HAWAII
SMALL BUSINESS
REGULATORY REVIEW
BOARD
ANNUAL REPORT SUMMARY

Results for Calendar Year 2015

Review of Administrative Rules, Legislation

and

Rules Requested by Small Business

In Compliance with

Chapter 201M, Hawaii Revised Statutes

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

ANNUAL REPORT SUMMARY 2015

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SECTION I

MESSAGE FROM THE DIRECTOR

On behalf of the Department of Business, Economic Development & Tourism, I support the Small Business Regulatory Review Board and believe in what it stands for.

Thank you, members, for your hard work and dedication throughout the year.

Luis P. Salaveria
Director

SMALL BUSINESS REGULATORY REVIEW

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David Y. Ige
Governor

Luis P. Salaveria
Director, DBEDT

Members

Anthony Borge
Chair
Oahu

Harris Nakamoto
Vice Chair
Oahu

Barbara Bennett
Second Vice Chair
Kauai County

Kyoko Y. Kimura
Maui County

Robert Cundiff
Oahu

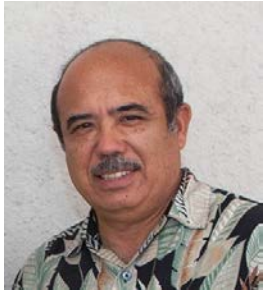
Phillip Kasper
Maui County

Nancy Atmospera-Walch
Oahu County

Garth Yamanaka
Hawaii County

Director, DBEDT
Voting Ex Officio

MESSAGE FROM THE CHAIR



Anthony Borge, Chair, SBRRB

We were blessed in 2015 to have an outstanding team of volunteer Board members who continues to persevere towards our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii. Our Board met every month to address, collaborate, and provide timely responses to the Governor, State & County agencies, and small businesses by reviewing the many proposed and amended regulations that had the potential to negatively impact small business.

On behalf of all the Small Business Regulatory Review Board members, I extend a big Mahalo to Governor David Ige, the State Legislature, and the Agency Directors and staff, for their support and cooperation in pursuit of our mission.

I personally want to thank each Board member who continued to donate countless hours (as well as time away from their families and businesses) to share their invaluable business knowledge to improve and enhance the growth and success of small businesses throughout the State of Hawaii. After all, small business is the economic engine for Hawaii. It was a great learning experience for me as well. A special Mahalo to DBEDT Director Luis Salaveria for his steadfast support, and SBRRB's Administrator, Dori Palcovich, for her knowledge, professionalism, and dedication to the Small Business Review Board.

OVERVIEW

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January 2015 through December 2015. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes (HRS), the annual summary is based on the following:

[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 or the legislature regarding its review of any 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, Hawaii Revised Statutes (HRS), as amended. (See Appendix 1)

Statutorily, the Board is comprised of nine members, eight current or former owners or officers of businesses from across the State, and the Director of Business, Economic Development, and Tourism (DBEDT) or the Director's designated representative who serves as an "ex officio" voting member. The Board is administratively attached to 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 ordinances, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members have volunteered their time attending State agency meetings, making presentations by performing outreach activities to small business organizations, such as the local Chambers of Commerce, 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. As of December 2015, the Board was operating with 9 members.

ADMINISTRATIVE RULE REVIEW

During 2015, the Board reviewed and made recommendations on 49 new and amended rules, both pre- and post-public hearing; see summary below. Since its inception, the Board reviewed a total of 676 sets of proposed new and amended administrative rules.

(See Appendix 2)

The following recommendations were made by the Board to Agencies and Counties during 2015.

Department / County	Chapter / Section Number	Chapter / Section Name	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
Department of Accounting & General Services – Title 3	70	Rules of the Stadium Authority	X		
Department of Agriculture – Title 4	60-9 60-10	Minimum Prices in the Honolulu Milk Shed Minimum Prices in the Hawaii Milk Shed			No Action after public hearing as the amendments were adopted prior to the board meeting No Action after public hearing as the amendments were adopted prior to the board meeting
Department of the Attorney General – Title 5	11	Notaries Public		X	
Department of Business, Economic Development & Tourism – Title 15	6	Enterprise Zones		X	
Department of Commerce & Consumer Affairs – Title 16	95 95 110	Pharmacists and Pharmacies Pharmacists and Pharmacies Physical Therapy	 X 	X X	

