

**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**

December 2006 – December 2007

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY

Table of Contents

Message From the Director.....	3
Message From the Chairperson.....	4
Small Business Regulatory Review Board – Overview.....	5
ANNUAL SUMMARY.....	6
Small Business Regulatory Flexibility Act.....	6
Small Business Regulatory Review Board Member Composition and Responsibility.....	6-7
Administrative Rule Review.....	7-17
Board Legislative Activity.....	18
Small Business Impact Statement <i>and</i> Administrative Directive 99-02.....	18
Strategic Plan.....	19
Yearly Annual Plan	19-20
Projects and Activities.....	21-23
Communications Plan.....	23-26
Administrative Rule Review - Requested by Small Business.....	27-30
Legislative Review.....	1-5
Appendices.....	6
1. Chapter 201M, HRS.....	7-16
2. Board Member Listing.....	17-18
3. Administrative Rules Reviewed.....	19-20
4. Administrative Directive 99-02	21-26
Small Business Regulatory Review Board – Contact Information	27

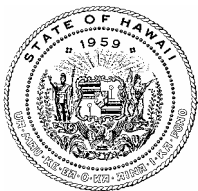
MESSAGE FROM THE DIRECTOR



Hawaii small businesses are the heart of Hawaii's economy and are central to our way of life. As always, as the Director of the Department of Business, Economic Development and Tourism, it gives me great pleasure to thank the members of the Small Business Regulatory Review Board for their hard work and efforts to improve the regulatory burden for the small businesses in Hawaii.

Theodore E. Liu
Director

MESSAGE FROM THE CHAIRPERSON



Linda Lingle
Governor

Theodore E. Liu
Director, DBEDT

Mark K. Anderson
Deputy Director, DBEDT

Members

Lynne Woods
Chairperson
Maui

Sharon L. Pang
Vice Chairperson
Oahu

Michael Yee
2nd Vice Chairperson
Oahu

Dorvin Leis
Maui

Donald Dymond
Oahu

Charles Au
Oahu

Richard Schnitzler
Hawaii

Bruce E. Bucky
Oahu

Peter Yukimura
Kauai



Lynne Woods, Chairperson
December 2007

The year 2007 was one of public relations and communication for our Board. As a result of two very generous donations from board members, a contract with the public relations firm of Hastings & Pleadwell was formed to conduct a survey of the small business community and its awareness of the Board's work. It came as no surprise to us that our constituents were, for the most part, unaware of our work and the efforts of Governor Lingle's Administration to change Hawaii to a nationally recognized business friendly state. Through a series of press releases, development of a presentation for small business associations, and training for board members, we are taking steps to inform the small business community of our efforts.

This annual report documents all of the rule reviews conducted by our State departments. Over the past year, the Board has noticed a growing trend towards including representatives of the business community in the process of rule making and review. We believe this inclusion is opening doors to awareness for both business and government and we encourage this communication to continue at an even broader level. When the Small Business Regulatory Flexibility Act, Chapter 201M, HRS was passed, it included not just the State but also all of the Counties. Up until now the counties have not been participating in the rule review process so we have begun discussions with each Mayor to facilitate their inclusion.

Much of the success of this Board is due to the incredible efforts of Dori Palcovich, Business Advocate. Ms. Palcovich's continued dedication and hard work continues to make us shine. On behalf of the Board I also wish to thank the 2007 Legislature for their support of our efforts, Governor Lingle for her unwavering support of small business, and Director of DBEDT, Ted Liu, for his interest and constant support. To have been re-elected by fellow board members to the position as Chairperson is an honor. I very much enjoy working with all of you. Your knowledge, wisdom, guidance, companionship and support continue to motivate all of us.

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 December 2006 through December 2007, pursuant to the Hawaii Small Business Regulatory Flexibility Act (RFA), Chapter 201M, Hawaii Revised Statutes (HRS), as amended.

[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 (RFA), 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

The Board is comprised of eleven current or former owners or officers of businesses from across the State. The Board 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 regularly volunteer their time attending State agency meetings, making presentations by performing outreach activities to small business organizations, and testifying on legislation. The Board is scheduled to meet monthly, and is administratively attached to the Department of Business, Economic Development & Tourism (DBEDT). 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 agencies as a "discussion leader" and is responsible for the initial

review of the administrative rules of that agency prior to consideration by the full Board. Since its inception, the Board has had several new members and re-appointees whose terms have expired. As of December 2007, the Board was operating with nine members. (Appendix 2)

ADMINISTRATIVE RULE REVIEW

Since its inception, the Board reviewed a total of 313 sets of proposed new and amended administrative rules. The results are categorized in Appendix 3. From December 2006 through December 2007, the Board reviewed and made recommendations on 51 sets of new and amended rules, both pre- and post public hearing. A summary of each rule is categorized below.

Department of Accounting & General Services

No key matters of small business impact have been noted.

Department of Agriculture

HAR Chapter 4-60-10, “Minimum Prices in the Hawaii Milk Shed”

Comments – The Board unanimously agreed that both the pre- and post public hearing statements proceed to public hearing and to the Governor for adoption.

HAR Chapter 4-69A, “Pests for Control or Eradication”

Comments – The Board unanimously agreed that these proposed rules proceed to public hearing.

HAR Chapter 4-71, “Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules”

Comments – The Board unanimously agreed that these post-public hearing statements proceed to the Governor for adoption.

HAR Chapter 4-158, “Non-Agricultural Park Lands Program Rules”

Comments – The Board unanimously agreed that the proposed rules proceed to both public hearing and to the Governor’s office for adoption.

Department of Attorney General

HAR Chapter 5-11, “Notaries Public”

Comments – The Board unanimously agreed that the proposed rule proceed 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 – No key matters of small business impact have been noted.

Department of Business, Economic Development & Tourism / Hawaii Community Development Association

HAR Chapter 15-10, “Relating to Improvement District 11”

Comments – The Board unanimously approved that the rules as presented proceed to public hearing for repeal.

