

**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 2003 – December 2004

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

Table of Contents

Message From Director.....	1
Message From Chairperson.....	2
Small Business Regulatory Review Board – Overview.....	3
Annual Summary.....	4
Regulatory Flexibility Act.....	4
Small Business Regulatory Review Board Member Composition.....	4
Administrative Rule Review.....	5-14
Board Legislative Activity.....	14
Small Business Impact Statement/Administrative Directive 99-02.....	14
Projects & Activities.....	15-16
Administrative Rule Review - Requested by Small Business.....	17
Appendices.....	18
1. Chapter 201M, HRS.....	20-24
2. Administrative Directive 99-02.....	26-31
3. Board Member Listing.....	33
4. Administrative Rules Reviewed.....	35

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 and dedication to improving relationships with Hawaii's State and County departments. Due to Governor Lingle's strong commitment to the Board, we have seen great strides with the cooperation of the agencies. I continue to extend my personal Mahalo and gratitude for their continued hard work and look forward to their continued success.

Theodore E. Liu
Director



SMALL BUSINESS REGULATORY REVIEW BOARD

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MESSAGE FROM THE CHAIR

Linda Lingle
Governor

Theodore E. Liu
Director, DBEDT



Members

Lynne Woods
 Chairperson
Maui

Brian Zinn
 Vice Chairperson
Oahu

Noelani Whittington
Hawaii

Dorvin Leis
Maui

Donald Dymond
Oahu

Phyllis N. T. Shea
Oahu

Michael Yee
Oahu

Joyce Edwards
Oahu

Edward MacDowell
Kauai

Jeanette Otsuka Chang
Kauai

George Handgis
Hawaii

The year 2004 was most productive for the Small Business Regulatory Review Board. With the appointment of four new board members we have been able to review a larger number of existing and newly proposed rules with extensive industry specific knowledge.

We made a few changes in our process in 2004. First and foremost is to review proposed and existing rules before and after public hearings. The additional review after public hearing was requested of us by Governor Lingle. This second review has given us the opportunity to put in place the second change: The Board now reaches out to the business community in order to receive feed back on economic impacts that were overlooked by the administration or board members themselves. This effort has brought about stronger more in-depth recommendations for change, further review, or acceptance to the Governor's office.

The Board is now also requesting all departments preparing for rule review contact all industry specific associations and licensed professionals with date, place, and time of public hearings. The small advertisements in the local newspapers are too easily missed which results in poorly attended hearings. In the past this has been interpreted as no interest from the business community when in fact insufficient notification may have been the issue.

As chairperson of the Small Business Regulatory Review Board I thank the volunteer board members for the incredible amount of time they have invested in the Board's work, I also thank Business Advocate Dori Palcovich for her assistance, we would not have accomplished what we have without her. Mahalo to DBEDT's Director Ted Liu for his support and to Tom Smyth for his knowledge and assistance of our legislative agenda.

It's an honor for me to serve on the board and I begin my second term as Chairperson with the excitement of knowing we are making a difference for our business community.

Lynne Woods
 Chairperson
 December 2004

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 2003 through December 2004, pursuant to the Regulatory Flexibility Act (RFA), Chapter 201M, HRS, 2002, 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

REGULATORY FLEXIBILITY ACT

Hawaii's Small Business Regulatory Flexibility Act (RFA) went into effect July 14, 1998, pursuant to Act 168, SLH 1998. In July 1999, the initial Small Business Regulatory Review Board (Board) members were nominated by departmental advisory committees on small business, and given interim appointments by Governor Cayetano. Permanent status of the Board was received when Governor Cayetano signed HB 2449, HD 1, SD2, which became Act 202, SLH 2002, and has since been codified as Chapter 201M, Hawaii Revised Statutes (Appendix 1).

SMALL BUSINESS REGULATORY REVIEW BOARD MEMBER

COMPOSITION

The Board is comprised of eleven current owners or officers of businesses or former owners or officers from across the State that volunteer their time to work at reviewing rules and regulations, 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 (DBEDT). Members provide recommendations to State agencies on proposed new and amended rules that directly impact small business, and review existing rules upon request, or at the Board's initiative. Since its inception, the Board has had several new members and re-appointees whose terms have expired. As of December 2004, the Board is operating at full capacity (Appendix 3).

As an effective and efficient means of review, each Board 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. The Board also has the power to solicit testimony from the public regarding any report submitted by the agency.

