

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

**Findings to the
Hawaii State Legislature
in Accordance with Chapter 201M,
Hawaii Revised Statutes**

**Annual Summary
and
Review of Administrative Rules
requested by Small Business**

December 2004 – December 2005

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

ANNUAL REPORT

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MESSAGE FROM THE DIRECTOR



On behalf of the Department of Business, Economic Development & Tourism, I would again like to thank and commend the members of the Small Business Regulatory Review Board for their continued effort, dedication and hard work to improving relationships with Hawaii's State and County departments. I look forward to their continued success.

Theodore E. Liu
Director



SMALL BUSINESS REGULATORY REVIEW BOARD

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MESSAGE FROM THE CHAIRPERSON

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Theodore E. Liu
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George Handgis
Vice Chairperson
Hawaii

Sharon L. Pang
2nd Vice Chairperson
Oahu

Dorvin Leis
Maui

Donald Dymond
Oahu

Charles Au
Oahu

Michael Yee
Oahu

Edward MacDowell
Kauai

Jeanette Otsuka Chang
Kauai



Lynne Woods
Chairperson
December 2005

Looking back at 2005 and the work done by the Small Business Regulatory Review Board makes me immensely proud to be part of this hardworking group.

On behalf of our members, I thank the Administration and Department heads for their review of existing rules and submission of newly created rules for this Board's review. I believe that all members of the Board will acknowledge that rulemaking can cause tremendous financial impacts on the business community and that we have an important role in mitigating those impacts.

2005 brought the Board many successes and the reality that economic development for the good of the whole can have devastating impacts on a few.

A special Mahalo to all who presented rule changes to us this year and to Ted Liu, Director of DBEDT, for his constant support.

The duties of Chairperson are made much easier and many of the successes in 2005 were accomplished because of the organization and efforts of Business Advocate, Dori Palcovich.

The year 2006 will bring us more challenges, successes, and the opportunity for me to continue to work with our incredible board members.

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 2004 through December 2005, pursuant to the Hawaii Small Business Regulatory Flexibility Act (RFA), Chapter 201M, HRS, as well as information pursuant to 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.

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, Hawaii Revised Statutes. (Appendix 1)

SMALL BUSINESS REGULATORY REVIEW BOARD MEMBER COMPOSITION AND RESPONSIBILITY

The Board is comprised of 11 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, the members regularly volunteer their time attending state agency meetings, making presentations and performing outreach activities to small business organizations, and commenting on legislation. The Board is scheduled to meet monthly, and is administratively attached to the Department of Business, Economic Development & Tourism. The Board also has the power to solicit testimony from the public regarding any reports submitted by the agency.

Since its inception, the Board has had several new members and re-appointees whose terms have expired. As of December 2005, the Board was operating with nine members. (Appendix 2)

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.

ADMINISTRATIVE RULE REVIEW

Since its inception, the Board reviewed a total of 231 sets of proposed new and amended administrative rules. The results are categorized in Appendix 3.

From December 2004 through December 2005, the Review Board reviewed and made recommendations on nearly 50 sets of new and amended rules, both pre- and post public hearing. The results and summary of each rule are categorized below.

Department of Accounting & General Services

1. HAR Chapter 3-122, “Source Selection and Contract Formation”

Comments - The Board fully supported these rules.

2. HAR Chapter 3-70, “Rule of the Stadium Authority”

Comments - The Board determined that, as presented, there appeared to be no direct small business impact, thus, the Board supported the rules to proceed to public hearing.

3. HAR Chapter 3-140, 3-141, 3-142, 3-143, 3-144, 3-145, 3-146, 3-147, and 3-147 “Definitions,” “General Provisions,” “Planning,” “Competitive Purchase of Service,” “Restrictive Purchase of Service,” “Treatment Purchase of Service,” “Small Purchase of

**Service,” “Crisis Purchase of Service,” and “Contracting,”
respectively.**

Comments - The Board fully supported these rules to proceed to public hearing.

**4. HAR Chapter 3-157, “Rules Governing Irrigation Water Service
of Consumers of Hawaii State Department of Agriculture
Irrigation Systems”**

Comments - The Board reviewed and supported these pre- and post public hearing rules.

Department of Agriculture

5. HAR Chapter 4-135, “Seals of Quality”

Comments - The Board supported both the pre- and post public hearing statements
to proceed for adoption.