HAR Chapter 15-210, “Rules, Regulations, Charges, and Fees for Public Parks”

Comments – The Board unanimously approved that these post-public hearing statements proceed to the Governor for adoption. The Board’s decision was incumbent upon appropriate enforcement in order to establish a sense of balance on the usage of the park and the paying of permits.

**HAR Chapter 15-211, 212, 213, and 214 “Rules Relating to
Kewalo Basin”**

Comments – The Board unanimously agreed that these rules proceed to public hearing with the agreement that the Agency and Kewalo Ocean Activities members continue to communicate prior to public hearing in the hopes that outstanding issues are resolved.

After public hearing, the Board unanimously voted that the rules not be adopted for the following reasons:

1. The current users will be forced to carry the financial burden for the Basin’s improvements, through increased fees, for work that was to be done by the Department of Transportation (DOT) over the past fifteen years. DOT collected fees over time, however, slips continued to be closed due to unsafe infrastructure. The rules indicate a new management with new and increased fees for improvements to existing infrastructure. The businesses should not be held accountable for past governmental mistakes.
2. The permit for moorage has become a multi-page lease. The new document was prepared and submitted to the Board members and the users the night before the August 15, 2007 Board meeting. As a lease document, it appears to be poorly thought-out and presented. Because it is Hawaii Community Development Authority’s (HCDA’s) intent to change from a permitting to a leasing process, the Review Board is concerned that the lease is only for one year and that not all harbors in Hawaii are managed in the same manner. A business cannot obtain financing with only a one-year lease. Ordinarily, a business will negotiate a three-, five-, or ten-year lease with a landlord. The Board is concerned that the

users are forced to sign a one-year revocable lease when they are expected to construct and improve the conditions of their own facilities.

3. The proposed rules will be incumbent upon the users to build a ticket booth and to pay rent for the same booth to HCDA. Property taxes and rent are paid by the users for the exact same space, called a “slip.” The Board is concerned that this is an excessive and transparent effort to make this moorage too expensive for the existing users.
4. HCDA is ill-equipped to manage a harbor. There is little acknowledgment of the dangers of this harbor and its entrance. HCDA intends to expand the use of the facilities to recreational users which has caused alarm amongst the long-term professional users. Although safety and the potential loss of life due to extreme ocean conditions and lack of experience is not normally the purview of this Board, it is very difficult to ignore this future probability.
5. The proposed rules do not provide reciprocity between harbors. If the current users of Kewalo Basin cannot enter their home harbor due to ocean conditions, it is questioned why they cannot enter any other State commercial harbor to off-load their catch or customers. The Board is concerned about the result of harbor management being divided between many departments. It is also concerned that if HCDA wants the slips for recreational use then why not provide additional facilities for Hawaii’s fishing fleet and commercial ocean tour operators.
6. There appears to be inaccurate statements in the small business impact statement regarding the lack of interest at the public hearing on behalf of the current users and a lack of a compromise. The Board is concerned with these statements because a number of members attended the public hearing even though the impact

statement stated otherwise. Given this experience, members on this Board will now scrutinize small business impact statements with a different eye.

Department of Commerce & Consumer Affairs

HAR Chapter 16-38.1, “Securities”

Comments – The Board unanimously agreed that the proposed rules proceed to public hearing.

HAR Chapter 16-24, “Money Transmitters”

Comments – The Board unanimously approved both the pre- and post-public hearing statements.

HAR Chapter 16-182, “No Rules Combat or Similar Contests”

Comments – The Board unanimously approved that these rules proceed to public hearing with the following recommendation, because the new proposed rules present a small business impact to the fighters and fight promoters, there is concern that the timeframes for the application and the medical testing processes do not give the fight promoters enough time to find replacement fighters such as when a fighter in an upcoming event cannot fight due to sickness or injury prior to the scheduled match. Therefore, the Board recommended that the agency’s application and the physician’s report be received at least thirty (30) days prior to an event and that the required serological test is conducted within ten (10) days prior to the physician’s report. As a result, the Board requested that the rule drafters reassess the required time periods.

HAR Chapter 16-24, “Money Transmitters”

Comments – The Board unanimously approved both the pre- and post-public hearing statements.

HAR Chapter 16-171, “Miscellaneous Insurance Rules”

Comments – The Board unanimously approved that these proposed rules proceed to public hearing.

Department of Defense

HAR Chapter 7-31, “Services to Veterans”

Comments – The Board unanimously approved that these rules proceed to public hearing.

HAR Chapter 7-32, “Hawaii State Veterans Cemetery Rules of Practice and Procedure”

Comments – The Board unanimously approved that these rules proceed to public hearing.

Department of Education

No key matters of small business impact have been noted.

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 11-12, “Food Establishment Sanitation”

Comments – The Board concurred that there was no discernible business impact and recommended that the pre- and post-public hearing statements proceed to public hearing and adoption, respectively.

HAR Chapter 11-55, “Water Pollution Control”

Comments – The Board agreed that these rules proceed to public hearing. While the Board also supported that the rules proceed to the Governor for adoption, the Agency

informed the members that the Governor had previously signed off on the amended rules, and were now officially adopted.

HAR Chapter 11-55-38, “Historic and Burial Sites Review”

Comments – The Board supported that the proposed rules proceed to public hearing.

HAR Chapter 11-79, “Relating to Dietitians”

Comments – The Board unanimously agreed that these rules proceed to public hearing. The Board recommended that the agency contact all the impacted parties about the upcoming public hearing.

HAR Chapter 11-80, “Electricians and Plumbers”

Comments – The Board supported that these rules proceed to both public hearing and to the Governor for adoption.

HAR Chapter 11-104.1, “Management of Infectious Waste”

Comments – The Board unanimously agreed that these post public hearing rules proceed to the Governor for adoption.

HAR Chapter 11-110.1, “Clinical Laboratories and Laboratory Personnel”

Comments – The Board unanimously agreed that the proposed rule amendments proceed to public hearing.

