

**HAWAII  
SMALL BUSINESS  
REGULATORY REVIEW  
BOARD**

**Annual Report Summary  
and  
Review of Administrative Rules  
Requested by Small Business**

**In Compliance with  
Chapter 201M,  
Hawaii Revised Statutes**

**December 2005 – December 2006**

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

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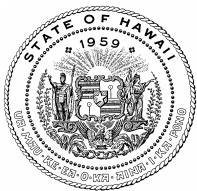
## MESSAGE FROM THE DIRECTOR



As the Director of the Department of Business, Economic Development and Tourism, it gives me great pleasure to thank the members of the Small Business Regulatory Review Board for their hard work, dedication and efforts to improving the regulatory burden in Hawaii.

Theodore E. Liu  
Director

# MESSAGE FROM THE CHAIRPERSON



**Linda Lingle**  
Governor

**Theodore E. Liu**  
Director, DBEDT

**Mark K. Anderson**  
Deputy Director, DBEDT

**Members**  
Lynne Woods  
Chairperson  
Maui

Sharon L. Pang  
Vice Chairperson  
Oahu

Michael Yee  
2<sup>nd</sup> Vice Chairperson  
Oahu

Dorvin Leis  
Maui

Donald Dymond  
Oahu

George Handgis  
Oahu

Charles Au  
Oahu

Richard Schnitzler  
Hawaii

Bruce E. Bucky  
Oahu

Peter Yukimura  
Kauai

In the preparation of this annual report, the Small Business Regulatory Review Board looks back on a year of hard work and new friendships.

This year, our Board welcomed four new members, Charles Au, Richard Schnitzler, Bruce Bucky, and Peter Yukimura. We also said a sad farewell to long-time members, Jeanette Otsuka Chang and Edward MacDowell. Our new members were immediately assigned towering piles of rules to be reviewed, which they tackled with determination.

The year 2006 brought us challenges from the business community regarding rules from the City and County of Honolulu, the County of Hawaii, and various State departments. We reviewed everything from taxi cab rule issues to the Department of Health Adult Residential Care Home rules to water rate rules; all of which presented financial impacts of various industries.

On behalf of all of the Small Business Regulatory Review Board members, I thank Governor Lingle and her department Directors for their cooperation. Many of the department Directors and employees attended meetings to present their new rules and rule reviews; for that we thank you. Your participation made our work much less complex.

Over this past year, we had difficulty with funding appropriate staffing and I thank Ted Liu director of DBEDT for his leadership in solving our issues.

Business Advocate, Dori Palcovich, deserves much praise for her organization, research, motivation and dedication to our efforts. Without Dori our Board would not have such achievements to point to.

We look forward to our upcoming year of challenges and know that 2007 will take us one step closer to becoming a business friendly state.

Chairperson  
December 2006

# **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 2005 through December 2006, pursuant to the Hawaii Small Business Regulatory Flexibility Act (RFA), Chapter 201M, HRS, as well as information pursuant to Section 201M-5 below.

### **[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 eleven current or former owners or officers of businesses from across the State. The Board has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board is also charged with reviewing existing rules upon request from small business owners, or at the Board's initiative. For requests regarding County rules, the Board may make recommendations to County council or the mayors for appropriate action.

In addition to reviewing rules and regulations, 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 2006, the Board was operating with ten 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 263 sets of proposed new and amended administrative rules. The results are categorized in Appendix 3.

From December 2005 through December 2006, the Board reviewed and made recommendations on 41 sets of new and amended rules, both pre- and post public hearing. A summary of each rule is categorized below.

#### ***Department of Accounting & General Services***

##### **HAR Chapter 3-70.19, “Rule of the Stadium Authority”**

Comments – As it was determined that there appeared to be no financial impact on small business, the Board unanimously supported these rules.

##### **HAR Chapter 3-160, “Election Campaign Contributions and Expenditures” and HAR Chapter 3-161, “Administrative Practice and Procedure before the Campaign Spending Commission”**

Comments – Overall, the rules are applicable to both individuals and businesses, both large and small, with no restrictions or provisions specifically for small business. As such, the Board supported these rules to proceed to public hearing.

*Department of Agriculture*

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

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

**HAR Chapter 4-60, “Milk Control Rules”**

Comments - The Board unanimously supported that these pre- and post-public hearing rules proceed to public hearing and adoption, respectively.

