



2021-2022

**RULES OF THE HOUSE INVESTIGATIVE
COMMITTEE TO INVESTIGATE
COMPLIANCE WITH AUDIT NOS. 19-12
AND 21-01.**

HOUSE OF REPRESENTATIVES
STATE OF HAWAII
The Thirty-First Legislature



Preface

The purpose of these Rules is to enable the Committee to perform properly the powers and duties vested in the Committee, including the conduct of hearings, in a fair and impartial manner, consistent with the protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good.

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PART I. DEFINITIONS

1.1 Definitions. (a) As used in these Rules, and unless a different meaning is clearly intended by the context in which the word is used:

"Authorized membership" means the total number of members appointed to the Committee by the Speaker of the House of Representatives.

"Chair" includes the Chair appointed by the Speaker, or in the absence or disability of the Chair, the Vice Chair appointed by the Speaker, or in the absence or disability of both the Chair and Vice Chair, the member who is selected by the majority of the authorized membership who are present at the meeting.

"Closed hearing" means any hearing closed to the public by the Committee, upon two-thirds vote of its authorized membership, at which only members of the Committee, staff personnel, the witness, and counsel for the witness are permitted to be present.

"Committee" means the House of Representatives investigating committee established by House Resolution No. 164, Regular Session of 2021, Establishing an Investigating Committee to Follow Up on the Audits of the Department of Land and Natural Resources' Special Land and Development Fund, Report No. 19-12, and Agribusiness Development Corporation, Report No. 21-01; to Examine the Recommendations Made in Those Audits; and for Purposes of Improving the Operations and Management of These State Agencies, Their Funds, and Any Other Matters, adopted by the House of Representatives of the State of Hawaii, Regular Session of 2021, as an investigating committee pursuant to chapter 21, Hawaii Revised Statutes.

"Hearing" means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by the Committee for the purpose of taking testimony or receiving other evidence. "Hearing" includes public hearings and closed hearings.

"Interested person" means any person whose name is mentioned or who is otherwise identified during a hearing of the Committee and who, in the opinion of the Committee, may be adversely affected thereby.

"Member" means any member of the House of Representatives appointed to serve on the Committee by the Speaker of the House of Representatives.

"Public hearing" means any hearing open to the public, or the proceedings of which are made available to the public.

"Quorum" means a majority of the authorized membership.

(b) Unless otherwise specifically stated, the terms used in these Rules shall have the meanings ascribed to them under chapter 21, Hawaii Revised Statutes.

PART II. RULES OF PROCEDURE

2.1 Committee Action. No action shall be taken by the Committee at any meeting unless notice of the meeting was duly given and a quorum is present. The Committee may act by a majority vote of the members present in person or via teleconference, constituting a quorum, except as otherwise provided by these Rules or by any statute requiring an affirmative vote by a larger number or proportion of the members of the Committee.

2.2 Issuance of Subpoena. (a) The Committee may issue, by a majority vote of its authorized membership, subpoenas requiring the attendance of witnesses and subpoenas duces tecum requiring the production of books, records, documents, or other evidence, in any matter pending before the Committee.

(b) The form of subpoenas, the manner of service, and witness and service fees shall be as provided in section 21-8, Hawaii Revised Statutes.

(c) Every subpoena and subpoena duces tecum authorized to be issued by the Committee shall be issued under the signature of the Chair and shall command each person to whom it is directed to attend and give testimony at a time and place thereon specified and, if requested by the Committee, to produce the books, records, documents, or other evidence designated therein; provided that in the absence of the Chair, the Speaker of the House of Representatives may sign subpoenas and subpoenas duces tecum pursuant to Rule 5.1.

(d) The Committee may delegate to the Chair the authority to specify the time and place at which the person subpoenaed is to attend and give testimony and to designate the books, records, documents, or other evidence required by the Committee to be produced.

2.3 Hearings. The Committee may hold hearings appropriate for the performance of its duties at such times and places as the Committee determines. The Committee shall not conduct a hearing unless the appropriate notice of the meeting is given and a quorum is present.

