

Amendment and Compilation of Chapter 6-20
Hawaii Administrative Rules

1. Chapter 6-20, Hawaii Administrative Rules, entitled "Public Records and Information; Adoption, Amendment, or Repeal of Rules; Declaratory Ruling; Cost of Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 20

PUBLIC RECORDS AND INFORMATION;
ADOPTION, AMENDMENT, OR REPEAL OF RULES;
DECLARATORY RULING; COST OF RULES

Subchapter 1 General Provisions

§6-20-1 Definitions

Subchapter 2 Public Records and Information

§6-20-2 Public inspection

§6-20-3 Information

§6-20-4 Disclosure of information

§6-20-4.01 Cost of copies for government records
and rules

Subchapter 3 Adoption, Amendment, or Repeal of
Rules

§6-20-5 Petition
§6-20-6 Form and content of petition
§6-20-7 Consideration of petition

Subchapter 4 Declaratory Ruling

§6-20-8 Petition for declaratory ruling; scope
§6-20-9 Form and content of petition
§6-20-10 Consideration of petition
§6-20-11 Repealed
§6-20-12 Renumbered as §6-20-23
§6-20-13 Renumbered as §6-20-24
§6-20-14 Notice of hearing
§6-20-15 Computation of time
§6-20-16 Conduct of hearing
§6-20-17 Parties; service
§6-20-18 Advisory memorandum
§6-20-19 Request for additional facts or
 supplemental memorandum; documents
§6-20-20 Argument
§6-20-21 Proposed findings of fact and
 conclusions of law
§6-20-22 Disposition of petition
§6-20-23 Applicability of orders
§6-20-23.01 Withdrawal of petition

Subchapter 5 Repealed

§6-20-24 Repealed

SUBCHAPTER 1

GENERAL PROVISIONS

§6-20-1 Definitions. As used in chapters 20 to 29 of this title:

~~["Administrator" means the administrator of the system or a duly designated assistant.]~~

"Alternate payee" means a spouse or former spouse of a member, a former member who has vested benefit status, or retirant who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to that member, former member with vested benefit status, or retirant.

"Applicant" means a person who files an application for disability retirement or accidental death benefits as provided in chapter 6-22, subchapter 1 of chapter 6-23, and subchapter 1 of chapter 6-26.

"Beneficiary" means the recipient of any benefit from the system or, as the context may indicate, the person or persons designated by a member, former member, or retirant, or as provided by law to receive the benefits payable in the event of the member's, former member's, or retirant's death.

"Board" or "board of trustees" means the board of trustees of the system.

"Contested case" means a contested case proceeding as defined in section 91-1, HRS.

"Executive director" means the executive director of the system or, in the executive director's absence, the deputy executive director of the system or other officer appointed by the board of trustees to act as the executive director of the system.

"Hearing officer" means a licensed attorney, duly appointed ~~[and authorized by the board of trustees]~~ by the board of trustees or the system to administer proceedings under this chapter and chapter 6-23.

"Member" means any person included in the membership of the system.

"Party" means any person or agency who participates in a declaratory ruling under subchapter 4 or in a contested case proceeding under chapter 6-23 as a petitioner, respondent, or intervenor.

"Petition" ~~[as used in subchapter 4,]~~ means a request filed pursuant to section 6-20-8 ~~[with the board of trustees]~~ for a declaratory ruling under subchapter 4, or a petition for a contested case hearing under chapter 6-23.

"Petitioner" means a member or other authorized person who files a petition for declaratory ruling under subchapter 4 or a petition for contested case hearing under chapter 6-23.

"Presiding officer" means the chairperson or other designated member of the board of trustees, or a hearing officer [~~designated~~] appointed by the board of trustees or the system, who presides over matters set forth in subchapter 4 or chapter 6-23.

"Retirant" means a member who has retired and becomes a beneficiary of the system.

"System" means the employees' retirement system of the State of Hawaii. [Eff 11/9/81; am and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 88-93.5) (Imp: HRS §§88-21, 88-29, 91-2, 88-93.5)

SUBCHAPTER 2

PUBLIC RECORDS AND INFORMATION

§6-20-2 Public inspection. All public records shall be available for inspection at the office of the system, 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813, during regular business hours. [Eff 11/9/81; am 6/11/92; comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-103, 91-2, 92F-11, 92F-12)

§6-20-3 Information. Information on matters within the jurisdiction of the system, except confidential information, may be obtained by inquiring in person during regular business hours at, or by submitting a written request to, the office of the system. [Eff 11/9/81; comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 92F-11, 92F-12, 92F-13, 92F-14, 92F-21, 92F-22, 92F-23)

§6-20-4 Disclosure of information. Information about a member, a beneficiary, or a retirant contained in the records of the system may be disclosed only to the member, beneficiary, or retirant or to a person authorized in writing by the member, beneficiary, or retirant, or to the duly appointed executor, legal representative, or administrator of the estate of the member, beneficiary, or retirant, or to an agency complying with the requirements of section 92F-19, HRS.