ADMINISTRATIVE RULE REVIEW

Since its inception, the Board reviewed a total of 183 sets of proposed new and amended rules. The results are categorized in Appendix 4.

From December 2003 through December 2004, the Review Board reviewed and made recommendations on a total of 47 sets of new and amended administrative rules. The results and summary of each rule are categorized below along with comments by Board discussion leaders.

Department of Accounting & General Services

No key matters of small business impact have been noted.

Department of Agriculture/Board of Agriculture

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

Comments – The Board fully supported these “post public hearing” rules, as the business impact is positive.

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

Comments – The Board reviewed both pre and post public hearing rules to which they supported.

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

Comments – The Board supported the rules to 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 (DBEDT)

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

Comments – After reviewing the proposed rules before and after the two public hearings, the Board was not in support of the rules as presented, and submitted a memorandum to Governor Lingle, which requested that a re-evaluation of the rules be performed. (These rules were submitted by the Hawaii Community Development Authority, an attached agency of DBEDT.)

5. HAR Chapter 15-35, “Ethanol Content in Gasoline”

Comments – The Board determined that there is little impact on small business and supported the proposed rules.

6. HAR Chapter 15-155, “Rules Governing the Brownfield’s Clean-up Revolving Loan Fund”

Comments – The Board supported the proposed new rules.

Department of Commerce & Consumer Affairs

7. HAR Chapter 16-77, “Contractors”

Comments – The Board determined that the post public hearing rules did not negatively impact small business and supported the rules for adoption.

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

Comments – The pre- and post public hearing administrative rule changes were supported by the Board. Any impact to small business was not significant.

9. HAR Chapter 16-78, “Cosmetology”

Comments – The proposed rules are supported by the Board and recommended that they proceed to public hearing.

10. HAR Chapter 16-38, “Securities”

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

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

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

12. HAR Chapter 16-36, “Practice and Procedure of the business
Registration Division”

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

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

Comments – The Board supported the proposed rule changes to proceed to public hearing.

Department of Defense

No key matters of small business impact have been noted.

Department of Education

14. HAR Chapter 8-54, “Teacher Licensing Standards”

Comments – The Board supported the rules noting there is no small business impact.

Department of Hawaiian Home Lands and the Office of Hawaiian Affairs

No key matters of small business impact have been noted.

Department of Health

15. HAR Chapter 11-219, “Parking for Persons with Disabilities”

Comments – The Board determined these rules changes were necessary and found no reason to object to the modifications.

16. HAR Chapter 11-172, “Certification and Reimbursement of Mental Health Rehabilitation”

Comments - The Board recommended that the rule changes be supported with reservations.

17. HAR Chapter 11-98.1, “Special Treatment Facilities”

Comments – The Board reviewed these rules at several meetings, determining that they opposed the rules as presented and submitted recommendations to the Governor. To date, finalization of the rules has not been made.

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

Comments - The Board unanimously agreed that the rules proceed to public hearing so that small businesses may voice their concern.

19. HAR Chapter 11-58.1, “Solid Waste Management Control”

Comments – The Board supported the proposed rule amendments to proceed to public hearing.

20. HAR Chapter 11-1, “Rules of Practice and Procedure”

Comments – The rule changes were supported by the Board and that they proceed to public hearing.

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

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

22. HAR Chapter 11-100.1, “Adult Residential Care Homes”

Comments – The Board did not support the rules after the public hearings, and submitted a memorandum to Governor Lingle with recommendations. To date, finalization of the rules has not been made.

Department of Human Resources Development

No key matters of small business impact have been noted.

Department of Human Services (DHS)

23. HAR Chapter 17-1737 and 17-1739.1, under Subtitle 12, Med-QUEST Division

Comments – The Board supported these post public hearing rules with reservations by stipulating that DHS keep an open line of communication with all those physicians and pharmacists that will be affected by the rules, and further, that DHS take into consideration any negative comments and feedback provided by these small businesses at the public hearing.

24. HAR Chapter 17-1705, 17-1737, 17-1739.1, and 17-1740.1, under Subtitle 12, Med-QUEST Division

Comments – The Board supported these rules with reservations as there will be a substantial negative impact on the affected businesses regarding additional costs and added paperwork.

25. HAR Chapter 17-653 and 676, “Relating to the Income Maintenance Programs”

Comments – The Board reported that the rules did not have an impact on small business but supported as presented.

26. HAR Chapter 17-2021, “Grievance Procedure”

Comments – The Board had no objections to the proposed rules as there appeared to be no business impact.

