



**HAWAII
SMALL BUSINESS
REGULATORY REVIEW
BOARD
ANNUAL REPORT SUMMARY**

Review of Administrative Rules, Legislation

and

Rules Requested by Small Business

In Compliance with

Chapter 201M

Hawaii Revised Statutes

January 2011 - December 2011

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

ANNUAL REPORT SUMMARY 2011

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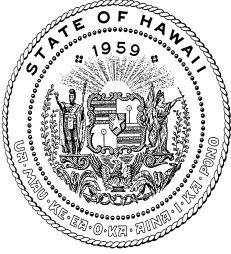
Section I

MESSAGE FROM DIRECTOR



It gives me great pleasure, as the Director of the Department of Business, Economic Development and Tourism, to thank the members for their continued service of the Small Business Regulatory Review Board. The dedicated work of the Board continues to be an essential part of the rule-review process in order to lessen the regulatory burden on the small business community.

Richard C. Lim



SMALL BUSINESS REGULATORY REVIEW

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MESSAGE FROM THE CHAIR



Sharon L. Pang

Looking back at 2011 and the work done by the members of the Small Business Regulatory Review Board makes me immensely proud to be part of this hardworking group. On behalf of our members, I thank the State agencies for the submission of proposed amended and newly created rules for this Board's review. I believe that all the members will acknowledge that rulemaking can cause tremendous financial impacts on the business community and that we have an important role in mitigating those impacts.

SMALL BUSINESS REGULATORY REVIEW BOARD

OVERVIEW

Members of the Small Business Regulatory Review Board are pleased to provide the Annual Summary for the period of January 2011 through December 2011, pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes (HRS).

[201M-5] Small business regulatory review board; powers

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to any agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules.

ANNUAL SUMMARY

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168. Subsequently, the role of the Board has been codified in Chapter 201M, HRS, as amended. (Appendix 1)

SMALL BUSINESS REGULATORY REVIEW BOARD MEMBER COMPOSITION AND RESPONSIBILITY

Statutorily, the Board is comprised of eleven current or former owners or officers of businesses from across the State. It is administratively attached to the Department of Business, Economic Development and Tourism (DBEDT) and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board is also charged with reviewing existing rules upon request from small business owners or at the Board's initiative. For requests regarding County rules, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members volunteer their time attending State agency meetings, making presentations by performing outreach activities to small business organizations, and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State agencies.

As an effective and efficient means of review, each member is assigned to one or more State agency as a "discussion leader," and is responsible for the initial review

of the administrative rules of that State agency prior to consideration by the full Board. Since its inception, the Board has had several new members and re-appointees. As of December 2011, the Board was operating with eight members. (Appendix 2)

ADMINISTRATIVE RULE REVIEW

Since its inception, the Board reviewed a total of 531 sets of proposed new and amended administrative rules. The results are categorized in Appendix 3. From January 2011 through December 2011, the Board reviewed and made recommendations on 50 sets of new and amended rules, both pre- and post-public hearing. A summary of each rule is categorized below.

Office of the Lieutenant Governor

No key matters of small business impact have been noted.

Department of Accounting & General Services

HAR Chapter 3-120.4, “Procurements Exempt from Chapter 103D,” HAR Chapter 3-124, “Preferences, Subchapter 1, Hawaii Products,” HAR Section 3-125-13, “Price Adjustment in Construction Contracts”

Comment – As one of the Board members recused themselves from participating due to a conflict of interest, there were an insufficient number of members present to take action on this item.

Department of Agriculture

HAR Chapter 4-72, “Plant and Non-Domestic Animal Quarantine, Plant Intrastate Rules, “HAR Section 4-72-12,

Restrictions on Coffee, HAR Section 4-72-4.5, “Designation of Infested Areas,” HAR Section 4-72-4, “Prohibited Transportation,” HAR Section 4-72-8, “Restrictions on Harboring, Breeding, etc, of Pets,” and HAR Section 4-72-11, “Restrictions on Banana”

Comment – The Board unanimously agreed to send these proposed rules to public hearing.

