

BOARD OF WATER SUPPLY of the COUNTY OF KAUA'I

PUBLIC HEARING

Second Floor, Microbiology Lab Bldg
Kaua'i County Department of Water
4398 Pua Loke Street, Lihu'e, Kaua'i, Hawai'i 96766

TUESDAY, AUGUST 21, 2012

6:00 p.m.

or soon thereafter

The Board of Water Supply of the County of Kauai ("Board") will hold a public hearing and receiving public testimony and comments from all interested persons regarding the following item:

PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS OF THE BOARD OF WATER SUPPLY, COUNTY OF KAUA'I, STATE HAWAII

PART 2 WATER SERVICE CONNECTIONS
SECTION IX - ADJUSTMENT OF BILLS FOR UNDETECTED LEAKS AND UNFORESEEN DAMAGES

(Section revisions to eliminate adjustment of bills for undetected leaks and unforeseen damages)

AND

PART 3 ESTABLISHING STANDARDS FOR SUBDIVISION WATER SYSTEMS
Modification of Requirements - Section XII

(Section revisions to elucidate who in the "department" can make modifications and how)

Public hearings will be held at 6:00 pm, or soon thereafter, on the following date, at the location given below:

Tuesday, August 21, 2012
Kauai County Department of Water's Microbiology Lab Building,
4398 Pua Loke Street, Lihue

A copy of the proposed rule amendment will be mailed to any interested person who requests a copy and pays the required fees for the copy and the postage. Requests may be made by calling the Water Manager's Office at (808) 245-5408, or by submitting facsimile requests to (808) 246-8628. Requests may also be made up to and including the date of the public hearing.

Page 1 of 2

NOTE: Special Accommodations for persons with disabilities are available upon request five (5) days prior to the meeting date. Please call the Department of Water, County of Kauai, at 245-5408 or drop by at 4398 Pua Loke Street, Lihue, Kauai. Our mailing address is PO Box 1706, Lihue, HI 96766.

The proposed rule amendments may be reviewed in person between the hours of 8:00 a.m. to 4:15 p.m., Monday through Friday (excluding State of Hawaii holidays), at the Water Manager's Office, 4398 Pua Loke Street, Lihue, Kauai, Hawaii. Proposed rule amendments may be reviewed any time up to and including the date of the public hearing.

All interested persons may submit data, views, arguments, or other testimony orally or in writing, or both, concerning the proposed rule amendments. Data, views, arguments, or other testimony may be submitted any time up to and including the date of the public hearing, or at the public hearing itself. Data, views, arguments, or testimony may be submitted by e-mail to mgarasi@kauaiwater.org, by facsimile to (808) 246-8628 or by U.S. mail to the Water Manager's Office, whose address is Kauai Department of Water, 4398 Pua Loke Street, Lihue, Kauai, Hawaii 96766.

The Board may impose a time limit for each person presenting testimony at the hearing. Should you have any questions, please do not hesitate to call the Water Manager's Office at (808) 245-5408. The Water Manager's facsimile number is (808) 246-8628.

BY ORDER OF THE BOARD: Daryl Kaneshiro, 2012 Chairperson

(Published in The Garden Island on July 20, 2012)

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NOTICE OF PUBLIC HEARING

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PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS OF THE BOARD OF WATER SUPPLY, COUNTY OF KAUAI, STATE OF HAWAII

Part II – Rules and Regulations for Water Service Connections, and providing Penalties for the Violations thereof

Section IX – Adjustments of Bills for Undetected Leaks and Unforeseen Damages – The following Section will be deleted:

SECTION IX - ADJUSTMENT OF BILLS FOR UNDETECTED LEAKS AND UNFORESEEN DAMAGES

1. The Department will reduce high water bills caused by undetected leaks in the consumer's supply pipe by one half of the excess over the consumer's normal bill based on the previous six months' average. Adjustments will also be allowed where the high water bill was caused by some unforeseen circumstance such as a storm, flood, explosion, fire and others.
2. Adjustment will be allowed only if the consumer exercises diligence in repairing the leak within the period of one week after knowledge of leakage.
3. No adjustments will be made for leakage due to faulty plumbing fixtures and exposed waterlines within his property.
4. Before adjustment is made under this section, the owner shall first request an adjustment and submit substantiating data to warrant such an adjustment if required by the Department. The Department shall make their determination based on the data presented and any other evidence as collected by the Department, if necessary.}

