

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 9, 2021

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 21SD-019

Approve the Repeal of Hawaii Administrative Rules (HAR) Section 13-1-18, Counsel for the Board in Contested Cases, upon Department’s Satisfaction of the Requirements of Subsection 91-3(g), Hawaii Revised Statutes, as amended (HRS).

HAR Chapter 13-1, which includes Section 13-1-18 that is the subject of the request to repeal, can be reviewed online at: <https://dlnr.hawaii.gov/occl/files/2013/08/Ch-13-1.pdf>.

BACKGROUND

Hawaii Administrative Rule §13-1-18 provides as follows:

§13-1-18 Counsel for the board in contested cases. A deputy attorney general, as assigned by the department of the attorney general, will serve as counsel to the board during its proceedings. In contested cases concerning alleged violations of law, there will be at least two deputy attorneys general assigned by and from different divisions of the department of the attorney general, one to represent the department of land and natural resources in enforcement of the law and one to serve as counsel for the board. [Eff 6/22/81; am and comp 2/27/09] (Auth: HRS §171-6) (Imp: HRS §§28-4,91-2)

For whatever reason, the above rule was promulgated by the Department to be specific for the Board of Land and Natural Resources (Board) and does not apply to the other boards or commissions within the State. The Department, in consultation with the Department of Attorney General (DAG) believe that the above rule is unnecessary may be repealed without jeopardizing the representation of the Board. DAG will provide representation with or without the rule. Moreover, the rule constrains DAG’s right and duty to make staffing decisions based on the facts of each individual case.

REMARKS

The applicable repeal process is HRS § 91-3(g) which states:

(g) Whenever an agency seeks only to repeal one or more sections, chapters, or subchapters of the agency's rules because the rules are either null and void or unnecessary, and not adopt, amend, or compile any other rules:

(1) The agency shall give thirty days' public notice at least once statewide of the proposed date of repeal and of:

(A) A list of the sections, chapters, or subchapters, as applicable, being repealed; and

(B) A statement of when, where, and during what times the sections, chapters, or subchapters proposed to be repealed may be reviewed in person.

(2) The agency shall post the full text of the proposed sections, chapters, or subchapters to be repealed on the Internet as provided in section 91-2.6; and

(3) Any interested person may petition the agency regarding the sections, chapters, or subchapters proposed to be repealed, pursuant to section 91-6.

This subsection does not apply to the repeal of one or more subsections, paragraphs, subparagraphs, clauses, words phrases, or other material within a section that does not constitute the entire section to be repealed.

Anyone who may oppose the repeal will have the opportunity to file a petition with the Board in accordance with Sections 91-3 and 91-6, HRS.

RECOMMENDATION: That the Board:

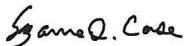
1. Approve the repeal of HAR Section 13-1-18 upon the Department's satisfaction of the requirements of Subsection 91-3(g), HRS.

Respectfully Submitted,



Michael Ferreira
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

RT