Department of Attorney General

HAR Chapter 5-24, “Fees for Hawaii Criminal Justice Data Center Services”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

HAR Chapter 5-25, “Covered Offender Registration”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

Department of Budget & Finance / Public Utilities Commission

Budget & Finance – No key matters of small business impact have been noted.

Public Utilities Commission

HAR Chapter 6-83, “Hawaii One Call Center Subsurface Installation Damage Prevention Program”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

Department of Business, Economic Development & Tourism

Adoption of Chapter 15-217, “Relating to the Kakaako Community Development District Mauka Area,” and HAR Chapter 15-218, “Relating to Kakaako Reserved Housing,” and repeal of HAR Chapter 15-22, “Relating to the KCDD Mauka Area Rules”

Comment – The Board recommended that the Governor be sent a memo in support of sending the proposed amendments to public hearing, and after public hearing the Board recommended that the proposed rules proceed to the Governor for adoption.

Adoption of Chapter 15-215, “Kalaeloa Community Development District Rules” and Chapter 15-216, “Kalaeloa Community Development District Reserved Housing Rules,” and repeal of HAR Chapter 15-200, “Rules for Health and Safety within the Kalaeloa Community Development District”

Comment – The Board recommended that the Governor be sent a memo in support of sending the proposed amendments to public hearing.

HAR Chapter 15-320, “Low Income Housing Tax Credit Loan Program”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed new rules to public hearing.

HAR Chapter 15-16 (repeal), and adoption of Chapter 15-219, “Relating to Rules of Practice and Procedure”

Comment – The Board recommended that the proposed rules proceed to the Governor for adoption.

Department of Commerce & Consumer Affairs

HAR Chapter 16-23, “Motor Vehicle Insurance Law”

Comment – This item was not taken up at the meeting.

**HAR Chapter 16-53, “Relating to Condominium Property
Regimes Fees”**

Comment – The Board recommended that the rules proceed to public hearing.

**HAR Chapter 16-71 “Relating to Certified Public Accounts and
Public Accounts”**

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

HAR Chapter 16-88, “Relating to Naturopaths”

Comment – The Board recommended that a memo be sent recommending that the Governor approve the department’s request to adopt the proposed amendments, after public hearing.

**New Subchapter 11, Section 16-88-80 “Code of Ethics,” and
Section 16-88-81, “Standards of Practice and Care”**

Comment – The Board supported the department’s request to send the proposed new rules to public hearing.

**HAR Chapter 16-97, “Relating to Private Detectives and
Guards”**

Comment – The Board recommended sending a memo to the Governor approving the department’s request to adopt the proposed amendments.

HAR Chapter 16-169, “Actuarial Opinion and Memorandum”

Comment – The Board recommended that the rules proceed to public hearing, and after public hearing, although DCCA need not physically come back to this Board, a small business statement after public hearing was requested.

HAR Chapter 16-171, “Miscellaneous Insurance Rules”

Comment – The Board recommended that the rules proceed to public hearing, and after public hearing although DCCA need not physically come back a Board meeting, a small business statement after public hearing was requested.

Department of Defense

No key matters of small business impact have been noted.

Department of Education

HAR Chapter 8-54, “Teaching Licensing Standards”

Comment – It was indicated that there is no business impact.

Department of Hawaiian Home Lands and the Office of Hawaiian

Affairs

No key matters of small business impact have been noted.

Department of Health

HAR Chapter 11-20, “Rules Relating to Potable Water Systems”

Comment – No action was taken on these post public hearing rules.

HAR Chapter 11-60.1, “Air Pollution Control,” Section 11-60.1-5,

“Open Burning”

Comment – This item was not taken up at the meeting.

HAR Chapter 11-94, “Skilled Nursing, Intermediate Care

Facilities, Nursing Facilities”

Comment – The Board recommended that the Governor support sending the proposed amendments to public hearing. In addition, the Board recommended that the department provide a timeline for notifying businesses of its applications’ completeness in future rule amendments.

HAR Chapter 11-218, “Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf-Blind”

Comment – The Board supported the Governor’s decision to proceed to public hearing. After public hearing the Board took no action as the rules were adopted.