27. HAR Chapter 17-1737, Subtitle 12, Med-QUEST, “Scope and Contents of the Fee for Service Medical Assistance Program”

Comments – The Board supported that the rules proceed to public hearing but noted that there is both positive impact for the independent social workers and potential negative impact for some small businesses. It was also pointed out that there appeared to be some confusion as to the actual ramifications of these rules in terms of the fundamental internal processing procedures.

28. HAR Chapter 17-1424, “Licensing of Adult Day Care Centers”

Comments – The Board supported the rules as presented.

29. HAR Chapter 17-1454, “Licensing of Home and Community-Based Case Management Agencies”

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

Department of Labor & Industrial Relations

30. HAR Chapter 12-52.8, “Safety and Health Professional”

Comments – The Board supported the post public hearing rules, which bring State rule language in line with Federal language.

31. HAR Chapter 12-50 “General, Legal and Administrative Provisions”

Comments – As the impact on these rules is positive, the Board agreed to support the rules for adoption.

32. 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 (DLNR)

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

Comments – The Board supported the administrative rule changes with reservations due to the potential impact on the commercial fishing industry fleet and eco-tourism.

34. HAR Chapter 13-232.43, “Construction or Improvements of Structures”

Comments – The Board initially agreed not to support the adoption of the rules in their present form as the views and proposed recommendations initially made by the board and the Ocean Tourism Coalition for methods of reducing the impact on small business were not endorsed by DLNR; also the Board did not concur with the fee increase of 50%. Subsequently, after hearing from representatives of DLNR, the proposed rules were supported by the Board for adoption.

35. HAR Chapter 13-37, “Old Kona Airport Marine Life Conservation, Hawaii,” Chapter 13-58, “Kona Coast, Hawaii,” and Chapter 13-60.3, “West Hawaii Regional Fisheries Management Area, Hawaii”

Comments – The Board supported the proposed rule changes provided that DLNR advise all those affected businesses of the upcoming public hearing by mail, particularly those businesses that were unable to attend the board meeting, such as harvesters of reef fish for aquarium collectors.

Department of Public Safety

No key matters of small business impact have been noted.

Department of Taxation

36. HAR Chapter 18-237 “General Excise Tax Law”

Comments – The Board supported the rules as the amendments were mainly clarifications to the existing law, and should have a positive impact on small business.

Department of Transportation

37. HAR Chapter 19-132 “Approval and Revocation of Approval for the Display, Sale and Use of Vehicle Equipment”

Comments – The Board supported the rule amendments.

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

Comments – The Board supported the rule changes, noting that the changes are administrative in nature, and have little or no effect on small business.

39. HAR Chapter 19-139 “Driver Education Program Requirements”

Comments – The Board supported the rules to proceed to public hearing as they have no adverse affect on small business.

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

Comments – The Board concurred that the rule changes have no adverse affect on small business and recommended that the rules proceed to public hearing.

41. HAR Chapter 19-44 “Wharfage Rates”

Comments – The Board supported the rules.

University of Hawaii

No key matters of small business impact have been noted.

Counties

42. Kauai Department of Water – “Pass Through of Private Charges”

Comments – The Board supported the rule changes, both pre- and post public hearing, which impose mostly a positive impact on small business.

43. Kauai County – “Facilities Reserve Charge”

Comments – The Board supported the rule changes, both pre- and post public hearing, due to the importance of the need for the increases.

44. Kauai County - “Proposed Deferment of Water Rate Increase from July 1, 2004 to July 1, 2004, Charged to Department Consumers”

Comments – The Board supports these rules, both pre- and post public hearing, which do not have an impact on small business.

45. Department of Liquor Control – County of Kauai

Comments - The Board noted that the impacted small businesses were pleased with the amendments; the Board supported the proposed amendments.

46. Liquor Commission – City and County of Honolulu (1)

Comments – Initially, the Board supported that the proposed rules proceed to public hearing but unanimously agreed that the substantial fee would undoubtedly impact small business negatively. Upon review of the post public hearing statement, the Board was opposed to the changes, and agreed that due to the enormous impact on small business, that the Liquor Commission perform a complete re-evaluation of the rules and a re-assessment of the proposed fees.

47. Liquor Commission – City and County of Honolulu (2)

Comments – The Board supported the rules with noted reservations on the sections of the rule that relate to a “licensee and manager in charge of premises.”

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.