**HAR Chapter 4-66, “Pesticides”**

Comments - The Board unanimously supported that these pre- and post-public hearing rules proceed to public hearing and adoption, respectively.

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

Comments - The Board supported these 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**

**HAR Chapter 6-73, “Installation, Operations, and Maintenance  
of Overhead and Underground Electrical Supply and  
Communication Lines”**

Comments - The Board supported these rules to proceed to public hearing. The Board also voted to waive reviewing the “post” public hearing statements upon favorable, written feedback of the rule’s business impact from the affected “small”



businesses. Subsequently, the companies responded that the rule amendments would not have a negative impact on their ability to operate in a profitable manner. As a result, the Board advised PUC that it waived its review of the post-public hearing statements.

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

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

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

**HAR Chapter 15-211, “Rules for Kewalo Basin”**

Comments – The Board supported that these rules proceed to public hearing with the recommendation for establishing procedures on “how to become a Kewalo Basin tenant.” Such procedures would include the allocation of a certain number of docking slips for various categories of vessels; i.e., catamarans, cruise boats, etc. Other recommendations included the following: For §15-211-73 Absence of vessel for more than fourteen days; effect on the leases - As this has a potentially huge impact on business with regards to the paperwork, it was requested that a lesser impact be put in place, if possible. For §15-211-74 Inspection - As this may be perceived as an “unannounced visit,” it was requested that a reason for the inspection and notification for such an inspection be established before boarding a commercial vessel. For §15-211-92 Emergency conditions, it was requested that specific criteria to “deviate” be established and the kind of notice one would have to give to “deviate” is included in the rules.

***Department of Commerce & Consumer Affairs***

**HAR Chapter 16-171, “Miscellaneous Insurance Rules”**

Comments – The Board supported these rules to proceed to public hearing, noting that small businesses would not be adversely affected by the amendments as they are directed solely at insurers; the only fees involved would be the cost of copying, mailing and postage. The Board also supported the rules after the public hearing.

***Department of Defense***

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

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

***Department of Education***

No key matters of small business impact have been noted.

***Department of Hawaiian Home Lands and the Office of Hawaiian Affairs***

No key matters of small business impact have been noted.

***Department of Health***

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

Comments – After reviewing these proposed rules for approximately four years, the Board noted that in view of the lengthy process of preparing and modifying these rules, as well as the tremendous amount of support from both the Governor’s office and the small business community, that the rules proceed to the Governor for adoption.

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

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

*Department of Human Resources Development*

No key matters of small business impact have been noted.

*Department of Human Services*

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

Comments - The Board supported that these post public hearing rules proceed to the Governor for adoption. Additional modifications to these rules *after* adoption were also supported by the Board to go to public hearing.

**HAR Chapter 17-1728.1, “QUEST-Adult Coverage Expansion (ACE)”**

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

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

Comments – As these proposed rules were anticipated to have a positive impact on both dental providers and the recipients, the Board supported that the rules proceed to public hearing, and also supported that the rules be adopted after the public hearing.

*Department of Labor & Industrial Relations*

**HAR Chapter 12-5, “Hawaii Employment Security Law”**

Comments – As these rules mostly conform to federal standards, the Board unanimously supported that they proceed to public hearing. The Board also reviewed the post public hearing statements, but noted that the Governor had already adopted the rules prior to the Board reviewing them.

**HAR Chapter 12-15, “Workers’ Compensation Medical Fee Schedule, and Exhibit A, Workers’ Compensation Supplemental Medical Fee Schedule”**

Comments – The Board recommended that the proposed rule amendments proceed to public hearing and requested that all business associations, in particular, all neighbor island associations, be notified of the upcoming hearing given that public hearings may not be held on each neighbor island. The Board also reviewed the post public hearing statements, but noted that the Governor had already adopted the rules prior to the Board reviewing them.

**HAR Chapter 12-46, “Hawaii Civil Rights Commission”**

Comments – The Board applauded the Agency for proposing these amendments as there are currently no rules in place to protect an employer. It was unanimously supported by the Board that these amendments proceed to public hearing. Note – This rule proposal came to the Board pursuant to Hawaii Revised Statutes §91-6 and Hawaii Administrative Rules (HAR) §12-46-81, via Petition by the Hawaii Employers Council to amend HAR §12-46-109, which relates to sexual harassment in employment and HAR §12-46-175, which relates to employment harassment on the basis of ancestry.