HAR Subchapter 3, 11-60.1, “Open Burning,” and Subchapter 10, “Field Citations”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

HAR Chapter 11-65, “Environmental State Revolving Loan Funds”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

Department of Human Resources Development

No key matters of small business impact have been noted.

Department of Human Services

HAR Chapter 17-676, “Relating to the Income Family Assistance Programs,” HAR Sections 17-656.2, “Other Family Assistance Programs,” Section 17-676.55, “Earned Income disregard reimbursement to reward work in the TANF program”

Comment – No action was taken at the meeting.

HAR Chapter 17-1727, “Hawaii Health QUEST, QUEST-Net” and HAR

Chapter 17-1728, “QUEST-Adult Coverage Expansion (ACE)”

Comment – The Board recommended that a memo be sent to the department to proceed to public hearing.

HAR Chapter 17-1745, “Death Payments Program”

Comment – The Chair reported that the proposed amendments had no perceivable small business impact and were not subject to Board discussion and review.

HAR Chapter 17-1443, “State-Approved Feeding Assistant Training

Program,” HAR Chapter 17-1444, “Nurse Aide Training and Competency

Evaluation Program,” and HAR Chapter 17-1445, “Recertification of

Nurse Aides in State-Licensed or State-certified Health Care Settings”

Comment – The Board recommended that for Chapters 17-1443 and 17-1444, the Governor approve the department’s request to send the proposed new rules to public hearing. For Chapter 17-1445, the Board recommended that the department engage a broader population of stakeholders for feedback prior to coming back to this Board to request approve to send the proposed new rules to public hearing. Subsequently, the Board re-reviewed the rules along with the small business impact statement but deferred comment until an upcoming meeting to be held in 2012.

HAR Chapter 16-2021, “Grievance Procedure”

Comment – This item was not taken up at the meeting.

Department of Labor & Industrial Relations

HAR Chapter 12, Subtitle 8, “Hawaii Occupational Safety and Health”

Comment – The Board unanimously agreed to send these proposed rules to public hearing.

HAR Chapter 12-12, “Prepaid Health Care Act”

Comment – The Chair reported that the proposed amended rule had neither a perceivable small business impact nor a positive impact and was not subject to the Board’s discussion or review.

HAR Chapter 12-12-10, “Workers Compensation Law, HAR Chapter 12-14-36, “Workers’ Compensation Medical Fee Schedule, and HAR Chapter 12-12-15, “Vocational Rehabilitation Rules”

Comment – The Chair reported that the proposed new and amended rule had neither a perceivable small business impact nor a positive impact and was not subject to the Board’s discussion or review.

HAR Sections 12-12-60, 12-12-61, and 12-12-63, “Prepaid Health Care Act”

Comment – The Chair reported that the proposed amended rule had neither a perceivable small business impact nor a positive impact and was not subject to the Board’s discussion or review.

HAR Chapter 12-46, Subchapter 9, “Disability Discrimination”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

Department of Land & Natural Resources

HAR Chapter 13-230, “General Provisions,” Chapter 13-231, “Operations of Boats,” Chapter 13-233, “Small Boat Harbors and Permits,” Chapter 13-256, “Motor Vehicle and Parking Rules,” and adoption of Chapter 13-256 (various chapters) “Ocean Recreation Management Rules”

Comment – The Board recommended sending a memo to the Governor approving DLNR’s request to send the proposed amendments to public hearing, noting the Board’s opposition to Chapter 13-231-26 (f), which substitutes “shall” with “may” when addressing the issue of “live aboards” at the Ala Wai and Keehi Small Boat Harbors.

HAR Chapter 13-231 “Operations of Boats,” and Chapter 13-233, “Motor Vehicle and Parking Rules, and Chapter 13-256, “Ocean Recreation Management Rules”

Comment – The Board recommended a memo be sent to the Governor to approve the department’s request to adopt the proposed amendments, after public hearing. The Board also requested that the Division of Boating and Ocean Recreation provide written policies regarding the department and County permits.

HAR Chapter 13-256, “Ocean Recreation Management Rules”

Comment – The Board recommended sending a memo to the Governor to approve the department’s request to go to public hearing on the proposed amendments.