6. HAR Chapter 4-29, “Dogs, Cats, and Other Carnivores”

Comments - The Board supported these rules for public hearing.

7. HAR Chapter 4-60, “Milk Control Rules”

Comments - The Board reviewed these post public hearing rules to which they supported.

**8. Proposed Chapter 4-11, “Establishing Administrative Rules and
Fees for Aquaculture Services for the Aquaculture Development
Special Fund”**

Comments - The Board thoroughly reviewed and supported these newly drafted rules for
public hearing.

9. HAR Chapter 4-41, “Minimum Export Grades”

Comments - The Board supported both the pre- and post public hearing rules, finding no
hardship on the farmers.

10. HAR Chapter 4-66, “Pesticides”

Comments - The Board supported the rules to proceed to public hearing and that the Farm Bureau be notified of the hearing.

11. 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

12. HAR Chapter 15-20, “Subchapter 10 Improvement District 11”

Comments - After reviewing the proposed rules submitted by the Hawaii Community Development Authority in December 2004, and two public hearings, the Board was not in support of the rules as presented, and submitted a memorandum to Governor Lingle requesting that a re-evaluation of the rules be performed; the rules have subsequently been adopted.

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

Comments - The Board supported both the pre- and post public hearing statements, noting that the rules were positive for small business.

14. HAR Chapter 15-22, “Kaka’ako Community Development District”

Comments - The Board supported both the pre- and post public hearing rules for adoption.

**15. HAR Chapter 15-23, “Kaka’ako Community Development
District Makai Area Plan”**

Comments - The Board supported both the proposed pre- and post public hearing rules for adoption.

Department of Commerce & Consumer Affairs

16. HAR Chapter 16-95, “Pharmacists and Pharmacies”

Comments – The Board supported these post public hearing statements for adoption, noting there is no discernible impact on small business.

17. HAR Chapter 16-171, “Miscellaneous Insurance Rules”

Comments - The Board supported these post public hearing statements for adoption.

**18. HAR Chapter 16-181, “Relating to Motor Vehicle Express
Enforcement (Lemon Law)”**

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

**19. HAR Chapter 16-25, “Application Procedures Relating to
Financial Institutions,” and HAR Chapter 16-28, “Escrow
Depositories”**

Comments - The Board supported both the pre- and post public hearing statements for adoption.

20. HAR Chapter 16-94, “Pest Control Operators”

Comments - The Board supported these post public hearing statements for adoption.

21. HAR Chapter 16-89, “Nurses”

Comments - The Board supported these post public hearing rules for adoption.

22. HAR Chapter 16-132, “Fees to be Paid by Cable Operations”

Comments - The Board supported both the pre-and post public hearing statements for adoption.

23. HAR Chapter 16-12, “Medicare Supplement Insurance Minimum Standards”

Comments - The Board supported the rules as presented to proceed to public hearing.

Department of Defense

No key matters of small business impact have been noted.

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

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

Comments - The Board reviewed both the pre- and post public hearing statements and recommended that these rules proceed for adoption.

25. HAR Chapter 11-172, “Certificate and Reimbursement of Mental Health Rehabilitation Services Providers”

Comments - The Board supported that these post public hearing statements rules proceed for adoption.

26. HAR Chapter 11-41, “Lead-Based Paint Activities”

Comments - The Board supported the rules to proceed for adoption.

27. HAR Chapter 11-55, “Water Pollution Control”

Comments - The Board accepted the post public hearing statements despite their subsequent adoption.

Department of Human Resources Development

No key matters of small business impact have been noted.

Department of Human Services

28. Under Subtitle 12, Med-QUEST Division - HAR Chapter 17-1705, “Medical Assistance Recovery,” HAR Chapter 17-1721, “Medical Assistance to Aged, Blind, or Disabled Individuals,” HAR Chapter 17-1722, “Special Medical Assistance Coverages and Programs,” HAR Chapter 17-1737, “Scope and Contents of the Fee for Service Medical Assistance Program,” and HAR Chapter 17-1744, “Coverage of Medicare Premiums”

Comments - The Board supported both the pre- and post public hearing rules for all noted chapters.

29. HAR Chapter 17-798.1, “Child Care Services”

Comments - The Board supported these rule changes, noting a substantial improvement in childcare standards.

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

Comments - The Board supported both the pre- and post public hearing rules, recognizing that the new rules may be confusing to the general community.

