties as may from time to time be assigned by the commission~~(TTT3)~~. [Eff

] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**§20-40.1-4 Office; hours.** (a) ~~Office.~~—The office of the commission is in the office of the ~~secretary of the commission~~ administrative officer~~(TTT4)~~, situated in Honolulu, Hawaii. All communications to the commission shall be addressed to the "State Postsecondary Education Commission, University of Hawaii, ~~State of Hawaii~~ Office of the President, Bachman Hall 202, 2444 Dole Street, Honolulu, Hawaii 96822," unless otherwise specifically directed.

(b) ~~Hours.~~—The office of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except holidays and unless otherwise provided by statute or executive order. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**§20-40.1-5 The commission's powers and authority.** The commission may cooperate with the

federal government to qualify the State to provide administrative action and/or receive funds made available under the Higher Education Act of 1965, Public Law 89-329, as amended from time to time, and in addition may serve as the state agency for the receipt of federal student information and/or federal funds when federal legislation dealing with higher education or post-secondary education requires, as a condition of state receipt of such funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the state and when agencies other than the commission may not qualify.<sup>(rrr5)</sup>

The commission may exercise and perform any other powers and duties that the commission considers necessary, proper, or desirable in order to carry out effectively the duties and responsibilities of the commission as prescribed in this chapter or by statute.<sup>(rrr6)</sup> [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**§20-40.1-6 Meetings.**

~~(a) Sessions.~~ The commission shall meet as needed for administrative action and/or the receipt of federal student information and/or federal funds. The commission annually and at such other times as required and may from time to time meet in each of the counties of Hawaii, Maui, and Kauai. The commission may meet in executive session, from which the public may be excluded as provided by chapter 92, HRS.

(b) The commission may, at the request of the administrative officer or the members of the commission, hold meetings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in carrying out its duties. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**§20-40.1-7 Quorum and voting; Robert's Rules of**



Order. (a) ~~(d)~~ ~~Quorum and voting.~~ A majority of the members to which the commission is entitled shall constitute a quorum at any ~~proceeding or hearing~~ commission meeting. The concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid ~~except for procedural action.~~

~~(b) Administrative officer.~~ ~~As stated in chapter 305H, HRS, the president of the University of Hawaii, as administrative officer of the commission, shall carry out the policies adopted by the commission.~~

~~(f)~~ The current (or most recent) edition of Robert's Rules of Order shall guide the conduct of the commission meetings except where in conflict with this chapter. No action of the commission shall be invalid or ineffective by reason of noncompliance with Robert's Rules of Order. Unless otherwise provided in these rules, Robert's Rules of Order shall apply. ~~—~~ [Eff ~~06/22/81; am and comp~~ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-84 Government records; inspection; cost of copies. Public records. (a) The term "government records" as used in this chapter is defined as in chapter 92F, HRS.

(b) All government records of the commission shall be available for inspection during established office hours of the administrative officer, subject to the limitations prescribed in chapter 92F, HRS.

(c) All government records of the commission except as limited by chapter 92F, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect government records or for copies of government records will be handled with due the regard for the dispatch of other public duties, subject to chapter 92F, HRS. [Eff ~~07/24/95; am and comp~~ 06/22/81; am ] (Auth: HRS §§91-2, 92F-11, 92F-12, 304A-3152) (Imp: HRS §§91-2, 92-21, 92F-11, 92F-12, 304A-3151, 304A-3152)

§20-40.1-9 Counsel for the commission. The university general counsel ~~(TTT)~~ shall be designated as legal counsel for the commission. The university general counsel or the university general counsel's representative, in the capacity as legal counsel for the commission, may be present at all meetings and hearings governed by this chapter. [Eff ] (Auth: HRS §§91-2, 304A-1005, 304A-3152) (Imp: HRS §§91-2, 304A-1005, 304A-3151, 304A-3152)

§20-40.1-105 The university's administrative practice and procedure. The rules applicable to rulemaking hearings and declaratory rulings, as set forth in the rules of practice and procedure of the board of regents for the university, as amended, shall be incorporated by reference and made a part of this chapter ~~(TTT)~~. [Eff ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-11 Severability. If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable. [Eff 06/22/81; am and comp ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

~~§20-40-6 Appearances before the commission. (a) Any individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona~~



~~vide officer of a corporation or association may represent the corporation or association, and an officer or employee of an agency of the State or a political subdivision of the state may represent such agency before the commission.~~

~~(b) A person may be represented by or with counsel or other duly qualified representative before the commission.~~

~~(c) When an individual acting in a representative capacity appears in person or signs a paper in practice signature shall constitute a representation to the commission that under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf the action is taken. The commission may at any time require any person appearing before the commission in a representative capacity to show his authority and qualification to act in such capacity. [Eff 06/22/81, am and comp \_\_\_\_\_] (Auth: HRS 55305H-2, 91-2) (Imp: HRS 55305H-2, 91-2)~~