HAR Chapter 11-156, “Communicable Diseases”

Comments – The Board supported that these rules proceed to public hearing.

HAR Chapter 11-200, “Environmental Impact Statement Rules”

Comments – The Board unanimously agreed that the proposed rule amendments proceed to public hearing. It was determined that the rules are complicated and so it is essential to hear from the small businesses.

HAR Chapter 11-201, “Environmental Council Rules of Practice and Procedure Related to the Environmental Impact Statement System”

Comments – The Board unanimously agreed that the rule amendments proceed to public hearing.

HAR Chapter 11-282, “Deposit Beverage Container Program”

Comments – The Board concurred that these post public hearing statements proceed to the Governor for adoption. Because the Board was informed that the rules had already been adopted prior to the Board’s approval, the Governor’s office was notified of this mistake.

HAR Chapter 11-282, “Deposit Beverage Container Program”

Comments – The Board supported additional proposed administrative rules to proceed to public hearing.

HAR Chapter 11-452, “Interim Guidelines and Procedures for Decontamination and Cleanup of Illegal Clandestine laboratory Methamphetamine Manufacturing Sites”

Comments – The Board unanimously agreed that the proposed rule amendments proceed to both public hearing and to the Governor for adoption.

Department of Human Resources Development

No key matters of small business impact have been noted.

Department of Human Services

HAR Chapter 17-1722, “State Pharmacy Assistance Program”

Comments – The Board unanimously supported these post public hearing statements to proceed to the Governor for adoption.

HAR Chapter 17-1724-10, “Earned Income from Self-Employment”

Comments – The Board unanimously supported these pre- and post-public hearing statements.

HAR Chapter 17-1728.1, “QUEST-Adult Coverage Expansion”

Comments - The Board unanimously recommended these post public hearing statements proceed to the Governor for adoption.

HAR Chapter 17-1737, “Scope and Contents of the Fee for Service Medical Assistance Program”

Comments – The Board unanimously supported these pre- and post public hearing statements.

Department of Labor & Industrial Relations

HAR Chapter 12-46, “Sexual Harassment”

Comments – The Board fully supported that the proposed rules proceed to public hearing.

HAR Chapter 12-136.1, “Cranes, Hoists, Elevators and Conveyors”

Comments – The Board fully supported both the pre- and post public hearing rules, noting that the regulations have significant business impact.

Department of Land & Natural Resources

HAR Chapter 13-51, “Kahului Harbor, Maui Fisheries Management Area”

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

HAR Chapter 13-65, “Wailua Reservoir Public Fishing Area, Kauai”

Comments – The Board recommended that the post public hearing statements proceed to the Governor for adoption.

HAR Chapter 13-75, “Rules Regulating the Possession and Use of Certain Fishing Gear”

Comments – The Board was unable to provide a final recommendation due to a lack of a majority vote.

HAR Chapter 13-75-12.5, “State Waters around Molokai, Special Rules”

Comments – The Board supported these rules because “one size does not fit all” and because the rules were “an encouraging development to a clear path that should prevent future issues.” The Board unanimously concurred that these rules proceed to the Governor for adoption.

HAR Chapter 13-76, “Non-Indigenous Aquatic Species”

Comments – Upon review, the Board unanimously agreed that the rules, as presented, were not within its purview regarding impact on small business. However, future rules as they relate to water fouling and its impact on inter-island travel would be.

HAR Chapter 13-209, “Rules Regulating Activities within Natural Area Reserves”

Comments – The Board unanimously agreed that the post public hearing statements proceed to the Governor for adoption.

HAR Chapter 13-233, “Motor Vehicle and Parking Rules”

Comments – The Board unanimously agreed that proposed amendments proceed to public hearing. At the Board meeting, three members of the Common Ground

Hawaii Coalition testified in opposition to the proposed rules. The Coalition is openly opposed to charging fees to State parks and beaches. The Board Chairperson explained to the Coalition that its members should attend the public hearing and voice its concerns.

HAR Chapter 13-256, “Subchapter 10 East Hawaii Island Ocean Recreation Management Area”

Comments – The Board unanimously agreed that the proposed amendments proceed to public hearing.

Department of Public Safety

No key matters of small business impact have been noted.

Department of Taxation

HAR Chapter 18-245, “Cigarette Tax Stamping”

Comments – The Board did not vote on these post-public hearing statements because the amendments had subsequently been adopted by the Governor’s office.

Department of Transportation

No key matters of small business impact have been noted.

University of Hawaii

No key matters of small business impact have been noted.

Counties

County of Hawaii Police Department

Hawaii Police Department Special Off-Duty Employment, General Order No. 413

Comments – The Board recommended that these County proposed amendments proceed to public hearing.

BOARD LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on a number of 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 2007 legislative session.

SMALL BUSINESS IMPACT STATEMENT *and* ADMINISTRATIVE DIRECTIVE 99-02

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. In August 1999, AD 99-02 (Appendix 4) was issued to update the policy and procedures by which State departments and agencies request the Governor’s approval for a public hearing for any proposed adoption, amendment or repeal of administrative rules developed under Chapter 91, HRS.

During the past several years, the Governor’s office and DBEDT staff, with the concurrence of the Board, have been updating and modifying the existing AD. At this writing, the newly proposed AD was reviewed by the Attorney General’s Office; there is no word as to when final approval is expected.

STRATEGIC PLAN

The Board meets annually to re-establish what it stands for and to set clearly defined goals for the upcoming year. In July 2007, the Board held its Annual Plan meeting where the members' most important goals for the upcoming year were discussed. These goals include improving upon the Board's communication, its strength and powerbase, the reception of the State's Department Directors, and the legislature's support. Another goal of the Board is establishing and implementing a small business regulatory alert system.