HAR Chapter 13-230, 231, 234, 244 “Ocean Recreation and Coastal Areas, Parts I and II”

Comment – The Board recommended the rules move forward to public hearing with the caveat that DLNR consider: 1) administrative changes regarding the National Association of State Boating Law Administrators course; 2) alternative means as to whether a boater must carry a certificate or if an on-line verification process can be accomplished; 3) incremental fee increases over a period of time.

HAR Chapter 13-5, “Conservation District”

Comment – No commentary was made by the Board before public hearing. After public hearing, this item was not taken up at the meeting.

Department of Public Safety

No key matters of small business impact have been noted.

Department of Taxation

HAR Chapter 18-231, Sections 231-91-01 through 231-100-01, “Cash Economy Enforcement”

Comment – The Board recommended that the Governor approve the department’s request to send the proposed amendments to public hearing.

Department of Transportation

HAR Chapter 19-122 “Rules Relating to the Examination of Applicants for Issuance and Renewal of Motor Vehicle Driver’s Licenses and Instruction Permits”

Comment – The Chair reported that the proposed amendments had no perceivable small business impact and was not subject to Board discussion and review.

University of Hawaii

No key matters of small business impact have been noted.

Counties

City and County of Honolulu

No key matters of small business impact have been noted.

County of Maui

No key matters of small business impact have been noted.

County of Hawaii

No key matters of small business impact have been noted.

County of Kauai

“Fixing Rates for the furnishing of Water Service in the County of Kauai”

Comment: The Board recommended that the Mayor approve the Kauai Department of Water’s request to send the proposed amendments to public hearing.

“Legal Practice and Procedure for Hearings conducted by a Hearings Officer Appointed under the Authority of the County Engineer”

Comment: The Board recommended that the Mayor approve the Department of Public Works’ request to send the proposed amendments to public hearing.

“Relating to the use of Parks and Park Facilities by Commercial Peddlers and Concessionaires in the County of Kauai”

Comment: The Board recommended that the Mayor approve the Department of Parks & Receptions’ request to send the proposed amendments to public hearing.

“Special Management Area Rules and Regulations”

Comment: The Board recommended that the Mayor approve the Planning Commission’s request to send the proposed amendments to public hearing.

Department of Water – County of Kauai

“Part IV of Rules and Regulations of the Kauai County Department of Water – Section I General Use Rates, Section III – Agricultural Rates, Section V – Private Fire Service Charges, Section VI – Public Fire Service Charges, Section X – Cost of Power Adjustment Clause”

Comment: The Board unanimously recommended that the proposed rules proceed to public hearing. The Board also recommended that the full supporting financial documentation of the proposal be provided to the Review Board, and that the Department of Water provide and present a “small business statement after public hearing” to the Board after public hearing.

BOARD LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. The Board continues to monitor legislation with both positive and negative impacts on small business. See “Legislative Review” at the end of this report for specific legislation the Board followed during the 2011 session.

SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S

ADMINISTRATIVE DIRECTIVE NO. 09-01

Under Section 201M-2, HRS, State agencies that want to adopt new or modified administrative rules that have an impact on small business must submit to the Board a small business impact statement showing the economic impact on those businesses. As a result, the Board reviews the small business impact

statements and the Governor's Administrative Directive (AD), while working with the rule-drafting agencies on behalf of the small business community.

On October 29, 2009, AD 09-01 (Appendix 4) was issued to update the policy and procedures by which State departments and agencies request Governor's approval for a public hearing of any proposed adoption, amendment or repeal of administrative rules developed under Chapter 91, HRS.

STRATEGIC PLAN

The Board has met annually to re-establish what it stands for and to set clearly defined strategic goals for the upcoming year. In 2011, the Board reserved holding a strategic meeting due to the new Administration and until new Board members are appointed.

REGALERT

In 2008, RegAlert, a small business regulatory alert system, was created in an effort to reduce the regulatory burden on Hawaii small businesses. It allows the Review Board to serve as the "voice of small business" on both new and proposed administrative rules directly to the rule-making State and County agencies. Through RegAlert, business owners are able to keep apprised of proposed rule changes on selected rules and are given an opportunity to provide input to the agencies promulgating proposed and amended rules through the Review Board.