During 2004, the Board formed a “legislative investigative subcommittee” to re-establish the concept of a “Small Business Bill of Rights.” The Board is working with DBEDT to include this bill into DBEDT’s Administrative package and to introduce it during the 2005 legislative session.

Another legislative item the Board is working on is a bill relating to the “Small Business Regulatory Flexibility Act.” This bill is intended to clarify and amend the RFA to include a provision establishing when the small business impact statement is to be submitted to the Board, update provision of the statute that relate to actions to be taken by the Board and the rule-drafting agencies, as well as other non-substantive housekeeping measures.

SMALL BUSINESS IMPACT STATEMENT / 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, which are required by the RFA and the

Governor's Administrative Directive (AD 99-02) (Appendix 2), while working with the rule-drafting agencies on behalf of the small business community.

In August 1999, Governor Cayetano issued AD 99-02 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 2004 year, Governor Lingle's office has been busy updating and modifying the existing AD. After the completion of a new AD, expected sometime in the last half of fiscal 2005, with the assistance of DBEDT staff, the Board is planning to schedule "technical" workshops for all State agencies to review and discuss the new AD, the small business impact statement, and the internal processes for submission of administrative rules to the Board.

PROJECTS AND ACTIVITIES

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

- Re-established the concept of a "Small Business Bill of Rights" that is expected to be introduced during the 2005 legislative session.
- Continued to distribute the quarterly Newsletter to more than 80 small business organizations, legislators, and small businesses throughout Hawaii. Information in the Newsletter recaps significant activities conducted by the Board each quarter.
- Recommended the implementation of an efficient process for posting of proposed administrative rules to the Office of the Lieutenant Governor's Website.

- Continued to update the Board's website located at www.hawaii.gov/dbedt/sbrrb.

Information on the site includes current board agendas, meeting minutes, history of the RFA, Board member information, the quarterly Newsletter, and various links to business-related sites.

In order to stay informed of State laws and internal practices and procedures, the following were presented to the members at their monthly meetings:

- In January, Ms. Susan Kern, Staff Attorney, Office of Information Practices, presented information on the Uniform Information Practices Act.
- In February and September, Mr. Peter T. Young, Chairperson, Board of Land and Natural Resources updated the members on current DLNR issues DLNR.
- In August, Mr. Michael Hull, Regional Advocate, Office of Advocacy, U.S. Small Business Administration, spent a full day at the Board's monthly meeting. He explained the function of the Office of Advocacy and how it assists small business at the Federal level.
- In October, Mr. Daniel J. Mollway, Executive Director and General Counsel, Hawaii State Ethics Commission, discussed conflicts of interests and explained when the State Ethics Cods requires board members to recuse themselves.

ADMINISTRATIVE RULE REVIEW - REQUESTED
BY SMALL BUSINESS

In compliance with Section 201M-5 (f) of the RFA, the following outlines administrative rules and legislative issues requested by small business owners for the Board to review from the period December 2003 to December 2004.

1. HRS 271 “Motor Carrier Law” / Regulatory Relief

On several occasions, Ms. Dale Evans, President, and Ms. Darcie Evans, Assistant General Manager of Charley’s Taxi, wrote correspondence and delivered testimony to the Board regarding issues and concerns with rules and regulations that have significantly impacted her taxicab company. Specifically, a “petition for relief from excessive regulations” was presented to the Board, whereby, Ms. Evans requested support from the Board to assist in “regulatory relief.”

Board Recommendation: The Board invited and heard from representatives of the Public Utilities Commission (PUC) and the City and County of Honolulu. Subsequently, correspondence was sent to Mr. Carlito Caliboso, Chairperson of PUC indicating that should Ms. Evans’ requests be a matter of rule review, then a review of the rules with a response sent to both Ms. Evans and the Board. Correspondence was also sent to Mayor Jeremy Harris requesting either a rule review be performed or the introduction of legislation, with a response sent to both Ms. Evans and the Board.

Status: To date, the PUC responded to the Board that Ms. Evans’ request for relief is a matter that should be taken to the applicable county council members or Mayor of the City and County of Honolulu consistent with HRS §201-5. To date, the Board has not heard from the City and County of Honolulu.

Appendices

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

Appendix 1

[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]

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]

(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.

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.

(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]

Revision Note

"July 1, 1998" substituted for "the effective date of this chapter".

(b) Subsection (a) shall not apply when:

(1) A small business fails to exercise good faith in complying with the statute or rules;

(2) A violation involves wilful or criminal conduct; and

(3) A violation results in serious health, safety, or environmental impact.