In support of these goals, the following projects and timelines were established:

1. Speaker's Bureau – This project began in August 2007 with several of the Board members committed to speaking to various small business venues.
2. Regulatory Alert Project – Board Chair and DBEDT staff are in the process of researching the implementation of a regulatory alert project.
3. Legislative Project – This project began in November 2007 with meetings scheduled with the State's legislators and Board members.
4. Agency Meetings – This project began in July 2007 when letters were sent to the State Agency Directors introducing the respective board members as discussion leaders. Follow-up meetings with the Directors have been ongoing.

YEARLY ANNUAL PLAN

In addition to the Board's strategic plan, DBEDT requires each program manager to provide a Yearly Annual Plan. This plan is based on W. K. Kellogg Foundation's logic model and assists in evaluating each program. The plan provides a common framework of how and why a program makes a difference. In August 2007, the Board's RFA Program was presented to DBEDT. In keeping with the objectives and goals outlined in the Board's strategic plan, the following areas

of focus have been identified to DBEDT and will be concentrated on during the 2008 fiscal year. Focus areas consist of:

1. Compliance with the law that governs the Board, 201M, HRS
2. The small business community's awareness of the Board
3. Regulatory assistance performed efficiently and effectively
4. Increased government support which includes:
 - o The Legislature
 - o Agency Directors
 - o Counties

As outlined in the Yearly Annual Plan, the Board has identified the following outputs and outcomes:

Media Visibility

Fiscal 2007 – Actual - One press release was published.

Fiscal 2008 – Anticipated - Six to ten press releases and two to three articles. As of this writing, fourteen press releases, articles and announcements were published as well as an announcement on KHON Fox Channel 2 regarding the newly elected Board officers.

Speaker's Bureau

Fiscal 2007 – Actual - Two presentations were performed.

Fiscal 2008 – Anticipated - Monthly presentations. As of this writing, two presentations were made by Board members.

Legislative and Government Outreach

Fiscal 2007 – Actual - Five meetings with legislators were made.

Fiscal 2008 – Anticipated - All Board members are expected to meet with legislators and attend hearings that pertain to small business. As of this writing, two meetings with legislators were made.

Small Business Inquiries

Fiscal 2007 – Actual - Four small businesses approached the Board for legislative or administrative rule assistance.

Fiscal 2008 – Anticipated - Eight. As of this writing, four small businesses have approached the Board.

PROJECTS AND ACTIVITIES

In keeping in line with the Board's strategic plan and DBEDT's Yearly Annual Plan, the following projects and activities were performed throughout the year.

- **Marketing Task Force** – In fiscal 2006, DBEDT's Communication Officer provided the Board with valuable information to improve upon its marketing outreach efforts and communication strategies, noting that when an effective communications plan is in place, the members should be committed to it. In response, the Board established a marketing task force to assist with the goals and objectives derived from the Board's strategic planning session. In November and December 2006, the marketing task force interviewed three public relations firms to assist with the Board's visibility and awareness among the general small business community. Upon review, Hastings & Pleadwell, LLC – A Communication Company, was selected to assist the members with its marketing efforts. Board member Mr. Dorvin Leis and an anonymous benefactor graciously gifted compensation for this effort. At the end of this section outlines the Communications Plan that was provided by Hastings & Pleadwell. The Plan will be utilized by the Board members throughout the 2007 – 2008 fiscal years.

- **Election of Officers** – In July the Board elected officers for the 2007 – 2008 fiscal years. Ms. Lynne Woods was re-nominated as Chairperson for the third year. Ms. Sharon L. Pang was re-nominated as Vice Chairperson and Mr. Michael Yee was re-nominated as Second Vice Chairperson for the second year.

- **Member Nominations and Recruitment** – The Board continued to actively recruit new members pursuant to Section 201M-5, "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 two vacancies, representing the islands of Kauai and Hawaii.

- **Hawaii’s Milk Task Force** – The Board formed a legislative task force to review Hawaii’s milk industry as it relates to, among other items, price controls, milk production and milk prices. In August Dr. Chin Nyeon Lee, Dairy Specialist from the University of Hawaii presented the Board with an in-depth analysis of Hawaii’s milk industry. Dr. Lee’s milk survey proved informative and helpful in understanding the milk industry.

- **Agenda Item Request Form** – The Board approved a form so that when a member requests an item to be placed on a monthly agenda, it will assist in the process.

- **State of Hawaii’s Innovation Policy** – During the August Board meeting, DBEDT Director Theodore Liu presented the State’s Innovation Policy initiated by Governor Lingle. The presentation included the Administration’s priorities, information on why the State should innovate, results of an innovative economy by year 2020, ten key policy elements, examples of innovation in education and workforce development and information on innovation in global links. As a follow-up to Director Liu’s presentation, the Board’s Chairperson attended the STEM Leadership Conference in October. The STEM conference, which stands for Science, Technology, Engineering and Mathematics, was intended to build a framework for action to create greater understanding, consensus and support for STEM education

pipeline resulting in the analytical, and critical thinking and problem solving skill-set needed for Hawaii's workforce of the future.

- **Administrative Rule Review** – In June, Ms. Linda Smith, Senior Policy Advisor to the Governor, attended the Board meeting. She explained that Governor Lingle wanted each member to be assured that the State is responsive and sensitive to the small businesses of Hawaii. All administrative rules since 2003 have been reviewed and uniformly submitted to DBEDT and passed onto this Board, with two exceptions. Those exceptions include rules that implement a federal law and emergency rules. Ms. Smith also noted that the Governor's Office is currently working on "virtual" public hearings due to convenience and improvements in technology.

COMMUNICATIONS PLAN

This section outlines a portion of the Communications Plan created by Hastings & Pleadwell. The members incorporated this Plan throughout fiscal 2007 and 2008. The goal is to position the Board as an experienced and responsible asset in the eyes of the Hawaii business world.

- **Brand or Be Branded** – At the March meeting, the members reviewed a presentation conducted by Hastings and Pleadwell that describes a proactive approach to raising the Board's profile. The presentation was well received by the members who found the presentation to be valuable in assisting the members to build visibility and market share in Hawaii.