RegAlert is intended to assist small businesses by empowering Hawaii's small business community to become more involved in the regulatory process and to provide business owners with the ability to comment on proposed State and County rules and regulations that affect them. It is also intended to assist this Board in

responding to State and County agencies by acquiring valuable feedback from small businesses affected by the proposed rules.

RegAlert partners include Maui Chamber of Commerce, Chamber of Commerce of Hawaii, The National Federation of Independent Business, Smart Business Hawaii aka Small Business Hawaii, Kauai Chamber of Commerce, Hawaii Island Chamber of Commerce, and Kauai Japanese Chamber of Commerce, The Legislative Center, Inc., Legislative Information Services of Hawaii, Organizations Management, LLC; Hawaii Island Economic Development Board, Inc., Honolulu Japanese Chamber of Commerce, and Realtors Association of Maui, Inc.

There was no activity on RegAlert in 2011.

PROJECTS AND ACTIVITIES

The following activities were performed throughout 2011.

- **Election of Officers** – Pursuant to 201M-5 (c), “a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.” There have been no elections of officers since June 2010 when Sharon L. Pang was elected Chair. Mr. Charles Au, Vice Chairperson, and Mr. Richard Schnitzler, Second Vice Chairperson, were elected in June 2009.

- **Member Nominations and Recruitment** – The Board continues to actively recruit new members pursuant to Section 201M-5 (b), “nominations to fill vacancies shall be made from names submitted by the review board.” Further, “the appointments shall reflect representation of a variety of businesses in the State; provided that no

more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.”

To date, the Board has three vacancies; two from the Island of Maui and one from Kauai.

- **Communications Plan**

In keeping in-line with the Board’s communications plan created by Hastings & Pleadwell in 2007, the Board continues to strive to position itself as an experienced and responsible asset in the eyes of the Hawaii business community.

During 2011, Board members have not made any formal presentations.

- **Website** - The Board continually updates its website. See - www.hawaii.gov/dbedt/business/start_grow/small-business-info/sbrrb.

- **Press Releases and Articles** – No press releases or articles during 2011 were found that referenced the Board.

ADMINISTRATIVE RULE REVIEW
REQUESTED BY SMALL BUSINESS

During 2011, the Board was not approached by small business owners in accordance with Section 201M-5(f), HRS, regarding requests for review of any rule adopted by a state agency.

Section II

LEGISLATIVE REVIEW

The Board provided testimony on the following bills during the 2011 session.

1. **House Bill 980, HD1 SD1 “Relating to the Small Business Regulatory Review Board”**

Background: The purpose of this measure was to transfer the small business regulatory review board from the department of business, economic development, and tourism to the department of commerce and consumer affairs; it authorizes the expenses of the board to be funded from the compliance resolution fund; and it requires that each agency to notify the board on an annual basis of any rules to be amended or repealed to reflect statutory amendment or repeal.

Board Recommendation: The Board initially supported this measure prior to the proposed transfer to the department of commerce and consumer affairs. The Board did not provide testimony.

Status: The measure crossed-over to the Senate and was subsequently deferred at the Ways and Means Committee.

2. **Senate Bill 1498, SD2, “Relating to the Small Business Regulatory Review Board”**

Background: The purpose of this measure was to require each state agency with rules affecting small businesses to submit an annual report to the Small Business Regulatory Review Board regarding the statutory changes that impact these rules and the status of each amended or new rule for which adoption is pending. The measure also required the Governor to direct state agencies to work with the Board to develop internal processes to expedite rulemaking actions due to a change in applicable law.

The measure further transferred the Small Business Regulatory Review Board from the department of business, economic development, and tourism to the department of commerce and consumer affairs.

Recommendation: The Board did not support this measure and did not provide testimony.

Status: The measure crossed-over to the House and was subsequently deferred at the Consumer Protection & Commerce Committee.

Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Board Member Listing
3. Administrative Rules Reviewed Matrix
4. Administrative Directive No. 09-01

1. Chapter 201M, Hawaii Revised Statutes

CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact; small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business; consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

§201M-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

§201M-2 Determination of small business impact; small business impact statement. (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses

and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs 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;
- (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;
- (6) How the agency involved small business in the development of the proposed rules; and
- (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.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher

standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
 - (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
 - (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
 - (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
 - (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.
- (d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

[\$201M-3] Small business statement after public hearing.

For any proposed rules that affect small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
 - (A) Attended the public hearing;
 - (B) Testified at the hearing; and

- (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[§201M-4] Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

§201M-5 Small business regulatory review board; powers.

(a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or to consider any request from

small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. Nominations to fill vacancies shall be made from names submitted by the review board. The appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4]

§201M-6 Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of

any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;

- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

(b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit

a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the next regular session of the legislature. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6]

§201M-8 Waiver or reduction of penalties. (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
 - (2) The violation was unintentional or the result of excusable neglect; or
 - (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
 - (2) When a violation involves willful or criminal conduct;
 - (3) When a violation results in serious health and safety impacts;
 - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;

- (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
 - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D).
- (c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

[\$201M-9] Executive order. The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

2. Board Member Listing

Island	Member	Company	Address	Discussion Leader Assignments	E-Mail
Oahu	Sharon L. Pang (Chair)	Care Companions & Consulting	1400 Pensacola Street, Honolulu, HI 96822	Office of the Governor, Office of the Lieutenant Governor, Dept. of Accounting and General Services, Dept. of Human Services	carecompanions@aol.com
Oahu	Charles K. H. Au (Vice Chair)	ECA, LLP	598 Halekauwila Street, Honolulu, HI 96813	Dept. of the Atty General, Dept. of Education, Dept. of Taxation	Charles@eca-advisors.com
Hawaii	Richard Schnitzler (2nd Vice Chair)	Hamakua Macadamia Nut Co.	P. O. Box 44715, Kawaihae, HI 96743	Dept. of Agriculture, DLNR	Richard@hawnnut.com
Oahu	Bruce E. Bucky	Hildgund Jewelry	1188 Bishop Street, Suite 2305, Honolulu, HI 96813	DBEDT, Dept. of Human Resources Development, Dept. of Transportation	info@hildgund.com
Kauai	Peter Yukimura	Koa Trading Co.	P. O. Box 1031, Lihue, HI 96766	Dept. of Defense, Dept. of Public Safety	pmyuki@hawaiian.net
Hawaii	David S. De Luz, Jr.	Big Island Toyota	811 Kaneohe Avenue, Hilo, HI 96720	Dept. of Education, Dept. of Health (hospitals, facilities), Dept. of Labor & Industrial Relations, UH	djr@teamdeluz.com
Oahu	Chu Lan Shubert-Kwock	ABC Mortgage, and Chu Lan Properties	1181 Wanaka Street, Honolulu, HI 96818		clskwock@aol.com clskwock@gmail.com
Oahu	Howard West	Environmental Science International	354 Uluniu Street, Suite 304, Kailua, HI 96734	Public Utilities Commission, Dept. of Hawaiian Home Lands	HWest@esciencei.com

3. Administrative Rules Reviewed

	Month/Year	Support	Oppose	No Comment	Support w/Rec.	Sup. w/Res.	Support/ Oppose	Pending
	FY 2000 to FY 2010	370	10	24	22	13	6	
FY 2011	Jul-10	3		2				
	Aug-10	3		1	1			
	Sep-10	0						
	Oct-10	12	2	5				
	Nov-10	0						
	Dec-10	4		3				
	Jan-11			2				
	Feb-11	3		2				
	Mar-11	2		1				
	Apr-11	1		1		1		
	May-11	2				1		
	Jun-11	4						
FY 2012	Jul-11	9		1		1		
	Aug-11			1		1		
	Oct-11	5						
	Dec-11	3		8				1
	Jan-12							
	Feb-12							
	Mar-12							
	Apr-12							
	May-12							

Jun-12							
Totals	421	12	51	23	17	6	1

4. Administrative Directive 09-01



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

October 29, 2009

ADMINISTRATIVE DIRECTIVE NO. 09-01

To: All Agency Heads

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It rescinds Administrative Directive No. 99-02, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated August 2, 1999.