(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]

[§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]

Appendix 2



EXECUTIVE CHAMBERS
HONOLULU

August 2, 1999

BENJAMIN J. CAYETANO
GOVERNOR

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.

Administrative Directive No. 99-02
August 2, 1999
Page 2

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.

Administrative Directive No. 99-02
August 2, 1999
Page 3

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:

- a. 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.

Administrative Directive No. 99-02
 August 2, 1999
 Page 4

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

Administrative Directive No. 99-02
 August 2, 1999
 Page 5

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.

Administrative Directive No. 99-02
August 2, 1999
Page 6

- 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

Appendix 3

Island	Member	Company	Address	Discussion Leader	Phone	Fax	E-mail
<i>Hawaii</i>	George Handgis 2nd Vice Chair	Gentry's Kona Marina Honokohau Harbor	74-425 Kealakehe Pkwy. Kailua-Kona, HI 96740	Department of Attorney General, Department of Commerce & Consumer Affairs, Department of Human Resources Development, Department of Land & Natural Resources (Back-up)	(808)329-7896	(808)329-7372	handgis@hawaii.rr.com
<i>Hawaii</i>	Noelani Whittington	President, Noe Lani Farms	78-6899 Palekana Rd. Holualoa, HI 96725	Department of Agriculture	(808)322-3579	(808)322-0697	noelanifarms@hawaii.rr.com
<i>Kauai</i>	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	(808)822-1612	ed@visionproperties.com
<i>Kauai</i>	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 (808)221-6073	(808)822-7798	jeanette@otsukas.com
<i>Maui</i>	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)877-3902Maui (808)841-2112 Hnl	(808)847-4820	lindap@leisinc.com
<i>Maui</i>	Lynne Woods Chairperson	President, Maui Chamber of Commerce	2200 High Street, Ste. 640 Wailuku, HI 96793	Department of Commerce & Consumer Affairs (Professional & Vocational Licensing Division-only), 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	(808)242-5475	lynne@mauichamber.com
<i>Oahu</i>	Brian K. Zinn Vice Chair	Copy Shop, Inc.	1100 Kaumoko St. Honolulu, HI 96825	Department of Land and Natural Resources, DOBOR, Department of Defense	(808)394-2679	(808)394-5551	Brian@CopyShopHawaii.com
<i>Oahu</i>	Donald L. Dymond	Kalapawai Market	306 S. Kalaeo Ave. Kailua, HI 96734	Department of Budget & Finance, Public Utilities Commission	(808)262-4359	(808)261-8691	dymondd001@hawaii.rr.com
<i>Oahu</i>	Joyce Edwards	President, The Systemcenter, Inc.	1738 Silva St. Honolulu, HI 96819		(808)847-0911 (808) 291-2237	(808)848-2784	joyce@systemcenter.com
<i>Oahu</i>	Michael C. L. Yee	EnviroServices & Training Center, LLC	2850 Paa St., Ste. 150 Honolulu, HI 96819	Department of Health-Environmental Division, Department of Land and Natural Resources	(808)839-7222	(808)839-4455	mike@gotoetc.com
<i>Oahu</i>	Phyllis N. T. Shea	Shea & Co., CPA's, Inc.	1585 Kapiolani Blvd., #1240 Honolulu, HI 96814	Department of Taxation, Department of Human Services(back-up), DCCA (Professional Boards only)	(808)949-4209	(808)942-9576	Shea_and_Co@verizon.net

Appendix 4

Statistics on 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			
FY 2002	Jul-01	3					
	Aug-01	2					
	Sep-01						
	Oct-01						
	Nov-01	1					
	Dec-01						
FY 2003	Jan-02	3	1				
	Feb-02	2				1	
	Mar-02	1					
	Apr-02						
	May-02	1					
	Jun-02						
	Jul-02	1					
	Aug-02						
	Sep-02	1					
	Oct-02						
	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	
	Jul-03						
	Aug-03	2					
	Sep-03				1		
	Oct-03	2					
	Nov-03	6				1	
	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						
FY 2005	Jul-04	5					
	Aug-04	3	1		1		
	Sep-04	4					
	Oct-04	2			1		
	Nov-04	1					
	Dec-04		1		1		
Totals	136	8	16	14	7	2	2

***Small Business Regulatory Review Board
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250 South Hotel Street, 5th Floor
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(808)586-2576
(808) 587-3832 Fax***