2.4 Notice Requirements. (a) All notices of meetings shall include the date, time, and place of the meeting.

(b) Each member of the Committee shall be given at least three days' written notice of any hearing to be held when the Legislature is in session and at least seven days' written notice of any hearing to be held when the Legislature is not in session. The notices shall include a statement of the subject matter of the hearing. A hearing, and any action taken at a hearing, shall not be deemed invalid solely because notice of the hearing was not given in accordance with this requirement.

(c) Notice to witnesses shall be given by service of a subpoena requiring the attendance of a person at a hearing of the Committee at least five days before the date of the hearing unless a shorter period of time is authorized by majority vote of the authorized membership in a particular instance when, in their opinion, the giving of five days' notice is not practicable; provided that if a shorter period of time is authorized, the person subpoenaed shall be given reasonable notice of the hearing, consistent with the particular circumstances involved; provided further that the Chair may waive the five-days' notice if the witness so agrees.

(d) Any person served with a subpoena requiring attendance at a hearing of the Committee shall also be served with a copy of the resolution establishing the Committee, a copy of these Rules, a general statement informing the person of the subject matter of the Committee's investigation or inquiry, a notice that the person may be accompanied at the hearing by counsel of the person's own choosing.

(e) Notice of public hearings shall be given by publicly posting the notice at least three days before any public hearing to be held when the Legislature is in session and at least seven days before any public hearing to be held when the Legislature is not in session; provided that the time periods of this rule may be waived by the Chair for good cause, and such waivers shall not invalidate any action taken by the Committee. The notices shall include a statement of the subject matter of the public hearing.

2.5 Conduct of Hearing. (a) All hearings of the Committee shall be public unless the Committee, by two-thirds vote of its authorized membership, determines that a hearing should not be open to the public in a particular instance and should be held in a closed hearing.

(b) The Chair shall preside at all hearings of the Committee and shall conduct the examination of witnesses alone or supervise examination by other members of the Committee, the Committee's counsel, or members of the Committee's staff who are so authorized. Any official position or statement of the Committee shall be made by the Chair or have received approval from the Chair before its issuance.

(c) No member shall ask more than two questions on the same subject or of a witness without leave of the Chair. The posing of a first question of a member shall not exceed three minutes and no more than two minutes for any subsequent question on the same issue or of the same witness without leave of the Chair; provided that any member may yield the member's option or time to question to another member.

2.6 Oath or Affirmation. (a) All testimony given or adduced at a hearing shall be under oath or affirmation unless the requirement is dispensed with in a particular instance by a majority vote of the Committee members present at the hearing. Any member of the Committee may administer an oath or affirmation to a witness at a hearing of the Committee.

(b) The form of the oath or affirmation shall be: "Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?"

2.7 Records. (a) The Committee shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced, which record shall include rulings of the Chair, questions of the Committee and its own staff, the testimony or responses of witnesses, sworn written statements submitted to the Committee, and such other matters as the Committee or its Chair may direct.

(b) For the purpose of recording its proceedings, the Committee may contract video recording services and utilize the recordings as a record of its proceedings.

(c) All records of the Committee shall be maintained by the Chief Clerk of the House of Representatives.

(d) The Committee shall make available to all those entities or interested persons who were the subjects of or who were witnesses who testified at any hearing a draft report of the

Committee's findings and recommendations concerning any matter that is the subject of its hearings.

(e) Any person or entity to whom a draft report is made available shall be given a period of no less than 14 days within which to make written responses to the draft findings and recommendations. The written responses, if any, shall be included as an appendix to the final report of the Committee.

2.8 Contempt. (a) A person shall be in contempt if the person:

- (1) Fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation;
- (2) Fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, record, paper, or other document subpoenaed by or on behalf of the Committee; or
- (3) Commits any other act or offense against the Committee, which, if committed against the Legislature or either house thereof, would constitute contempt.

(b) The Committee may, by majority vote of its authorized membership, report to the House of Representatives any instance of alleged contempt. The Speaker of the House of Representatives shall certify a statement of such contempt under the Speaker's signature as Speaker to the Attorney General who shall prosecute the offender in any court of the State. If the Legislature is not in session, a statement of the alleged contempt shall be certified by the Chair, under the Chair's signature, to the Attorney General who shall prosecute the offender in any court of the State. An instance of alleged contempt shall be considered as though committed in or against the House of Representatives or Legislature itself.