~~§20-40-7 Filing of documents. (a) All documents required to be filed with the commission shall be filed with the secretary. Such documents may be sent by mail or hand-carried to the commission's office in Honolulu, Hawaii, within the time limit, if any, for such filing. The date on which the documents are actually received by the commission shall be deemed to be the date of filing.~~

~~(b) All documents must be signed by the party or a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document, that to the best of his knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading, and that it is not interposed for delay.~~

~~(c) The initial document filed by any person shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed. [Eff 06/22/81, am and~~



~~comp \_\_\_\_\_ ] (Auth: HRS §5305H-2, 91-2)  
(Imp: HRS §5305H-2, 91-2)~~

~~§20-40-8 Computation of time. In computing any period of time prescribed by these rules or by order of the commission, the provisions of section 1-29, HRS, shall apply. [Eff 06/22/81, am and comp \_\_\_\_\_ ] (Auth: HRS §5305H-2, 91-2) (Imp: HRS §5305H-2, 91-2)~~

~~§20-40-9 Continuance or extension of time. Whenever a person or agency is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order of regulation, the chairperson may~~

- ~~(1) Before the expiration of the prescribed period, with or without notice, extend such period; or~~
- ~~(2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to the chairperson to be the result of excusable neglect. [Eff 06/22/81, am and comp \_\_\_\_\_ ] (Auth: HRS §5305H-2, 91-2) (Imp: HRS §5305H-2, 91-2)~~

~~§20-40-10 Amendment of documents. If any document filed does not conform with the applicable rules of the commission as to the contents thereof, or is otherwise insufficient, the commission, on its own motion, or on motion of any interested person, may strike or dismiss such document or require its amendment. If amended, the document shall be effective as of the date of the original filing. [Eff 06/22/81, am and comp \_\_\_\_\_ ] (Auth: HRS §5305H-2, 91-2) (Imp: HRS §5305H-2, 91-2)~~

~~§20-40-11 Retention of documents by the commission. All documents filed with or presented to the commission may be retained in the files of the commission. However, the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace documents. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-12 Counsel for the commission. The attorney general or a representative, in the capacity as counsel for the commission, may be present at all proceedings, hearings or contested cases governed by these rules. The attorney general or a representative shall be designated as counsel for the commission. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 28-4)~~

#### ~~SUBCHAPTER 2~~

#### ~~PROCEEDINGS BEFORE THE COMMISSION~~

~~§20-40-13 General. (a) The commission may on its own motion, or on petition or any interested person, group, organization or agency, hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the carrying out of its duties. For such purposes, it may call witnesses and call for the production of documents and other relevant statements. Procedures to be followed by the commission, shall, unless specifically prescribed in these rules, be such as in the opinion of the commission will best serve the purposes of such proceedings.~~

~~(b) Notice of any proceeding before the commission shall comply with section 92-7, HRS. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS~~

~~§§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-14 Appearances in a proceeding. (a) Any person shall be afforded an opportunity to present oral testimony to the commission at a meeting on any agenda item.~~

~~(b) In order to ensure an orderly and efficient meeting, any person who wants to appear before the commission to present testimony is requested to notify the secretary of the commission at least twenty-four hours prior to the meeting of the commission and, if possible, submit a written copy of the testimony to the secretary prior to the meeting.~~

~~(c) The chairperson of a meeting shall have the authority to limit or terminate any testimony which the chairperson determines to be repetitious or made solely for purposes of delay. Further, the chairperson of the meeting shall have authority to remove any person who willfully disrupts the conduct of a meeting and to impose other reasonable conditions to ensure an orderly and efficient meeting. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). (Eff 6/22/1991; am 07/24/95; am and comp \_\_\_\_\_) (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-15 Commission decision. All final decisions of the commission in a proceeding shall be available for public inspection in the office of the commission or may be obtained upon request and upon payment of charges, if any. (Eff 06/22/91; am and comp \_\_\_\_\_) (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-16 Consolidations. The commission, upon its own initiation or upon motion, may consolidate for consideration or for other purposes two or more issues which are the same or closely related, if it finds that~~



~~such consolidations will be conducive to the proper dispatch of its business and will not unduly delay the proceeding. [Eff 06/22/81, am and comp ] (Auth: HRS 55305H-2, 91-2) (Imp: HRS 55305H-2, 91-2)~~

### ~~SUBCHAPTER 3~~

#### ~~RULES APPLICABLE TO RULEMAKING HEARINGS~~

##### ~~§20-40-17 Notice of proposed rulemaking.~~

~~(a) When pursuant to a petition therefor, or upon its own motion, the commission proposes to issue, amend or repeal a rule, notice of proposed rulemaking will be published in accordance with chapters 91 and 92, HRS.~~