- **Hawaii Small Bill of Rights Brochure** – In fiscal 2006, the Board established a legislative investigative taskforce to develop and design a "Hawaii Small Business Bill of Rights" brochure. The brochure is based on the Small

Business Bill of Rights bill that was initially introduced during the 2005 legislative session (Senate Bill 1380 SD2 HD2). With the assistance of Hastings & Pleadwell and Mr. Steven Bretschneider, DBEDT's Marketing Officer, the brochure was finalized. As of this writing, the Board Chairperson is expecting to formally announce the Small Business Bill of Rights brochure at the January 9, 2008 Small Business Hawaii Conference.

▪ **Power Point Presentation** – With the assistance of Hastings and Pleadwell, the Board redesigned its power point presentation to present at small business functions and forums. As of this writing, the following presentations were made:

- Aiea Pearl City Business Association – August 2007
- County of Maui – October 2007

▪ **Presentation Training** – With the assistance of Hastings and Pleadwell, in September the members were given presentation training coinciding with the Board's newly designed power point presentation.

▪ **Website** – At the suggestion of Hastings and Pleadwell, the Board's website is now accessible on the front page of DBEDT's website under "*Featured Program.*" DBEDT's website is <http://www.gov/dbedt>.

▪ **Small Business Survey** – With the assistance of Hastings and Pleadwell, Ward Research, Inc., conducted a small business survey in June with interviews made to 305 Hawaii small businesses. On average, the survey length was ten minutes. The research sought to answer some the following marketing questions:

- What is the level of awareness among the small businesses of the Small Business Regulatory Review Board?
- How are businesses affected by rules and regulations set by the State and other agencies?
- What is the best way to communicate with small businesses about the Small Business Regulatory Review Board?

- What is the likelihood that small businesses will seek assistance from the Small Business Regulatory Review Board? What are the motivators and what are the barriers?
- How confident are the small businesses that the Small Business Regulatory Review Board will be able to assist them?

The conclusion of the survey revealed that there is a great opportunity for this Board to educate the business community about its services and its success stories. There is great interest among the business community to stay informed about rules and regulations and a fair amount of interest in participating in the process through meetings. It was advised that the Board should educate businesses in its process and capabilities to increase interest and participation.

While thirty-four percent of the businesses surveyed learn about rules and regulations in the newspaper, they would prefer to learn about them via direct mail (or email); even before it hits the newspapers. Small businesses do not have much confidence in a small business agency influencing government rules and regulations but there is interest in trying out the process, with forty-three percent stating they would attend meetings. Another small proportion of small businesses may decide to attend meetings after learning that the Board is beneficial. Overall, it was noted that it is important for the Board to talk about success stories and show the business community how the Board has influenced government agencies in the past.

Because seventy-four percent of the businesses contacted are involved in one or more groups, contacting businesses through organizations and/or associations for educational purposes was recommended. Only ten percent or less of the contacted businesses actually preferred this method of contact on a regular basis. Additionally, small businesses with five or less employees are less likely than others to belong to any organizations or associations, so other methods of educating are necessary.

- **Press Releases and Articles** – The following press releases, articles and announcements referencing the Board were published beginning in fiscal 2008:
 - “State Model Legislation Victories in Six States” - SBA Office of Advocacy – *The Small Business Advocate* – July – August 2007
 - “Small Business Regulatory Review Board Announces Strengthening of Rights for Small Business” – DBEDT Press Release – posted on DBEDT’s website – 7-15-07
 - “Board wants small businesses to know it’s there to help them” – *Pacific Business News* – 7-20-07
 - “Small-business review board needs teeth” – *Pacific Business News* – 7-27-07
 - “Business board re-energized” – Letter to the Editor - *Pacific Business News* – 8-03-07
 - “Small Businesses Get Help as States Rein in New Regs” - Kiplinger.com – 8-09-07
 - “Boaters file suit over Kewalo transfer” – *The Honolulu Star-Bulletin* – 8-09-07
 - “Advice for small businesses” – *Leeward People* – 8-15-07
 - “New Hires / Promotions” – *The Honolulu Star-Bulletin* – 8-23-07
 - “Leadership Corner – Lynne Woods” – *The Honolulu Advertiser* – 8-27-07
 - “Hawaii Review Board opposes Kewalo Basin changes” – *The Honolulu Advertiser* – 8-29-07
 - “State board sides with boaters” – *The Honolulu Star-Bulletin* – 8-30-07
 - “Small business board names officers” – *Garden Island* – 9-02-07
 - “Trade winds - Hawaii’s Business Leaders” – Small Business Regulatory Review Board – *The Honolulu Advertiser* – 9-12-07

ADMINISTRATIVE RULE REVIEW REQUESTED BY SMALL BUSINESS

In compliance with Section 201M-5 (f), HRS, the following outlines administrative rules and legislative issues requested by small business owners for the Board to review from the period December 2006 to December 2007.

1. Maui Marine Tour Operators

Issue: The Board was approached by a state-wide business activity association involving Maui's marine tour operators regarding the County of Maui introducing a new set of administrative rules for permits to operate commercial businesses on the Maui beaches. The permits are for companies that provide lessons such as SCUBA and surfing lessons. The business association asked this Board to intervene with the rule making process.

Board Recommendation: The Board Chair contracted the Mayor of Maui to explain the administrative rule review process and this Board's mandates as it relates to reviewing all rules that have substantial business impact before and after public hearing. Subsequently, the Board Chair met with Maui's Economic Development Coordinator who expressed the need to work with this Board regarding County administrative rules.

Status: As of this writing, the Board has not heard from the County of Maui regarding proposed rules, but will follow-up throughout the fiscal year.

2. Application to Renew Nurse Aid Certification and Subsequent Act

Issue: Several certified nurse aides approached the Board in August 2006 regarding a memorandum which they received indicating that the State of Hawaii was unable to approve their nurse aide's recertification. Further, it was stated that in order to be

eligible for recertification, nurse aides must be employed for “at least one day” in a long-term care skilled nursing or intermediate care facility, and approved by the State of Hawaii. At a meeting with the Board, representatives discussed the purpose of the program and why nurse aides working in patient care homes were excluded from automatic re-certification and re-education when nurse aides in hospitals, assisted-living care homes, and assisted-living homes were automatically re-certified and re-educated. Since this time, the Board has kept abreast of the status of this issue.