Department of Labor & Industrial Relations

31. HAR Chapter 12-10, “Workers’ Compensation Law”

Comments - The Board supported that the changes proceed to public hearing.

32. HAR Chapter 12-14, “Workers’ Compensation Rehabilitation”

Comments - The Board supported that the changes proceed to public hearing.

**33. HAR Chapter 12-15, “Workers’ Compensation Medical Fee
Schedule”**

Comments - The Board supported that the changes proceed to public hearing.

Department of Land & Natural Resources

34. HAR Chapter 13-60.5, “Northwestern Hawaiian Islands Marine Refuge”

Comments - The Board supported these post public hearing rule changes for adoption, despite having reservations prior to public hearing due to the potential impact on the commercial fishing industry fleet and eco-tourism.

35. HAR Chapter 13-104, “Commercial Harvest Permits”

Comments - The Board approved both the pre- and post public hearing rules for adoption.

36. HAR Chapter 13-234, “Mooring Rates at State Boating Facilities”

Comments - The Board supported these administrative rule changes to proceed to public hearing.

37. HAR Chapter 13-37, “Old Kona Airport Marine Life

**Conservation, Hawaii,” HAR Chapter 13-58, “Kona Coast,
Hawaii,” and HAR Chapter 13-60.3, “West Hawaii Regional
Fisheries Management Area, Hawaii”**

Comments - The Board supported these post public hearing rules to proceed for adoption.

38. HAR Chapter 13-223, “Historic Preservation and Restoration on Public Lands”

Comments - The Board approved both these pre- and post public hearing rules for adoption.

Department of Public Safety

No key matters of small business impact have been noted.

Department of Taxation

39. HAR Chapter 18-235 “Certification Rules”

Comments - The Board supported the rules proceed to public hearing, recommending that all those groups representing high technology businesses be notified of the hearing.

Department of Transportation

40. HAR Chapter 19-133.2 “Periodic Inspection of Vehicles”

Comments - The Board supported the pre-public hearing rule changes to proceed to public hearing. Upon reviewing the rules after public hearing, the Board supported that the rules proceed for adoption with two members in opposition. The Board further encouraged the State to re-consider its position in requiring the mandated inspection program by justifying its continuation and benefits to the small business community. Additionally, the Board’s recommendation was premised on a temporary basis until such time that legislation would be introduced to repeal the law governing these rules.

41. HAR Chapter 19-44 “Wharfage Rates”

Comments - The Board supported these post public hearing rules to be adopted.

University of Hawaii

No key matters of small business impact have been noted.

Counties

42. City and County of Honolulu – Liquor Commission

Comments – The Board supported these rules with reservations to proceed to public hearing with the inclusion of specific concerns and comments involving licensed managers in charge of the premises, zoning clearance, and new and transferred licenses. After public hearing, the Board supported these rules for adoption, which incorporated those comments recommended by the Board.

43. Kauai Department of Water – “Deferral from July 1, 2005 to January 1, 2006 for certain water rates”

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

44. Kauai Department of Water - “Amendments to 2002 Water Systems Standards”

Comments – The Board supported both the pre- and post public hearing statements for adoption.

45. Charter Review Commission – County of Kauai

Comments - The Board supported these pre- and post public hearing statements for adoption.

46. Kauai Department of Water – “Amendments to Part 4 to modify 10 categories of fees charged to the consumers”

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

Other

A bill “Relating to Uniform Environment Covenants Act”

Comments – The Board responded to the Department of Health that this particular type of issue was not within the Board’s jurisdiction.

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 will continue to monitor legislation with both positive and negative impacts on small business.

Beginning in 2004, the Board initiated and formed a “legislative investigative taskforce” to re-establish the concept of a “Small Business Bill of Rights.” This effort resulted in the introduction of several bills during the 2005 legislative session. One of these measures, Senate Bill 1380 SD2 HD1, successfully passed the Senate but did not make it through the House of Representatives. This measure will be carried over to the 2006 legislative session.

Another legislative item the Board continues to support is a bill relating to the “Small Business Regulatory Flexibility Act.” The intent of Senate Bill 711 and its companion House Bill 602 is to clarify and amend the Regulatory Flexibility Act (RFA) to include provisions when the small business impact statement is to be submitted to the Board and actions to be taken by the Board and the rule-drafting agencies, as well as other non-

substantive housekeeping measures. Both measures moved through the legislative process and will be carried over to the 2006 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. The Board reviews the impact statements and the Governor's Administrative Directive (AD 99-02) (Appendix 4), while working with the rule-drafting agencies on behalf of the small business community.