~~(b) A notice of the proposed issuance, amendment, or repeal of a 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 issuance, amendment, or repeal of a rule is proposed.~~

~~(3) A statement of the substance of the proposed rulemaking.~~

~~[Eff 06/22/81, am and comp ] (Auth: HRS 55305H-2, 91-2) (Imp: HRS 55305H-2, 91-2)~~

##### ~~§20-40-18 Conduct of rulemaking hearing.~~

~~(a) Public hearing. Unless otherwise specifically directed by the commission, all rulemaking hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed issuance, amendment, or repeal of a rule. However, the commission may hold such hearings on a neighbor island if a written request for such a hearing is received by the commission within the time specified in the public notice. In all cases, however, written testimony may be received by the commission in accordance with these~~

~~writes:~~

~~When a matter affects only a county other than~~  
~~Oshtemo then the hearing shall be held in that county.~~

~~(b) Presiding officer. Each such rulemaking hearing shall be presided over by the chairperson or a member of the commission as designated by the chairperson. The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as 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 proceedings.~~

~~(c) Continuance of rulemaking hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but may 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.~~

~~(d) Order of hearing. 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 matters specified in the notice of hearing in such order as the presiding officer shall prescribe.~~

~~(e) Conduct of hearing. All interested persons shall be given reasonable opportunity to submit written or oral testimony or evidence with respect to the matters specified in the notice of hearing. The conduct of the hearing and filing of all documents shall be in accord with sections 20-40-6 through 20-40-12. The presiding officer shall confine the testimony to the questions before the hearing and is empowered to confine the testimony so as to keep order. Every person testifying may be subject to questioning by any member of the commission or its counsel but questioning by private persons shall not be permitted unless the presiding officer expressly permits it.~~

~~(f) Transcript of the testimony. Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the hearing need not be reported verbatim. 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 fourteen copies of the exhibits shall be submitted. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS 55305H-2, 91-2) (Imp: HRS 55305H-2, 91-2, 91-3)~~

~~520-40-19 Commission action. At the final public hearing, the commission may make its decision or announce the date when its decision shall be made. The commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS 55305H-2, 91-2) (Imp: HRS 55305H-2, 91-2)~~

~~520-40-20 Emergency rulemaking. Notwithstanding the foregoing rules, if the commission 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 such finding, it may proceed without prior notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty days without renewal. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS 55305H-2, 91-2) (Imp: HRS 55305H-2, 91-2, 91-3)~~

~~520-40-31 Petitions for adoption, amendment or repeal of rules. (a) Scope. Any interested persons, organization or agency may petition the commission for the issuance, amendment, modification or repeal of any rule as defined in this chapter.~~

~~(b) Form and contents. Petitions for rulemaking~~

shall conform to the requirements of section 20-40-7. Such petition for rulemaking shall set forth the text of any proposed rule or amendment desired or shall specify the rule the repeal of which is desired and state 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 commission may also require the petitioner to serve other persons, organizations or agencies known to be interested in the proposed rulemaking. No request for the issuance, amendment, modification or repeal of a rule which does not conform to the requirements set forth above will be considered by the commission.

~~(c) Procedure. The commission shall within thirty days following the filing of the petition either deny the petition or writing or initiate public rulemaking procedures. No public hearing, oral argument or other form of proceedings will be held directly on any such decision, but if the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed will be as set forth in sections 20-40-17 through 20-40-19. Where the commission 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 or where the petition does not concern a rule, the commission shall deny the petition and the petitioner will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition. [Eff 06/22/81, am and comp ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-6)~~

~~§20-1-22 Filing and publication. (a) The commission, after obtaining the approval of the~~



governor of any rule, shall file certified copies of the rule with the lieutenant governor.

~~(b) The commission shall also keep a compilation of all such rules adopted by the commission which are still in effect. Such compilation shall be supplemented, revised and made available to the public and provided by these rules and chapter 91 and 92, HRS. (Eff. 06/22/81; am and comp \_\_\_\_\_) (Auth: HRS 56205H-2, 91-2) (Imp: HRS 56205H-2, 91-2, 91-4, 91-5)~~

#### SUBCHAPTER 4

#### DECLARATORY RULINGS

##### ~~§20-40-23 Petition for declaratory rulings.~~

~~(a) Form and contents. On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. Petitions for the issuance of such orders shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest, and shall conform to the requirements of section 20-40-7.~~

~~(b) Additional data and supporting authorities. The commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.~~

~~(c) Dismissal. The commission may, without notice or hearing, dismiss a petition or declaratory ruling which fails in material respect to comply with the requirements of this chapter.~~

~~(d) Request for hearing. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission~~

may at its discretion order such proceeding set down for hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in a request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence will not permit the fair and expeditious disposition of the petition. In addition, to the extent that such request for hearing is dependent upon factual ascertainment, the petitioner shall accompany the request with an affidavit establishing such facts. In the event a hearing is ordered by the commission, sections 20-40-24 and 20-40-25 shall govern the proceedings.