	99	Real Estate Brokers and Salespersons	X		Proceed to the second public hearing, and if no substantive changes to the rules are made, DCCA need not return to the Board, but proceed to the Governor for adoption of rules, subject to the Board's receipt of the small business statement after public hearing
	85-8	Examination and Reexamination		X	
	85-49	Degree of Supervision		X	
	78-2 78-59	Cosmetology Definitions Enrollment - " " "	X	X	
	35	Secure and Fair Enforcement for Mortgage Licensing Act	X		
	17	Captive Insurance Companies	X		
Department of Health – Title 12	62	Wastewater Systems	X		The Board recommended that DOH involve the City and the Counties regarding a future timetable for sewer line installation in the high population/cesspool density areas
Department of Human Services – Title 17	1719.1	State Funded Aged, Blind and Disabled Program		X	
	1722.3	Basic Health Hawaii		X	
	1731	Premium Assistance Program		X	
Department of Labor & Industrial Relations – Title 12	41	Hawaii Labor Relations Board Rules of Practice and Procedure	X		A motion was made acknowledging that the amendments have major impact on small business, that the amendments proceed to public hearing, and that the State's Department of Agriculture is approached for comments regarding any effect the amendments might have on the State's diversified agriculture program
Department of Land & Natural Resources – Title 13	146-6	Hawaii State Park System Fees	X	X	The Board commended the work of the Division of State Parks for its collaboration with the small business stakeholders, while promulgating the rule amendments, which resulted in reasonable fees, ongoing maintenance of the parks, and acceptable solutions to overall challenging endeavors
	60.8	Haena Community-Based Subsistence		X	
	256-152	Kahaluu Bay	X	X	

	86.1	Sea Cucumber Management	X		
Department of Public Safety – Title 23	200 201	Regulations of Controlled Substances Regulated Chemicals for the Manufacture of Controlled Substances	X X		
Department of Taxation – Title 18	231 251	Income Tax Law Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax	X X		
City and County of Honolulu	Rule 3-80-1.1, Honolulu Liquor Commission	Definitions (Dancing)	X	X	
County of Maui	Title 08, Subtitle 01, Chapter 101, Subchapter 1, Department of Liquor Control Services	Definitions (Dancing)	X	X	
County of Kauai	12, Section 5A-6.4 of the Kauai County Code, 1987 New Chapter 7A, Kauai County Code Section 8.0 Parts 4 and 5, Department of Water Chapter 23, Department of Parks and Recreation Rule 1.1, Department of Liquor Control	Real Property Tax Classification Rules Pertaining to the Housing Policy for the County of Kauai Relating to Application Fees, Application Procedure Facilities Reserve Charge 1) Commercial Boating Activities, Article 3, Kauai County Code 1987; and 2) Governing Commercial Surfing and Stand-up Paddle Instruction, Part V, Section 40, time of Use (a), (b), Section 43 (f), and Sections 43 (u) and (v) Definitions (Dancing)	X X X X X X X	X Deferred to next meeting X	Support the proposal to proceed to public hearing and to engage the stakeholders due to the negative impact on small businesses, such as the realtors, contractors, and developers

County of Hawaii	Part I - Part VI	Rules and Regulations of the Liquor Commission of the Department of Liquor Control of the County of Hawaii	X	X	

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See "Legislative Review" at the end of this report for specific legislation the Board followed during the 2015 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.

During 2015, the Board updated the small business impact statement templates in order to expedite the rule review process, to bring the statements up-to-date with the current statutes, and for standardization and consistency. The newly renovated forms were launched in January; in March, DBEDT Director Salaveria made a presentation to the State Department Directors at a Governor's weekly Cabinet meeting regarding the newly amended templates.

At the November and December Board meetings, the members readdressed and made changes to the impact statements for launching in 2016.

On October 29, 2009, AD 09-01 (See Appendix 3) 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.

BOARD MEMBERS / CHAIRPERSON

Pursuant to Section 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." At the 2015 May board meetings, Mr. Anthony Borge was elected Chair, Mr. Harris Nakamoto was elected Vice Chair, and Ms. Barbara Bennett was elected Second Vice Chair.