In August 1999, AD 99-02 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 two years, the Governor's office and DBEDT staff have been busy updating and modifying the existing AD. At this writing, the newly proposed AD is being reviewed by the Attorney General's Office; final approval is expected prior to the beginning of the 2006 legislative session.

PROJECTS AND ACTIVITIES

The following projects and activities were performed throughout the past year.

- Established a new "legislative investigative taskforce" consisting of four of the board members that will introduce a "Hawaii Small Business Bill of Rights" brochure during 2006, which will be based on the proposed Small Business Bill of Rights bill.

- Recommended the implementation of an efficient process for posting proposed administrative rules to the Office of the Lieutenant Governor’s website. As a result of this recommendation, Lieutenant Governor James R. Aiona, Jr. recently mandated that all department directors ensure that the rule information pertaining to their respective agencies is current and accurate and that individuals contacting the agencies be advised of the availability of the proposed rulemaking actions on the Lieutenant Governor’s website. Further, all agencies are required to begin posting *all* proposed rule changes on their respective websites and are to provide internet users with instructions on how to download the full text of all the proposed rule changes.

- Revamped the Board’s website located at www.hawaii.gov/dbedt/sbrrb. Information on the site, which is updated regularly, includes current board agendas, meeting minutes, history of the RFA, Board member composition and information, and various links to business-related sites.

STRATEGIC PLAN

The Board meets annually to re-establish what it stands for and to set clearly defined goals for the upcoming year. With the assistance of a trained facilitator, a strategic planning session was held in October 2005. The Board discussed the following topics and arrived at several sub-topics and issues for review during the next year.

1. Board members’ authority and standards of member accountability
 - a. Authority issues and themes
 - b. Accountability issues and themes
 - c. Initiatives:
 - I. Chair’s authority/Members’ accountability
 - II. Public outreach
2. Relationships with government departments

3. Special attention on Hawaii Occupational Safety and Health Division and Public Utility Commission
4. Strategy for the Small Business Bill of Rights and the RFA
5. Periodic review of administrative rules

BOARD COMMENTARY

Given the results of the strategic planning session held in October, volume of rules to be reviewed in 2006, the participation of the business community regarding existing rules, and the increased public outreach by the members, our Board is seriously understaffed. We would like the support of the legislature in approving a permanent civil service position to assist the Business Advocate with the duties of the Board.

ADMINISTRATIVE RULE REVIEW REQUESTED BY SMALL BUSINESS

In compliance with Section 201M-5 (f), HRS, the following outlines any administrative rules and legislative issues requested by small business owners for the Board to review from the period December 2004 to December 2005.

1. Section 12-1.10(b) of the Revised Ordinances of Honolulu, Department of Customer Services / Section 5.54 Taximeters UR. User Requirements

In December 2005, Mr. Charles Morita, owner of Taximeter Radios & Service, LLC., submitted correspondence to the Board regarding issues and concerns with the Honolulu City and County's Department of Motor Vehicles and Division of Weights & Measures. These issues and concerns are in reference to Mr. Morita's recommendations to set forth clearly defined processes and procedures for the approval and implementation of rate changes and drawing up of weights and measures, "so as to be relevant and informative to industry stakeholders."

Board Recommendation: The Board has extended an invitation to Mr. Morita to attend the January 2006 board meeting to discuss these issues.

Status: To be determined.

Appendices

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

1. Chapter 201M, HRS

[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.

"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, §5]

[\$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 small business regulatory review board prior to providing notice for a 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 cost 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 which affords the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[\$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 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. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5]

[\$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; or

(3) These impacts were not previously considered at the public hearing on the rules.

(b) For rules adopted prior to July 1, 1998, an affected small business may file a written petition with the agency that adopted the rules objecting to all or part of any rules affecting small business on any of the following grounds:

(1) The rules created an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;

(2) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

(3) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(c) 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.

(d) 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 small business regulatory review 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. For rules adopted after July 1, 1998, 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; or

(3) These impacts were not previously considered at the public hearing on the rules.