Upon receipt of a request for information regarding domestic relations orders under section 88-93.5, HRS, and a certified copy of a complaint or decree for divorce, the system shall provide the alternate payee with information regarding benefits that are relevant to the alternate payee's interest in the member's, former member's with vested benefit status, or retirant's benefits. Information about a deceased member, beneficiary, or retirant may be disclosed to any person under chapter 92F, HRS, without written authorization from the deceased member's, beneficiary's, or retirant's representatives, to the extent authorized by law. [Eff 11/9/81; am 6/11/92; comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 92F-11, 88-93.5) (Imp: HRS §§88-103.5, 92F-11, 92F-12, 92F-13, 92F-14, 92F-19, 92F-21, 92F-23, 88-93.5)

§6-20-4.01 Cost of copies for government records and rules. (a) Government records. The system may charge ~~up to~~ a minimum of fifty cents per page, [or less,] or an amount to be approved by the board, for each copy of a document that it reproduces under section 92-21, HRS, pursuant to a public records request under ~~[section 92F-19,]~~ chapter 92F, HRS[-], and shall include but not be limited to the labor,

material, electricity, equipment, certification and other related costs of reproduction.

(b) Administrative rules. Compilations and supplements of rules adopted by the board shall be made available free of charge upon request by state officers in the case of a state agency and by county officers in the case of a county agency. Compilations and supplements may also be made available, free of charge, to organizations representing public employees and to agencies of the federal government or of other states.

As to all other persons, the price for a copy shall be one dollar for each chapter compilation or chapter supplement. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§ 91-2.5, 91-5, 92- 21)

SUBCHAPTER 3

ADOPTION, AMENDMENT, OR REPEAL OF RULES

§6-20-5 Petition. Any interested person may petition the board for the adoption, amendment, or repeal of any rule of the system. The petition shall be submitted in duplicate and delivered to the office of the system. [Eff 11/9/81; comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

§6-20-6 Form and content of petition. The petition need not be in any special form but it shall contain:

- (1) The petitioner's name, address, including zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest;

- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) A draft or the substance of the proposed rule or amendment or repeal and a designation of any existing rules affected by the petition; and
- (5) The signature of the petitioner.

Any petition which does not conform to the foregoing requirements may be rejected by the board. The rejection shall be in writing and shall state the reasons therefor. [Eff 11/9/81; am and comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

§6-20-7 Consideration of petition. Within [~~thirty~~] sixty days after the receipt of the petition, the board shall either deny the petition, stating in writing, its reasons for the denial, or initiate proceedings for the adoption, amendment, or repeal of the rule. [Eff 11/9/81; comp 11/26/93; comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

SUBCHAPTER 4

DECLARATORY RULING

§6-20-8 Petition for declaratory ruling; scope.

(a) Any person or agency may petition the board for a declaratory ruling as to the applicability of any statutory provision administered by the system or of any rule or order adopted by the system.

(b) The scope of this subchapter is limited to petitions requesting the board's interpretation of a statute, rule, or administrative order administered by

the board, regarding circumstances that have not yet been decided by the system or the board. A petition for declaratory ruling is a way to seek an advance determination from the board. A petition under this subchapter may not request the board to review a concrete decision already made by the system or the board. For example, a petition alleging that the system has improperly granted or denied the petitioner or other person a benefit, service credit, or other entitlement under chapter 88, HRS, must be filed as a petition for contested case hearing under subchapter 2 of chapter 6-23, and not as a petition for declaratory ruling. [Eff 11/9/81; am and comp 11/26/93; am and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS § 91-8)

§6-20-9 Form and content of petition. (a) The petition shall be submitted in duplicate. It need not be in any special form but it shall contain:

- (1) The petitioner's name, address, including zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts;
- (5) A statement of the issues raised;
- (6) A statement of the petitioner's proposed interpretation of the statute, rule, or order or the petitioner's position or contention with respect thereto;
- (7) A memorandum containing the reasons, including any legal authorities, in support of the interpretation and relief sought[~~- The board may require the petitioner to file additional data or memoranda~~];
- (8) The names of any other potential parties; and
- (9) The petitioner's signature.