Board Recommendation: A memoranda from the Board was sent to representatives of Department of Commerce and Consumer Affairs (DCCA), Department of Health (DOH), Healthcare Association, Department of Human Services (DHS), Hawaii Long Term Care Association, and Alliance of Residential Care Administrators with the following recommendations:

- That better educational and informational sharing is conducted with all impacted parties so that everyone is “on the same page;
- That impacted parties understand insurance issues that relate to their liability as nurse aides;
- That all nurse aids will be brought up-to-date on what does or doesn’t affect them, including existing laws and proposed legislation;

Status: The Board is very pleased with the status of this business concern. In July the Board heard from a DOH representative who explained that during the 2007 legislative session, House Bill 71, “Relating to Nurse Aides” was passed and adopted by Governor Lingle under Act 226. The Act provides for the certification and re-certification of nurse aides who work in nursing facilities participating in Medicare and Medicaid programs and in other state-licensed and state-certified healthcare

settings. The certification will allow DCCA, DHS and DOH to monitor and evaluate the quality and competency of the nurse aides practicing in the State of Hawaii.

3. **Dr. David Dantes / Maui Tradewinds**

Issue: Dr. David Dantes approached this Board via correspondence requesting the Board's intervention regarding assisting short-term vacation rentals. The issue is that there is no zoning or ordinances for the establishment and enforcement of short-term vacation rentals such as bed and breakfasts in Maui. Dr. Dantes brought his concern to the Board because a number of short-term vacation rentals have been closed up by the County and he wanted the Board to help assist in the closing of such entities.

Board Recommendation: Given that this Board reviews new and existing administrative rules, the Board determined that the issue of Dr. Dantes' inquiry does not fall within its purview. The Board recommended that Dr. Dantes consult with the County Council in Maui to discuss the establishment of a new ordinance regarding home-based visitor accommodations.

Status: Until such time that the County of Maui has established administrative rules for short-term vacation rental companies, the Board is unable to assist the small business owner.

4. **Michael Sheehan, Hanalei River Boatyard At the River, Hanalei, Kauai**

Mr. Michael Sheehan, president of Hanalei River, Inc., Hanalei River Holdings, Hanalei-Kalihiwai River fisheries, and Bali Hai Tours, approached this Board regarding conflicting permit issues with the County of Kauai and the State of Hawaii's Department of Land and Natural Resources (DLNR) over the past several years. Mr. Sheehan is unable to operate his boatyard to its full capacity as the State is currently not issuing boating permits.

Board Recommendation: The Board has requested that a County of Kauai representative attend the next Board meeting along with a DLNR representative in an attempt to resolve Mr. Sheehan's concerns

Status: As of this writing, Mr. Sheehan's request has been deferred until the Board's January 2008 meeting.

LEGISLATIVE REVIEW

1. Senate Bill 188, SD2, HD1, “Relating to the Small Business Regulatory Flexibility Act”

Background: The Board strongly supported this bill; it was signed by the Governor on June 28, 2007 and made into law under Act 217. The bill makes several changes to the RFA that was passed in 1998 and subsequently codified as Chapter 201M, HRS. The members are delighted with the amendments because the changes more clearly specify that a small business impact statement is to be submitted to this Board during the drafting phase of new or modified rules. This will allow a dialogue between the drafting agencies and the members before any final step on the rules is taken. The amendments also add that this Board review new or changed rules, when previously the Board’s powers only focused on existing rules.

2. Senate Bill 17 SD2 HD2, CD1 “Relating to Procurement”

Background: In fiscal 2006, Ms. Karen Hong, Account Executive at Finance Insurance, Ltd., and several small business owners requested a business impact review from the Board entailing the Department of Transportation’s procedures regarding the State of Hawaii’s general terms and conditions of the “defense and indemnity clause” requiring contractors to defend the State. It was conveyed that over the past several years, the requirement to defend the State was not tied to a contractor’s negligence, and that it rarely applied. The State’s Attorney General enforced this provision by requesting contractors to pay the cost of the State’s defense. As a result, the cost to defend the State could ultimately be very expensive and purportedly bankrupt a small business.

Subsequently, Ms. Hong requested that the Board support Senate Bill 17, SD2, HD2, CD1, “Relating to Procurement.” This bill prohibits contracts less than \$1 million between a governmental body and professional architects, landscape architects, engineers, and surveyors from requiring defense of a governmental body. In addition, contracts may require indemnification and holding the governmental party harmless.

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

Status: The bill was passed by the Governor via Governor’s Message No. 1017, resulting in Act 246.

3. Senate Bill 963, HD2 “Relating to Procurement”

Background: See comments above as this bill mirrors Senate Bill 17, SD2, HD2, CD1.

Board Recommendation: The Board supported this bill during the legislative session.

Status: The bill was carried over to the 2008 Regular Session.

4. Housing Bill 349, SD1, CD1, “Relating to County Regulation of Commercial Bicycle Tours”

Background: Mr. Phil Feliciano, owner of Cruiser Phil’s Maui Bicycle Tour Association and Ms. Cheryl Thuro, owner of Maui Mountain Cruisers, requested that the Board oppose House Bill 349, “Relating to County Regulation of Commercial Bicycle Tours.” The bill authorizes the counties to regulate both guided and unguided bicycle tour businesses on state and county highways. It also requires that counties shall follow federal guidelines for bicycle tours. There was concern that this bill may put companies out of business due to unreasonable demands on liability insurance as Maui County Council had recently signed an ordinance increasing the

required liability insurance from one million dollars a year to three million dollars regarding guided bicycle companies.

Board Recommendation: The Board opposed this bill during the legislative session.