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BY ORDER OF THE BOARD: Daryl Kaneshiro, 2012 Chairperson

SMALL BUSINESS IMPACT DETERMINATION AND STATEMENT
For
PROPOSED AMENDMENT OF RULES of the
BOARD OF WATER SUPPLY, COUNTY OF KAUA'I

**RELATING TO PART II, RULES AND REGULATIONS FOR WATER SERVICE
CONNECTIONS IN THE COUNTY OF KAUA'I**

MARCH 2, 2012

SUMMARY OF THE PROPOSED RULE AMENDMENT:

PURSUANT TO ACT 168, 1998

PROPOSED RULE AMENDMENT: The intent of the rule amendment (Rule) is to cancel the leak rebate program outlined in Section IX – Adjustments of Bills for Undetected Leaks and Unforeseen Damages of Part II of the Rules and Regulations for Water Service Connections in the County of Kaua'i.

IMPACT DETERMINATION:

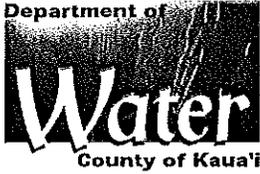
The Department believes the proposed rule amendment would have no discernible effect on small businesses. Our water rates do not single out business usage and therefore cannot with certainty say any individual request for bill adjustment due to leakage is related to a small business. This does amount to approximately \$300,000 to \$400,000 in lost revenue to the Department of Water which in turn amounts to about a (2%) lower water rate for all customers including small businesses.

All businesses large and small will no longer be able to avail themselves of the canceled rule when in effect.

There should be no increase in direct or indirect costs associated with compliance. The businesses would, however, have to be more diligent in checking for leaks on the businesses side of the meter that would have had to be fixed anyway to take advantage of the rule section being canceled.

Thus far, the rule change was noticed at the Board of Water Supply July 28, 2011 regular board meeting when this action was proposed, and approved to go to the Small Business Regulatory Review Board at its August 18, 2011 regular board meeting.

The proposed rule change does not include provisions that are more stringent than other similar requirements. The philosophy behind the rule change is that those who take care of their water system after the meter should not be subsidizing those who do not take care of their water system after the meter.



Water has no substitute.....Conserve it

March 2, 2011

Small Business Regulatory Review Board (SBRRB)
DBEDT - Business Support Division
P. O. Box 2359
Honolulu, HI 96804

Dear SBRRB:

Subject: Kauai Department of Water's Proposed Rule Amendment to the Rules and Regulations of the Kauai County Department of Water:
"Proposed Amendments to Part II of the Rules and Regulations for Water Service Connections":
Section IX – Adjustments of Bills for Undetected Leaks and Unforeseen Damages – Section deletion

Pursuant to Section --3 of Act 168 (98) and revised in Act 202 (02), we are transmitting on behalf of the Board of Water Supply, Kauai Department of Water, a draft Small Business Impact Statement for our proposed rule amendment above. The proposed Rule Amendment is also attached.

As we seek your approval to allow this proposed rule change go to public hearing, may we request that this matter be placed on the SBRRB's April 2012 Board Meeting Agenda please? At the time of writing, we were unable to determine the actual date of the April meeting. Could we please get a copy of the April 2012 SBRRB Board Meeting Agenda as soon as it is published and a copy of the results of the SBRRB's April 2012 meeting? You can fax it to us at (808) 246-8628, or email it to cbeardmore@kauaiwater.org. If we are able to be on the April SBRRB Agenda, I plan to attend that meeting to make a presentation to the SBRRB and would appreciate notification of the date of the meeting.