The board member nomination process, under Section 201M-5, HRS, provides that "the Board shall consist of nine members, who shall be appointed by the governor pursuant to section 26-34; provided that: (1) Three members shall be appointed from a list of nominees submitted by the president of the senate; (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives; (3) Two members shall be appointed by the governor; (4) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting member of the board; (5) The appointments shall reflect representation of a variety of businesses in the State; (6) No more than two members shall be representatives from the same type of business; and (7) There shall be at least one representative from each county."

In addition, "nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations. Except for the ex

officio member, 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."

At the end of December 2015, the Board was comprised of the following members:

- Anthony Borge, RMA Sales, representing the City and County of Honolulu
- Barbara Bennett, *For Kauai Magazine*, representing Kauai County
- Kyoko Y. Kimura, Aqua-Aston Hospitality, representing Maui County
- Harris Nakamoto, Kaiser Permanente, representing the City and County of Honolulu
- Robert Cundiff, Rengo Packaging, Inc., representing the City and County of Honolulu
- Phillip Kasper, Boss Frog's Dive & Surf, representing Maui County
- Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Healthcare Institute, representing the City and County of Honolulu
- Garth Yamanaka, Yamanaka Enterprises, Inc., representing Hawaii County
- DBEDT Director, Voting Ex Officio Member

ACTIVITIES AND PROJECTS

The following activities and projects were performed in 2015.

▪ **Collaborative Effort with U.S. Small Business Administration (SBA) Regulatory Fairness Board –** At the January Board meeting, Mr. Reg Baker, Hawaii Small Business Advocate and Business Executive, was introduced as the United States Small Business Administration (SBA) Board Member of the Regulatory Fairness Board for Region 9. The Fairness Board covers rules and regulations affecting small businesses that come from the federal government by monitoring how the rules and regulations are enforced.

Mr. Baker was soliciting feedback from this Board as well as various State agencies, business organizations, and other interested parties to report back to the SBA in Washington. He is currently working with the Hawaii Chamber of Commerce to build up the Chamber's Business Council for networking opportunities. He extended his services in wherever this Board believes it would be appropriate for collaborative efforts.

At the April meeting, Ms. Jane Sawyer, District Director of the Hawaii U.S. Small Business Administration (SBA), discussed programs and services that are offered to the businesses in Hawaii. Her specific area at the SBA is to assist businesses with capital, contracting, consulting, advocacy, innovation, and disaster funding.

▪ **Small Business Office –** At the July Board meeting, Mr. Shawn Ritchey and Ms. Robyn Pfahl, Procurement Specialists at the State's Procurement Office (SPO) in the Department of Accounting and General Services, discussed SPO's preliminary initiative to create a Small Business Office within the State. This Office is anticipated to house the statutorily-created Small Business Set-aside Preference Program and the Small Business Regulatory Review Board.

▪ **Website –** The Board's webpages were regularly updated throughout the year; see: http://dbedt.hawaii.gov/sbrrb.

▪ **Brochures and Evaluation Survey** – The Board's brochure is updated regularly. In addition, the Board received and reviewed Evaluation Surveys from testifiers and State and County representatives attending the Board meetings. During 2015, fillable Evaluation Surveys were created.

▪ **Press Releases and Articles** – During 2015, the following articles were released:

- On June 1, 2015, *Pacific Business News* (bizjournals.com) announced the election of Anthony Borge's chairmanship to the Board, under "People on the Move."

- On June 1, 2015, *Pacific Business News* (bizjournals.com) announced the election of Harris Nakamoto's vice chairmanship to the Board, under "People on the Move."
- On June 1, 2015, *Pacific Business News* (bizjournals.com) announced the election of Barbara Bennett's second vice chairmanship to the Board, under "People on the Move."
- On June 1, 2015, *Pacific Business News* (bizjournals.com) announced that Mr. Phillip Kasper was appointed as a member of this Board, under "People on the Move," and that Mr. Kasper represents the Island of Maui.
- On June 1, 2015, *Pacific Business News* (bizjournals.com) announced that Mr. Robert Cundiff was appointed as a member of this Board, under "People on the Move."
- On June 1, 2015, *Pacific Business News* (bizjournals.com) announced that Mr. Garth Yamanaka was appointed as a member of this Board, under "People on the Move," and that Mr. Yamanaka represents the Island of Hawaii.
- On June 25, 2015, *Pacific Business News* (bizjournals.com) announced that Ms. Nancy Atmospera-Walch was appointed as a member of this Board, under "People on the Move."