(c) A person guilty of contempt shall be fined no more than \$1,000 or imprisoned no more than one year, or both.

PART III. RULES GOVERNING RIGHTS OF WITNESSES

3.1 Right to Counsel. Every witness at a hearing of the Committee may be accompanied by counsel of the witness' own choosing, who may advise the witness as to the witness' rights, subject to reasonable limitations which the Committee may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing.

3.2 Compelling Testimony. The Chair may direct a witness to answer any relevant question or furnish any relevant book, record, paper, or other document, the production of which has been required by subpoena duces tecum. Unless the order is overruled by majority vote of the Committee members present, disobedience shall constitute a contempt.

3.3 Statements and Proposed Questions. (a) A witness at a hearing or the witness' counsel, with the consent of a majority of the Committee members present at the hearing, may file forty-eight hours in advance with the Committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter, and scope of the Committee's investigation or inquiry.

(b) Any witness at a hearing, or the witness' counsel, may submit forty-eight hours in advance to the Committee proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the Committee shall ask those questions that the Committee determines to be appropriate to the subject matter of the hearing.

3.4 Transcript. A witness at a hearing, upon the witness' advance request and at the witness' own expense, shall be furnished a certified transcript or record of the witness' testimony at the hearing; provided that no witness shall be entitled to the closed hearing testimony of any other witness.

3.5 Privileges. The Rules of Evidence shall not apply at proceedings of the Committee, except that a witness may claim any privilege provided by the state or federal constitution.

3.6 Rights of Interested Persons. (a) Any interested person may, upon the person's request or upon the request of any member of the Committee, appear personally before the Committee and testify in the person's own behalf or, with the Committee's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record of the hearing.

(b) Upon the consent of a majority of its authorized membership, the Committee may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record; provided that no request to appear, appearance, or submission of evidence shall limit in any way the Committee's power to subpoena.

(c) Any person who appears before the Committee pursuant to this rule shall have all the rights, privileges, and responsibilities applicable to a witness under these Rules.

PART IV. RULES GOVERNING DISCLOSURE

4.1 Disclosure of Proceedings in Closed Hearings. Testimony and other evidence given or adduced at a closed hearing shall not be made public unless authorized by majority vote of the authorized membership, which authorization shall also specify the form and manner in which the testimony or other evidence may be released.

4.2 Disclosure of Proceedings by Staff. No staff member of the Committee shall disclose confidential information regarding testimony given or adduced at any proceeding unless otherwise authorized by the Committee.

4.3 Television, Films, and Radio. No hearing, or part thereof, shall be televised, filmed, or broadcast except upon approval of the Committee, by majority vote of its authorized membership.

4.4 Confidential Information. All information of a defamatory or highly prejudicial nature received by or for the Committee other than in a public hearing or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorized by

majority vote of the authorized membership for legislative purposes or unless its use is required for judicial purposes.

4.5 Disclosure of Committee Activities to the Public and the Media. All information of official actions, statements, or positions of the Committee shall be made by the Chair, unless otherwise authorized.

PART V. RULES OF GENERAL APPLICABILITY

5.1 Powers of the Speaker of the House of Representatives. The Speaker of the House of Representatives shall have administrative authority over the activities and operations of the Committee to:

- (1) Assign appropriate staff or contract with outside parties to direct appropriate services to assist the Committee in accomplishing its mandated purpose;
- (2) Adjust the membership of the Committee as the Speaker deems necessary; and
- (3) In the absence of the Chair, sign hearing notices or subpoenas and subpoenas duces tecum, as the case may be, as authorized to be issued by the Committee.

5.2 Rules Consistent with Applicable Laws and Rules; Severability. These Rules govern procedure in and before the Committee, and are adopted pursuant to section 21-4, Hawaii Revised Statutes. If any provision of these Rules, or the application thereof to any person or circumstance, is determined to be invalid, the invalidity does not affect other provisions or applications of these Rules that can be given effect without the invalid provision or application, and to this end the provisions of these Rules are severable.

5.3 Limitations. Nothing in these Rules shall be construed to limit or prohibit the acquisition of evidence or information by the Committee through any lawful means.