We very much appreciate your assistance. If you have any questions, please do not hesitate to call me at (808) 245-5408.

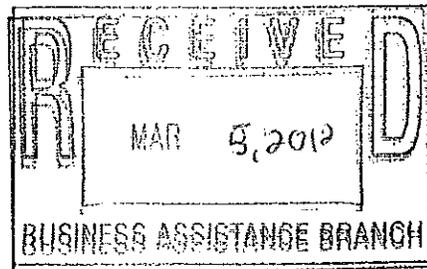
Sincerely,

David R. Craddick, P.E., C.E.M.
Manager and Chief Engineer

Cc: Peter Yukimura

cab

Attachments: Small Business Impact Statement
Part II Rule Amendment



SBRRB-Request to be on April 2012 SBRRB Agenda



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

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Tel 808 586-2594
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DEPT. OF WATER
COUNTY OF KAUAI

MEMORANDUM

Neil Abercrombie
Governor

Richard C. Lim
Director, DBEDT

Mary Alice Evans
Deputy Director, DBEDT

Members

Sharon L. Pang
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Bruce Bucky
Oahu

Peter Yukimura
Kauai

David S. De Luz, Jr.
Hawaii

Howard West
Oahu

Chu Lan Shubert-Kwock
Oahu

TO: David R. Craddick, P.E., Manager and Chief Engineer
Department of Water, County of Kauai

FROM: Sharon L. Pang, Chairperson
Small Business Regulatory Review Board

DATE: March 7, 2012

SUBJECT: Kauai Department of Water's Proposed Rule Amendments to
Part II of the Rules and Regulations for Water Service
Connections; Section IX – Adjustments of Bills for Undetected
Leaks and Unforeseen Damages

As you are aware, the Small Business Regulatory Review Board (Review Board) provides recommendations to State and County agencies on proposed rules and proposed rule amendments, pursuant to Chapter 201M, Hawaii Revised Statutes (HRS).

Thank you for providing the Review Board with the County of Kauai Department of Water's above-captioned rules for review. Upon careful consideration and review pursuant to Chapter 201M-2, HRS, it has been determined that the rules do not fall within the Review Board's purview. As a result, the rules will not be placed on an upcoming board agenda.

As always, thank you for keeping the Review Board apprised of the regulatory activity at the County of Kauai Department of Water.

c: Peter Yukimura, Review Board Discussion Leader

NOTICE OF PUBLIC HEARING

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PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, COUNTY OF KAUAI, STATE OF HAWAII

PART 3 Establishing Standards For Subdivision Water Systems

(Section revisions to elucidate who in the "Department" can make modifications and how)

SECTION XII - MODIFICATION OF REQUIREMENTS

When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected [~~], such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations, may be made by the Department].~~

The Manager and Chief Engineer may waive or modify requirements of this rule when not contrary to the purpose of the rule or the public interest, and when the Manager and Chief Engineer finds that:

- 1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and**
- 2. The applicant's circumstance or condition is unique or exceptional, and the Manager and Chief Engineer would grant the same request if made by every similarly situated applicant; and**
- 3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations.**
- 4. In cases of exemption from or reduction of the FRC fee, the request must be brought to the Board for approval.**

Any waiver or modification made by the Manager and Chief Engineer will not be considered to have final approval until the Board is notified of the action through the Manager and Chief Engineer's monthly report to the Board, and the Board has not chosen to deny or modify the Manager and Chief Engineer's decision by a two-thirds vote.

Should the Manager and Chief Engineer decline to waive or modify the requirements, an applicant may ask the Board to waive or modify requirements of these rules when not contrary to the purpose of the rule or the public interest. The Board must find that:

- 1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and**
- 2. The applicant's circumstance or condition is unique or exceptional, and the Board would grant the same request if made by every similarly situated applicant; and**
- 3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations; and**

4. In cases of exemption from or reduction of the FRC fee, the resulting financial impact would not unduly impede or impair the financial health of the Department.