Status: The bill was passed by the Governor via Governor’s Message No. 939, resulting in Act 181.

5. House Bill 313, “Relating to Small Business”

Background: This bill moves the Small Business Regulatory Review Board from DBEDT to the Office of the Ombudsman. It also changes the appointment process so that members are appointed by the President of the Senate and Speaker of the House of Representatives, and appropriates funds.

Board Recommendation: In the spirit of compromise and success for the small business community, the Board opposed this bill during the legislative session.

Status: The bill did not pass.

6. House Bill 313, “Relating to Small Business”

Background: This bill re-establishes the Office of the Small Business Defender within the Legislature. It also allows for a Small Business Defender to hire attorneys and appropriated funds.

Board Recommendation: The Board supported this bill during the legislative session.

Status: The bill did not pass.

7. House Bill 1056, “Making an Appropriation for Regulatory Boards and Commissions”

Background: During the 2006 legislative session, Board members approached the legislation and requested a bill to provide for additional monies to be set aside for a

board and commissions administrative assistant position for the specific use of the Board and the Business Advocate. The resulting bill was introduced in January 2006, passed the first and second readings and referred to Ways and Means in February where it did not pass. During the 2007 legislative session, Board members again approached the legislation on the same matter and as a result House Bill 1056 was introduced.

Board Recommendation: The Board supported this bill during the legislative session.

Status: The bill did not pass but funds were appropriated and allocated for the position. The Governor approved and signed off on the appropriation. As of this writing, a position description was written, and is awaiting the appropriate approvals.

8. Senate Bill 928, “Making an Appropriation for Regulatory Boards and Commissions”

Background: See comments above as this bill mirrors House Bill 1056.

Board Recommendation: The Board supported this bill during the legislative session.

Status: See comments above as this bill mirrors House Bill 1056.

9. Gubernatorial Nominee 269 – Theodore E. Liu

Background: This gubernatorial nomination re-nominates Theodore E. Liu as DBEDT’s Director.

Board Recommendation: The Board supported Director Liu’s re-nomination.

Status: Director Liu was re-nominated as DBEDT’s Director for a four-year term.

10. Gubernatorial Nominee 390 – Bruce E. Bucky

Background: This gubernatorial nomination nominates Bruce E. Bucky as a member on the Small Business Regulatory Review Board.

Board Recommendation: The Board supported Mr. Bucky's nomination.

Status: Mr. Bucky was officially confirmed as a member of the Small Business Regulatory Review Board in June 2007.

11. Gubernatorial Nominee 391 – Peter Yukimura

Background: This gubernatorial nomination nominates Peter Yukimura as a member on the Small Business Regulatory Review Board.

Board Recommendation: The Board supported Mr. Yukimura's nomination.

Status: Mr. Yukimura was officially confirmed as a member of the Small Business Regulatory Review Board in July 2007.

Appendices

- 1. Chapter 201M, Hawaii Revised Statutes**
- 2. Board Member Listing**
- 3. Administrative Rules Reviewed**
- 4. Administrative Directive 99-02**

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) 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]

§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]

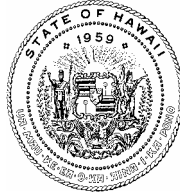
2. Board Member Listing

Island	Member	Company	Address	Discussion Leader	E-mail
Maui	Lynne Woods (Chairperson)	Maui Real Estate Ventures, Inc.	373 Kolahala Drive Kula, Maui, HI 96790	Department of Commerce & Consumer Affairs (Back-up), Office of the Governor, Public Utilities Commission	lynne@billwoods.com
Oahu	Sharon L. Pang (Vice Chairperson)	Care Companions & Consulting, LLC	1400 Pensacola Street, Suite 505 Honolulu, HI 96822	Department of Health-Medical Division, Department of Human Services, Department of Commerce and Consumer Affairs, Department of Labor and Industrial Services (Back-up)	carecompanions@aol.com
Oahu	Michael C. L. Yee (2nd Vice Chairperson)	EnviroServices & Training Center, LLC	505 Ward Avenue, Suite 202 Honolulu, HI 96814	Department of Health-Environmental Division, Department of Land and Natural Resources	mike@gotoetc.com
Maui	Dorvin Leis	Dorvin D. Leis, Co., Inc.	1100 Alakea Street, Ste 1400, Honolulu, HI 96813	Department of Accounting & General Services, University of Hawaii, Office of the Lieutenant Governor	jadel@lleisinc.com
Oahu	Donald L. Dymond	Kalapawai Market	306 S. Kalaheo Ave. Kailua, HI 96734	Department of Budget & Finance – Finance Division, Public Utilities Commission (Back-up), Department of Attorney General	mdymond@hawaii.rr.com
Oahu	Charles K.H. Au	Edwin Cabrinha & Au, LLP	598 Halekauwila Street Honolulu, HI 96813	Department of Taxation, Department of Hawaiian Home Lands, Department of Education	charles@eca-advisors.com
Hawaii	Richard Schnitzler	Hamakua Macadamia Nut Co.	P.O. Box 44715 Kawaihae, HI 96743	Department of Agriculture, Department of Business, Economic Development & Tourism, Dept. of Land & Natural Resources (Back-up)	hawwnut@hialoha.net
Oahu	Bruce E. Bucky	Hildgund Jewelry	1188 Bishop Street, Suite 2305 Honolulu, HI 96813	Department of Human Resources, Department of Transportation	Hildgund@aol.com
Kauai	Peter Yukimura	Koa Trading Co.	PO Box 1031 Lihue, HI 96766	Department of Defense	pmyuki@hawaiian.net