▪ **Meetings with State Department Directors** – In August, the SBRRB sent a letter to the State Department Directors requesting a meeting to discuss upcoming rule changes and activities of the respective departments. To date, the SBRRB members/discussion leaders met with the following:

- Department of Human Services

- Department of Health
- Department of Land and Natural Resources
- Department of the Attorney General
- Department of Business, Economic Development and Tourism

▪ **Power Point Presentation and Fact Sheet** – The Board members updated its power point presentation and created a Fact Sheet for outreach purposes.

▪ **Budget** – The Board requested, through DBEDT, a supplemental budget for fiscal 2017 from the State Legislature for operating funds and clerical staff; the request did not pass through the Department of Budget and Finance.

▪ **e-Newsletter** – During the November and December Board meetings, the members discussed the launching of a monthly e-Newsletter. The first e-Newsletter will be comprised of a Message from the Chair, Members, and a link to the Board's monthly Agenda, and a list of upcoming Board meetings for 2016. It will be sent to small business organizations, State Legislators, and State Department Directors, and is expected to be distributed at the beginning of 2016.

REQUESTS FROM SMALL BUSINESS

The following outlines requests from small businesses during 2015.

1. Representatives from CORA (Commercial Ocean Recreational Activities) approached the Board for assistance in a proposed six-fold increase in permit fees by Maui County's Finance Department. It was explained that the increase was not communicated with the stakeholders prior to the initial discussion and approval at the May 4, 2015 Maui City Council meeting. The Board unanimously agreed that a letter be sent to the Maui City Council requesting that any action at the May 26, 2015 meeting of the Maui County's Finance Department regarding the proposed permit fee be deferred until communication between the stakeholders, the businesses, the public, and all those affected by the increase is conducted for feedback to discuss the purpose of the increase and its expected outcome.

   Further, the Board requested that if the proposed increase in the permit fees is to be promulgated by administrative rules, that the County of Maui follow Chapter 201M, HRS, and submit the rules and a small business impact statement, under Section 201M-2, HRS, to this Board. Copies of the correspondence were sent to Maui Mayor Arakawa and the Maui State legislators.

   The Board's request resulted in Maui County Council agreeing to postpone the proposed increase in the permit fees until such time that a dialogue is conducted with stakeholders.

2. Ms. Dale Evans, owner of Charley's Taxi, approached the Board for assistance in determining if the airport pick-up fees at Hawaii International Airport are consistent with HAR Title 19, Chapter 38.1, "On-Demand Taxi Service at Public Airports," HAR Chapter 20.1, "Commercial Services at Public Airports," and with Act 163, Session Laws

of Hawaii, 1994. In addition, Ms. Evans requested that improvements be made to the dispatching of taxi service for passengers through operational and enforcement of rules and procedures, and to the level of service to customers.

The Board unanimously agreed to meet with the Department of Transportation to discuss the issues at hand.

SECTION II

LEGISLATIVE REVIEW

The Board provided testimony on the following measures during the 2015 Legislative Session.

1. **Senate Bill 12, "Relating to the Small Business Regulatory Flexibility Act"**

   Background: Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development and tourism.

   Recommendation: The Board provided testimony in support.

   Result: Passed the first reading but did not survive the first cross-over.

2. **House Bill 266, "Relating to the Small Business Regulatory Flexibility Act"**

   Background: Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development and tourism.

   Recommendation: The Board provided testimony in support.

   Result: Passed the first reading but did not survive first cross-over.

3. **House Bill 774 HD1 SD1, "Relating to Small Business"**

   Background: This measure makes an appropriation to the department of business, economic development, and tourism for the small business regulatory review board to acquire additional staff.

   Recommendation: The Board supported this measure throughout the legislative session.

   Result: Passed in the House Committee on Economic Development & Business and continued to Conference Committee where it did not survive.

4. **Senate Bill 1188, "Relating to Small Business"**

   Background: This measure makes an appropriation to the department of business, economic development and tourism for the small business regulatory review board to acquire additional staff.

   Recommendation: The Board unanimously voted to support this measure.