Any waiver or modification made by the Manager and Chief Engineer will not be considered to have final approval until the Board is notified of the action through the Manager and Chief Engineer's monthly report to the Board, and the Board has not chosen to deny or modify the Manager and Chief Engineer's decision by a two-thirds vote.

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BY ORDER OF THE BOARD: Daryl Kaneshiro, 2012 Chairperson

SMALL BUSINESS IMPACT DETERMINATION AND STATEMENT

For

**PROPOSED AMENDMENT OF RULES of the
BOARD OF WATER SUPPLY, COUNTY OF KAUA'I**

**RELATING TO PART 3, ESTABLISHING STANDARDS FOR SUBDIVISION WATER
SYSTEMS WITHIN THE COUNTY OF KAUA'I**

AUGUST 9, 2012

SUMMARY OF THE PROPOSED RULE AMENDMENT: The intent of the amendment (Rule) is for the Department to undertake changes to current Rules and Regulations, Part 3, Establishing Standards for Subdivision Water Systems, Section XII, Modification of Requirements in the County of Kaua'i. The proposed draft rule amendment is attached hereto as Attachment "A".

The rule change is being proposed to clarify the roles and responsibilities of the Manager and Chief Engineer and the Board of Water Supply in regards to modification of requirements for subdivisions. The current rules do not sufficiently define the authority to make such modifications.

IMPACT DETERMINATION:

The Department believes the proposed rule change is administrative in nature and would not impose a significantly different or inequitable impact on small businesses.

Impact Assessment:

The Department's analysis provides the following indications as to how the Proposed Rule will impact small businesses:

1. *The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rule amendment:*

The proposed rule change has no anticipated cost benefits or costs burdens on small business.

2. *Description of the small businesses that will be required to comply with the proposed rule and how they will be adversely affected:*

The proposed rule change has no anticipated adverse effects on small business.

3. *In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss or other cost associated with compliance:*

The proposed rule change has no anticipated direct costs such as fees or fines, and indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss or other cost associated with compliance.

4. *The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used:*

The proposed rule change has no anticipated monetary costs and benefits.

5. *The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques:*

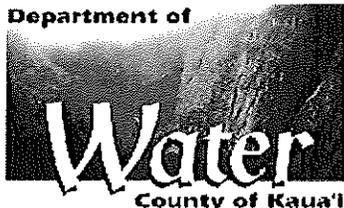
The proposed rule has no anticipated impact on small business

6. *How the agency involved small business in the development of the proposed rules:*

A public hearing has been scheduled for Tuesday, August 21, 2012 in which small businesses may become involved and testify to the Board of Water Supply.

7. *Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state or county standards, with an explanation of the reason for imposing the more stringent standard:*

The proposed rules do not include provisions that are more stringent than the standards mandated by federal, state or other counties in Hawai'i.



4398 Pua Loke Street, P. O. Box 1706
Lihue, Kauai, Hawaii 96766
Eng. & Fiscal FAX No.: 808-245-5813
Shop FAX No.: 808-245-5402
Administration FAX No.: 808-246-8628
email: dow@kauaiwater

MEMO

To: FILE
From: David R. Craddick, P.E., C.E.M. 
Date: August 21, 2012
Subject: SBRRB Review on Part 3 Section XII Rule Amendment

The Department's SBIS has been forwarded to the Small Business Regulatory Review Board for comments on the Part 3 Establishing Standards for Subdivision Water Systems Section XII- Modification of Requirements.

On communication with Dori Palcovich, *Economic Development Specialist Liaison to the SBRRB* on August 13, 2012; it appears that the rules do not fall within the Small Business Regular Review Board's purview under Chapter 201M, Hawaii Revised Statutes. It was recommended that the Board of Water Supply refer to the County of Kauai's Corporation Counsel for specific guidance.

Our Deputy County Attorney Andrea Suzuki reviewed the matter and agreed with SBRRB that this rule change does not fall within the DBRRB purview and approval from SBRRB is not necessary.

As practiced, the Department will keep the Review Board apprised of future regulatory activity at the County of Kauai Department of Water.