Legal Reference:

Section 91-3(c), Hawaii Revised Statutes, provides that, "the adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor."

Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

Policy:

Whenever any department or agency requests executive approval for the proposed adoption, amendment, or repeal of a rule, the director of the department or agency shall ensure that the proposed changes conform to existing legal provisions, including Chapter 91, Hawaii Revised Statutes. In requesting the adoption, amendment, or repeal of any rule, the director will explain or submit the following:

1. Explain the exact changes to be made and the purpose, reasons for the changes, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing.

2. Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.
3. Identify the final result expected by instituting the proposal (e.g. a program improvement/clarification of statute).
4. Identify any program and financial impacts on the State that will arise upon the implementation of the proposal to include:
 - a. Long- and short-range program impacts, and
 - b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period, and the assumptions used to arrive at the estimates.
5. Describe long- and short-term impacts to the public or the economy of the State.
6. Identify the alternatives explored in lieu of implementing the proposal.
7. Provide an explanation of whether the proposal will affect small business. For purposes of this Directive, a proposal will affect small business if the proposal will impact a for-profit enterprise consisting of fewer than 100 full-time or part-time employees and will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

If a proposal affects small business, the department or agency will describe:

- a. Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposal;
- b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule; and
- c. Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M.

Procedure:

1. Approval of the Governor is required prior to any rule change proceeding to a public hearing.

Prior to formal publication of notice of public hearing on the proposed adoption, amendment, or repeal of any rule, departments and agencies will:

- a. Obtain the Attorney General's approval "as to form" prior to submitting the rule to me for approval for public hearing; provided that as to rules proposed for adoption, amendment, or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General. The Department of the Attorney General will complete its pre-hearing review on an expeditious basis;
- b. Provide the Governor's office with a copy of the proposed rule, including the information requested in "Policy" items 1 through 7 above; and
- c. At the time the rules are submitted to the Governor's Office, concurrently provide copies to the Director of Budget and Finance (B&F) and to the Director of Business, Economic Development and Tourism (DBEDT) for their prompt review. B&F and DBEDT comments will be forwarded directly to the Governor.

2. Notice of Public Hearings.

If any proposed rule affects small business, the notice of public hearing will summarize any business impact described in the "Small Business Impact Statement," and will state any new fee or compliance burdens that will be placed on small business.

3. Final Approval After Public Hearing.

Departments and agencies will obtain the Governor's final approval for the adoption, amendment, or repeal of any rule after the required public hearing has been held. In seeking final approval, the director of the department or agency concerned shall:

- a. Indicate whether any revision is being recommended to the proposed rule, amendment, or repeal based on facts and circumstances brought out in the public hearing;
- b. If a revision or change is recommended, provide a copy of the proposed rule with revisions and changes to the Attorney General for approval "as to form" prior to resubmitting the rule to the Governor for final approval; provided that as to rules proposed for adoption, amendment or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General.

The Attorney General's office will approve the form within two weeks of receipt if the changes are not substantive. If the changes are determined to be substantial or material by the Attorney General, an additional public hearing will be held.

If a re-hearing of a proposed rule is sought, the procedures required for approval to proceed to public hearing will again be followed;

- c. Indicate whether the proposal affects small business, and, if so, whether a "Small Business Statement," which provides the information described in HRS Chapter 201M, has been submitted to the Small Business Regulatory Review Board; and
 - d. Submit three copies of the proposal in standard format and in accordance with Chapter 91, HRS, for the Governor's final approval. The original and a copy of the rules adopted by the department or agency will be signed by the director of the department, by the chairperson of a board or commission of a principal department, or by the chairperson of a board or commission if the rule has been adopted by a board or commission which is assigned to a department for administrative purposes. The third copy may use a facsimile of the required signatures.
4. Distribution of Approved Adopted Rules.
- a. A complete set consisting of three copies approved by the Governor will be filed at the Office of the Lieutenant Governor.
 - b. The Office of the Lieutenant Governor will provide one copy to the agency adopting, amending, or repealing the rule.
 - c. Each department or agency adopting, amending, or repealing the rule will provide one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

LINDA LINGLE

APPROVED AS TO FORM:



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