(b) Any petition which does not conform to the foregoing requirements may be rejected by the board. The rejection shall be in writing and shall state the reasons therefor. [Eff 11/9/81; am and comp 11/26/93; comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-10 Consideration of petition. (a) The board, within a reasonable time after the receipt of a petition for declaratory ruling, shall do one of the following:

- (1) Deny the petition, without a hearing, where:
 - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
 - (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;
 - (C) The issuance of the declaratory ruling may adversely affect the interest of the State, the system, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise;
 - (D) The petition requests a ruling on a statutory provision not administered by the board or the matter is not otherwise within the jurisdiction of the board;
 - (E) The petition is frivolous;
 - (F) The petition is beyond the scope of this subchapter as provided in section 6-20-8(b), or there exists a genuine issue of material fact, the resolution of which is necessary before any declaratory ruling may issue. In either case, the board may dismiss the action

or request that the petitioner re-file the action as a petition for contested case hearing under subchapter 2 of chapter 6-23; or

(G) There is other good cause for denial of the petition;

~~[(2) Set the petition for hearing before the board or hearing officer in accordance with this subchapter. If the board assigns the petition to a hearing officer, the board shall use the decision-making procedures set forth in sections 6-23-48, 6-23-49, 6-23-50, 6-23-51, 6-23-52, and 6-23-53. A hearing officer shall have the same powers as a presiding officer under this subchapter; or~~

~~(3)]~~ (2) Grant the petition, without a hearing, at the board's discretion [-]; or

(3) Set the petition for a hearing before the board or a designated hearing officer.

(b) If the board denies or grants a petition without a hearing, ~~[then]~~ the board shall notify the petitioner in writing of the denial or grant by the board, and shall state the reasons therefor.

(c) If the board assigns the petition to a hearing officer, the board shall use the decision-making procedures set forth in sections 6-23-48, 6-23-49, 6-23-50, 6-23-51, 6-23-52, and 6-23-53. The hearing officer shall have the same powers as a presiding officer under this subchapter. [Eff 11/9/81; am and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8, 92-16) (Imp: HRS §§ 91-8, 92-16)

§6-20-11 REPEALED. [R 11/26/93]

§6-20-12 Renumbered as §6-20-23.

§6-20-13 Renumbered as §6-20-24.

§6-20-14 Notice of hearing. (a) If the board, at its discretion, sets the petition for hearing, all parties shall be given written notice of the hearing, including:

- (1) The date, time, place, and nature of the hearing;
- (2) The section of the pertinent statutes or rules involved; and
- (3) A concise statement of the issues and basic facts giving rise to the petition. A copy of the petition attached to the notice of the hearing shall satisfy this requirement.

(b) The notice of hearing shall conform to the requirements of section 91-9, HRS, and shall be personally delivered or mailed by registered or certified mail with return receipt requested at least fifteen days before the hearing.

(c) The notice shall also inform each party of the right to retain and be represented by legal counsel, if desired. [~~A party may be represented by or with counsel.~~] The board or hearing officer designated by the board may, at any time, require any person [~~transacting business before the board in a representative capacity~~] purporting to represent a party in the declaratory ruling proceeding to show the person's authority or qualification to act in that capacity [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp _____] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-9, 91-9.5)

§6-20-15 Computation of time. In computing any period of time prescribed or allowed by this subchapter, the provisions of section 6-23-9 shall apply. [Eff and comp 11/26/93; comp 11/26/2009; comp _____] (Auth: HRS §§ 88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-16 Conduct of hearing. (a) In the event that the board, at its discretion, sets the petition for hearing, the chairperson or other member of the board designated by the chairperson, or a hearing officer~~[7]~~ designated by the board, shall preside at all hearings governed by this subchapter.

(b) The presiding officer shall have the following powers and duties:

- (1) To continue or postpone, at the request of a party, any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To administer oaths and affirmations;
- (4) To examine witnesses;
- (5) To issue subpoenas;
- (6) To rule on offers of proof and to accept evidence;
- (7) To hold conferences, before or during the hearing, for the simplification of issues; and
- (8) To rule on motions and dispose of procedural requests and similar matters.

(c) The presiding officer shall convene the hearing and summarize ~~[the statement of]~~ what is stated and requested in the petition. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. The party having the burden of proof shall proceed first in the presentation of opening statements, witnesses, and arguments, followed by the ~~[administrator]~~ executive director and any other person duly admitted by the board to the proceedings. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp]
(Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-10, 92-16)

§6-20-17 Parties; service. (a) Unless a petition has been denied or granted in accordance with section 6-20-10, the ~~[administrator]~~ executive director of the system shall be considered a party to the proceedings and shall be served accordingly. Within fifteen days after the petition is filed, other persons having a direct and substantial interest in the petition may request, in writing, that the board recognize them as parties to the proceedings. The board may, at its discretion, grant or deny their request.