~~(c) Declaratory ruling on commission's own motion. Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice or hearing, issue a written declaratory order to terminate a controversy or to remove uncertainty. (Eff 06/22/91; am and comp \_\_\_\_\_) (Auth: HRS §§305H-2, 91-2) (Imp: HRS 55305H-2, 91-2, 91-7, 91-8)~~

#### SUBCHAPTER 5

#### RULES APPLICABLE TO CONTESTED CASES

~~§20-40-24 Delegation of powers. The commission shall have the power to delegate the power to hear contested cases to a designated hearing officer. The proposed decision of the hearing officer shall be subject to review by the commission pursuant to the process set forth in section 20-40-27. (Eff 6/22/1981; am 07/24/95; am and comp \_\_\_\_\_) (Auth: HRS 55305H-2, 91-2) (Imp. HRS 55305H-2, 91-2)~~

~~§20-40-25 Procedure. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.~~



- ~~(b) The notice shall include a statement of:~~
- ~~(1) The date, time, place, and nature of hearing.~~
  - ~~(2) The legal authority under which the hearing is to be held.~~
  - ~~(3) The particular sections of the statutes and rules involved.~~
  - ~~(4) An explicit statement in plain language of the issues involved and the facts alleged by the commission or SPRE in support thereof, provided that, if the commission or SPRE is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.~~
  - ~~(5) The fact that any party may retain counsel if so desired.~~

~~(c) At least fifteen days before the hearing, a written notice of hearing shall be provided to all parties to the proceeding by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United State Postal Service return receipt card (green card).~~

~~(d) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.~~

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

~~(f) For the purpose of decisions, the record shall include:~~

- ~~(1) All pleadings, motions, intermediate rulings.~~
- ~~(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.~~
- ~~(3) Offers of proof and rulings thereon.~~
- ~~(4) Proposed findings and exceptions.~~
- ~~(5) Report of the officer who presided at the hearing.~~
- ~~(6) State memoranda submitted to members of the commission in connection with their~~

~~consideration of the case.~~

~~(g) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.~~

~~(h) No matters outside the record shall be considered by the commission and the hearing officer in making a decision, except as provided in this chapter.~~

~~(i) Any contested case provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case regulation shall take precedence over the procedures established by this subchapter or by any rule of regulation established by the commission. [Eff 6/22/1981; am 07/24/95; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp. HRS §§305H-2, 91-2, 91-9, 91-9.5)~~

~~§20-40-26 Rules of evidence; official notice.~~

~~(a) Any oral or documentary evidence may be received but the commission and hearing officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission and hearing officer shall give effect to the rules of privilege recognized by law.~~

~~(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.~~

~~(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.~~

~~(d) The commission and hearing officer may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical~~



~~or scientific facts within their specialized knowledge, but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.~~

~~(c) Any documents filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff 6/22/1981; am 07/24/95; am and comp ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10).~~

~~§20-40-27 Examination of evidence. Whenever in a contested case the hearing is not held by the commission, but delegated to a hearing officer, and the commission has not heard and examined all of the evidence, the decision shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party to the proceeding adversely affected by the proposed decision, other than the commission or SPRE itself, to file exceptions to the proposed decision and present argument to the commission. The members of the commission shall personally consider the whole record of the contested case or such portions thereof as may be cited by the parties. [Eff 6/22/1981; am 07/24/95; am and comp ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-11).~~

~~§20-40-28 Decisions and orders. Every decision and order rendered by the commission in a contested case, shall be in writing or stated in the record and~~

~~shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. (Eff 6/22/1981, am 07/24/95, am and comp \_\_\_\_\_) (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)~~

~~§20-40-20 Consultation by officials. No official of the commission who renders a decision in a contested case shall consult any person or any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. (Eff 6/22/1981, am 07/24/95, am and comp \_\_\_\_\_) (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)~~

~~32. This simultaneous repeal of chapter 20-40 and adoption of chapter 20-40.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.~~

~~3. Additions to update source notes to reflect these amendments and compilations are not underscored.~~

~~4. These amendments to and compilation of chapter 20-40, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.~~

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

~~ROY Y. TAKEYAMA~~ David Lassner  
~~Chairperson~~ Administrative  
Officer,  
State Post-Secondary Education  
Commission

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