3. Administrative Rules Reviewed

	Month/Year	Support	Oppose	No Comment	Support w/Rec.	Sup. w/Res.	Support/Oppose	Pending	
FY 2000-2004		112	6	3	11	7	2		
FY 2005	Jul-04	5							
	Aug-04	3	1		1				
	Sep-04	4							
	Oct-04	2			1				
	Nov-04	1							
	Dec-04	2	1		1				
	Jan-05	6				1			
	Feb-05	5				2			
	Mar-05	4				1			
	Apr-05	6							
	May-05	5							
	Jun-05	4							
FY 2006	Jul-05	4							
	Sep-05	10							
	Oct-05	2			1				
	Nov-05	7					1		
	Dec-05	3				1			
	Jan-06	1							
	Feb-06	0							
	Apr-06	8			1				
	May-06	4							
	Jun-06	4							
	FY 2007	Jul-06	3						
		Aug-06	3						
Sep-06		1							
Oct-06		2							
Nov-06		8		2					
Jan-07		3		1					
Feb-07		3		1					
Mar-07		9							
Apr-07		9							
May-07		5							
FY 2008	Jun-07	3							
	Jul-07	-							
	Aug-07	5	1						
	Sep-07	2			1				
	Oct-07	8							
Totals		266	9	7	16	12	3	0	

4. Administrative Directive 99-02



EXECUTIVE CHAMBERS
HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

August 2, 1999

ADMINISTRATIVE DIRECTIVE NO. 99-02

To: All Department 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. 94-04, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated July 28, 1994.

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."

Section 2 of Act 168, Session Laws of Hawaii 1998, enacted the "Hawaii Small Business Regulatory Flexibility Act," which 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 and to any departmental advisory committee on small business; unless the proposed rule is being promulgated on an emergency basis or in accordance with a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute, such as a federally-mandated regulation which affords the department or agency no discretion to consider less restrictive alternatives.

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, especially those provisions of Chapter 91, Hawaii Revised Statutes, and current administrative rules. In requesting the adoption, amendment, or repeal of any rule, the director shall fully explain or submit the following:

1. Exact changes to be made and the reasons for the changes, including a justification for the proposed adoption, amendment, or repeal of any rule. If applicable, the present rule shall be cited and the proposed rule shall be quoted in full without paraphrasing.
2. Manner in which the proposed adoption, amendment, or repeal of the rules would affect the operations or programs of the department or agency in terms of responsibilities, functions, activities, and inter-relationships, both internal and external.
3. Final result (e.g. a program improvement/clarification of statute) to be expected by instituting the proposed adoption? amendment, or repeal of a rule.
4. Program and financial impact on the State upon the adoption, amendment, or repeal of the rules. This should include the:
 - a. Long- and short-range program impact, 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 of anticipated savings or funding shortfalls projected over the subsequent four-year planning period.
5. Long- and short-term impacts on the public, on economic growth and the economy of the State.
6. Other alternatives explored in attempting to resolve the problem or situation at hand other than that of adopting, amending, or repealing the rules in question.

7. A determination as to whether the proposed rule will affect small business. For purposes of this Directive, a proposed rule will affect small business if the proposed rule will be applied to a for-profit enterprise consisting of fewer than 200 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 proposed rule affects small business, the department or agency shall discuss:

Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposed rule;

b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule;

c. Whether it has prepared a Small Business Impact Statement” that has been submitted to the Small Business Regulatory Review Board and to any departmental advisory committee on small business for its respective consideration and recommendation, in the manner described in § -2 of Section 2, Act 168, SLH 1998; and

d. Whether any recommendation was made by the Small Business Regulatory Review Board and the departmental advisory committee on small business regarding the proposed rule; and, if the recommendation was not adopted, an explanation for not adopting the recommendation.

Procedure:

Prior Approval for Public Hearing.

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

- a. Obtain the Attorney General’s approval as to form prior to

submitting the rule to me for approval for public hearing;

- b. Provide me with a copy of the proposed rule, including the information requested in Items 1 through 7 above. A copy of the requested information and a copy of the proposed rule shall be concurrently provided to the Director of Budget and Finance and to the Director of Business, Economic Development, and Tourism;
- c. Prepare and submit a Small Business Impact Statement” as required by Item 7 of the previous section; and
- d. Obtain my approval for public hearing on any rule to be adopted, amended, or repealed.

2. Notice of Public Hearings.

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

3. Final Approval of Proposed Rule After Public Hearing.

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

- a. Indicate whether the facts and circumstances regarding the proposed adoption, amendment, or repeal of any rule has changed, compared to that information that was sent to me before the public hearing;
- b. Provide a copy of the proposed rule to the Attorney General for approval as to form prior to submitting the rule to my office for final approval;
- c. Describe any changes that have been made to the proposed rule following public hearing, by explaining these changes and providing me with any updates of information requested in Items 1 through 7 of the above-stated Policy section. A copy of this information shall be concurrently sent to the Director of Budget and Finance, the Director of Business, Economic Development, and Tourism, and the Attorney General;

If the changes are determined to be substantial or material by the Attorney General, an additional public hearing shall be held. In these situations, the previous procedures related to my prior approval to proceed to public hearing shall be followed;

- d. Indicate whether the proposed rule affects small business; and, if so, whether a “Small Business Statement,” which provides the information described in § -3 of Section 2, Act 168, SLH 1998, has been submitted to the Small Business Regulatory Review Board and the departmental advisory committee on small business; and
 - e. Submit three copies of the proposed adoption, amendment, or repeal of the rule in standard format and in accordance with Chapter 91, HRS, for my final approval. The original and a copy of the rules adopted by the department or agency shall be signed by the director of the department; or by the chairperson of a board or commission when the rule has been adopted by a board or commission which is assigned to a department for administrative purposes; or by the chairperson of the board or commission of a principal department; and by the Attorney General or the duly appointed Deputy Attorney General. The third copy may have a facsimile of the required signatures.
4. Distribution of Approved Adopted Rules.
- a. A complete set of three copies approved by me shall be filed at the Office of the Lieutenant Governor.
 - b. The Office of the Lieutenant Governor shall provide one copy to the agency adopting, amending, or repealing the rule.
 - c. Each department or agency adopting, amending, or repealing the rule shall submit one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

Your full and prompt cooperation in complying with provisions of this administrative directive is essential.


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