(e) For rules adopted prior to July 1, 1998, the regulatory review board may base its recommendation to the agency on any of the following reasons:

(1) The rules created 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;

(2) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

(3) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

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

(g) 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]

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business in effect on July 1, 1998 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 small business regulatory review board shall submit an evaluation report to each regular session of the legislature in even-numbered years. 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 such action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

§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	Phone	E-mail
Hawaii	George Handgis (Vice Chair)	Gentry's Kona Marina Honokohau Harbor	74-425 Kealakehe Pkwy. Kailua-Kona, HI 96740	Department of Attorney General, Department of Human Resources Development, Department of Land & Natural Resources	(808) 329-7896	handgis@hawaii.rr.com
Kauai	Edward MacDowell	Vision Properties, Inc.	P.O. Box 29 Kapaa, HI 96746	Department of Transportation, Department of Hawaiian Home Lands, Department of Public Safety	(808) 822-4444	ed@visionproperties.com
Kauai	Jeanette Otsuka Chang	President, Otsuka's Furniture & Appliances	P. O. Box 1180 Kapaa, HI 96746	Department of Education, Department of Commerce & Consumer Affairs (Back-up), Department of Labor & Industrial Relations	(808) 822-7766	jeanette@otsukas.com
Maui	Dorvin Leis	Dorvin D. Leis, Co., Inc.	2265 Hoonee Pl., Ste. 200 Honolulu, HI 96819	Department of Accounting & General Services (Procurement), University of Hawaii, Office of the Lieutenant Governor	(808) 877-3902	lindap@leisinc.com
Maui	Lynne Woods (Chairperson)	President, Maui Chamber of Commerce	2200 High Street, Ste. 640 Wailuku, HI 96793	Department of Commerce & Consumer Affairs, Department of Labor & Industrial Relations (back-up), Department of Business, Economic Development & Tourism, Office of the Governor, Public Utilities Commission (back-up)	(808) 269-0142	lynne@mauichamber.com
Oahu	Donald L. Dymond	Kalapawai Market	306 S. Kalaheo Ave. Kailua, HI 96734	Department of Budget & Finance, Public Utilities Commission	(808) 262-4359	dymond001@hawaii.rr.com
Oahu	Michael C. L. Yee	EnviroServic es & Training Center, LLC	2850 Paa St., Ste. 150 Honolulu, HI 96819	Department of Health- Environmental Division, Department of Land and Natural Resources (back up)	(808) 839-7222	mike@gotoetc.com
Oahu	Sharon L. Pang (2nd Vice Chair)	Care Companions & Consulting, LLC	1333 Heulu Street, Honolulu, HI 96790	Department of Health	(808) 523-3716	carecompanions@aol.com
Oahu	Charles K.H. Au	Erwin Cabrinha & Au, LLP	598 Halekauwila Street Honolulu, HI 96813	Department of Taxation	(808) 533-4244	charles@eca-advisors.com

3. Administrative Rules Reviewed

	Month/Year	Support	Oppose	No Comment	Support w/Rec.	Sup. w/Res.	Support/Oppose	Pending
	Total FY 2000	38	1		3			
	Total FY 2001	26	2	1	2			
	Total FY 2002	14	1				1	
FY 2003	Jul-02							
	Sep-02	1						
	Nov-02	2			1			
	Dec-02	2			2	1		
FY 2004	Jan-03							
	Feb-03	1						
	Mar-03	1			1			
	Apr-03							
	May-03							
	Jun-03	2			1	1		
	Aug-03	2		1				
	Sep-03				1			
	Oct-03	2						
	Nov-03	6				1		
FY 2005	Dec-03	2	1	1			1	
	Jan-04	7				1		
	Feb-04	1				2		
	Mar-04	6				1		
	Apr-04	3	1					
	May-04	2						
	Jun-04	3						
	Jul-04	5						
	Aug-04	3	1		1			
	Sep-04	4						
FY 2006	Oct-04	2			1			
	Nov-04	1						
	Dec-04	2	1		1			
	Jan-05	6						
	Feb-05	5						
	Mar-05	4						
	Apr-05	6						
	May-05	5						
	Jun-05	4						
	Jul-05	4						
FY 2006	Sep-05	10						
	Oct-05	2			1			
	Nov-06	7					1	
	Dec-05	3				1		
	Totals	194	8	3	15	8	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.


NJAMIN J. CAYETANO

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