   Result: Passed first reading, was referred to the Committee on Economic Development & Business, and was not heard.

5. **Senate Bill 1236 SD1, "Relating to the Hawaii Public Procurement Code Procurement"**

   Background: This measure establishes the small business office to administer the state small business program; establishes the state small business program and transfers certain duties of the chief procurement officer to the small business office, which under the State small business program may, among other things, train and assist small businesses in doing business in the State, encourage from small business, and establish a goal of awarding twenty percent of the State's annual purchasing expenditures to small businesses; requires the small business regulatory review board to adopt rules to define "small business," establish set-asides for small business, and encourage the use of small businesses as subcontractors for large government contracts.

   Recommendation: The Board reviewed this measure at its March board meeting; no action was taken.

   Result: This measure passed the first and second readings; it was subsequently referred to the Senate Committee on Ways and Means where it was not heard.

6. **Governor's Message No. 767, "Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony B. Borge, for a term to expire June 30, 2019."**

   Background: The Board members unanimously supported this measure.

   Recommendation and Result: The recommendation by the Senate Committee on Economic Development, Environment, and Technology to Advise and Consent to the nomination was confirmed on April 22, 2015.

7. **Governor's Message No. 768 and 769, "Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Garth Yamanaka, for a term to expire June 30, 2015 and June 30, 2019," respectively.**

   Background: The Board members unanimously supported this measure.

   Recommendation and Result: The recommendation by the Senate Committee on Economic Development, Environment, and Technology to Advise and Consent to the nomination was confirmed on April 22, 2015.

8. **Governor's Message No. 770, "Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Nancy Atmospera-Walch, for a term to expire June 30, 2016."**

   Background: Chair Borge encouraged the board members to provide his or her own personal testimony.

   Recommendation and Result: The recommendation by the Committee on Economic Development, Environment, and Technology to Advise and Consent to the nomination was confirmed on April 22, 2015.

9. **Governor's Message No. 771, "Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Phillip Kasper, for a term to expire June 30, 2018."**

   Background: Chair Borge encouraged the board members to provide his or her own personal testimony.

   Recommendation and Result: The recommendation by the Committee on Economic Development, Environment, and Technology to Advise and Consent to the nomination was confirmed on April 22, 2015.

10. **Governor's Message No. 772, "Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Robert Cundiff, for a term to expire June 30, 2016."**

    Background: Chair Borge encouraged the board members to provide his or her own personal testimony.

    Recommendation and Result: The recommendation by the Committee on Economic Development, Environment, and Technology to Advise and Consent to the nomination was confirmed on April 22, 2015.

Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. 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. (a) For any proposed rule that affects 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, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a) (3):

(1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or

(2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

(1) Specifically address each issue and concern raised in the board's request for a written response; and

(2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

[§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 nine members, who shall be appointed by the governor pursuant to section 26-34; provided that:

(1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
(2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
(3) Two members shall be appointed by the governor;
(4) The director of business, economic development, and tourism, or the director’s designated representative, shall serve as an ex officio voting members of the board;
(5) The appointments shall reflect representation of a variety of businesses in the State;
(6) No more than two members shall be representative from the same type of business; and
(7) There shall be at least one representative from each county. For purposes of paragraphs (1) and (2), nominations shall be solicited from small business

organizations, state and county chambers of commerce, and other interested business organizations.

(c) **Except for the ex officio member**, 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; am L 2012, c 241, §3]

§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; provided that, by June 30 of each year, each agency shall submit to the small business regulatory review board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their 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; am L 2012, c 241, §4]

§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. Administrative Rule Review Matrix

Administrative Rule Review Matrix

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reserv.	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2014		474	12	62	28	17	8	0
FY 2015	Jul-14	3						
	Aug-14	1						
	Sep-14	8						
	Oct-14	0						
	Nov-14	6		2				
	Dec-14	5	1					
	Jan-15	7		2				
	Feb-15	3			1			
	Mar-15	4			1			
	Apr-15	2						
	May-15	3						
	Jun-15	3						
FY 2016	Jul-15	2						
	Aug-15	1			1			
	Sep-15	7			1			
	Oct-15	3			1			
	Nov-15	4						
	Dec-15	2						1
	Totals	538	13	66	33	17	8	1

3. 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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