(b) All parties recognized by the board, including the ~~[administrator,]~~ executive director, shall be served with the petition, correspondence, and other documents filed with the board. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-18 Advisory memorandum. The ~~[administrator,]~~ executive director, within thirty days after receiving the notice of hearing, shall file a memorandum advising the board or hearing officer of the ~~[administrator's]~~ executive director's position and responding to the points raised in the petition. The ~~[administrator]~~ executive director shall recommend whether the board should grant or deny the petition, and state the legal and factual reasons for the recommendation. Other parties recognized by the board, within thirty days after receipt of the notice of hearing, may also file and serve upon the board or hearing officer and all parties a memorandum responding to the petition, advising the board of the parties' position and stating concisely and fully the parties' legal position or contentions and reasons, including legal authorities. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-19 Request for additional facts or supplemental memorandum; documents. (a) The board or hearing officer at any time before [~~it files its~~] they file their [~~decision~~] decisions may request the petitioner or any party, including the [~~administrator,~~] executive director, to submit a statement of additional facts or a legal memorandum, the purpose of which is to clarify a specific factual or legal issue, position, or contention, provided the request shall aid in effectuating the ends of justice, or in achieving its purposes, and shall not unduly delay the proceedings or hinder, harass, or unreasonably prejudice any party.

(b) If any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the board, or is otherwise insufficient, the board or hearing officer may, on its own motion or on motion of a party, strike that document or require its amendment. All documents filed with or presented to the board or hearing officer may be retained in the files of the system. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 92-16)

§6-20-20 Argument. In the event that the board[~~r~~] or hearing officer, at [~~its~~] their discretion, sets the matter for hearing, oral [~~argument~~] arguments shall be heard before the board or [~~the designated~~] hearing officer. All parties shall be afforded a full opportunity to present arguments on all issues involved. The argument shall be at the time and place set forth in the notice of hearing, but that time and place may be continued from day to day and adjourned to a later day or to a different place without notice, other than the announcement thereof at the hearing. (Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 92-16)

§6-20-21 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law, except where ordered in the discretion of the board~~[-]~~ or hearing officer.

(b) Where ordered, written proposed findings of fact and conclusions of law shall be filed within fifteen days after the close of the hearing, and shall contain specific references to the record and the legal authorities relied upon. (Eff and comp 11/26/93; comp 11/26/2009; am and comp _____] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-12)

§6-20-22 Disposition of petition. In the event that the board [~~at its discretion,~~] sets the matter for hearing~~[7]~~ before the board, the board, within sixty days after the close of arguments or submission of all evidence and any permitted or requested memoranda, whichever is later, shall issue its declaratory ruling, either denying or granting the petition and stating the reasons therefor. The ~~administrator~~ executive director shall promptly notify the petitioner of the board's ruling and of the petitioner's rights to appeal the ruling to the circuit court. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp _____] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-12)

§6-20-23 Applicability of orders. Orders disposing of petitions shall be applicable only to the fact situation alleged in the petition or as set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued

by the board. [Eff 11/9/81; am, ren 6-20-12, and comp
11/26/93; comp 11/26/2009; comp]
(Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS § 91-8)

§6-20-23.01 Withdrawal of petition. A petitioner shall file a written notice of withdrawal in order to withdraw a petition under this subchapter. If a hearing has been set, the petitioner must serve the notice, no later than five days before the date of the scheduled hearing, on all parties named in the petition and the board. A petition withdrawn within five days of the hearing date shall result in the petition being dismissed with prejudice, i.e., the petition may not be refiled at any time thereafter. If a hearing has not been set, the petitioner may withdraw the petition at any time, and shall serve a notice of withdrawal on the board, the ~~administrator,~~ executive director, and all other applicable parties. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2, 91-8) (Imp: HRS §91-8)

SUBCHAPTER 5 REPEALED

§6-20-24 REPEALED." [R NOV 26 2009]

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

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

4. These amendments to and compilation of Chapter 6-20, 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 the 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.

Emmit Kane, Chairperson
Employees' Retirement System
of the State of Hawaii, Board
of Trustees

Craig Hirai, Director
Department of Budget and
Finance

APPROVED AS TO FORM:

Deputy Attorney General