***Department of Land & Natural Resources***

**HAR Chapter 13-64, “Kokee Public Fishing Area, Kauai”**

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

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

Comments - The Board supported these amended rules to proceed to public hearing as they will have a positive impact on service type companies such as retailers of fishing tackle and bait, car rental businesses, grocery stores and restaurants.

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

Comments - The Board supported these administrative rule changes to proceed to public hearing and recommended that all licensees and non-licensees be notified of the upcoming hearing.

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

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

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

Comments – With one member abstaining from voting due to business conflicts, the Board approved these amended rules to proceed to public hearing.

***Department of Public Safety***

No key matters of small business impact have been noted.

***Department of Taxation***

**HAR Chapter 18-237 “General Excise Tax Law”**

Comments - The Board unanimously supported both the pre-public and posting public hearing statements.

**HAR Chapter 18-245, “Cigarette Tax Stamping”**

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

### *Department of Transportation*

#### **HAR Chapter 19-42 “Vessel and Harbor Controls”**

Comments – For three months, the Board listened to testimony from several impacted businesses; subsequently, the agency presented modified amendments to which all impacted parties agreed upon and supported, as well as the Board.

#### **HAR Chapter 19-41 “Commercial Harbors and Tariff”**

Comments - The Board unanimously supported that the proposed post public hearing statements proceed to the Governor for adoption.

### *University of Hawaii*

No key matters of small business impact have been noted.

### *Counties*

#### **County of Hawaii’s Department of Liquor Control – Liquor Commission**

Comments – The Board supported that the amended rules proceed to public hearing with the recommendation that under Part I. Practice and Procedures, Rule 1.7 Voting, “no more than two (2) board meetings,” be included.

### **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.

**Hawaii Small Business Bill of Rights Bill** - 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

HD2, successfully passed the Senate but did not make it through the House of Representatives. Subsequently, the Board voted to turn the Small Business Bill of Rights bill into a formal brochure. (See discussion under “Projects and Activities”)

**Senate Bill 2864, “Making an Appropriation for Regulatory Boards and Commissions”** – During the 2006 legislative session, Board members approached the legislation and requested a bill to provide for additional monies to be set aside for a board and commissions administrative assistant position for the specific use of the Board and the Business Advocate. The resulting bill, Senate Bill 2864 “Making an Appropriation for Regulatory Boards and Commissions,” was introduced in January 2006, passed the first and second readings and referred to Ways and Means in February where it did not pass.

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

Under Section 201M-2, HRS, State agencies that want to adopt new or modified administrative rules that have an impact on small business must submit to the Board a small business impact statement showing the economic impact on those businesses. As a result, the Board has been reviewing the small business impact statements and the Governor’s Administrative Directive (AD), while working with the rule-drafting agencies on behalf of the small business community.

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

the Board, 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 2007 legislative session.

## **STRATEGIC PLANNING**

The Board meets regularly to re-establish what it stands for and to set clearly defined goals for the upcoming year. Since the Board's last strategic planning session held in October 2005, it has kept its communication open among the members by providing monthly updates to monitor the Board's goals in order to keep aligned with its final strategic product. The Board is planning to hold another strategic planning session in March 2007.

The following outlines topics and sub-topics that were discussed at the October 2005 planning session.

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

## **PROJECTS AND ACTIVITIES**

In keeping with the objectives and goals outlined in the Board's strategic plan, the following projects and activities were performed throughout the year.



? **Marketing Task Force** – DBEDT’s Communication Officer provided the Board with valuable information to improve upon its marketing outreach efforts and communication strategies, noting that when an effective communications plan is in place, the members should be committed to it. Various ideas that were suggested for developing a communications strategy included establishing a goal, crafting a specific message statement, choosing a medium, locating a funding source, and finding a talent to market the Board.

Subsequently, the Board established a marketing task force to assist with the goals and objectives derived from the Board’s strategic planning session. In November and December 2006, the marketing task force interviewed three public relations firms to assist with the Board’s visibility and awareness among the general small business community. Board member Mr. Dorvin Leis has graciously committed to gifting the compensation for such marketing efforts, and after consulting with the marketing task force, selected Hastings & Pleadwell, LLC.

? **Hawaii Small Bill of Rights Brochure** – Established a legislative investigative taskforce to develop and design a “Hawaii Small Business Bill of Rights” brochure. The brochure is based on the Small Business Bill of Rights bill that was initially introduced during the 2005 legislative session (Senate Bill 1380 SD2 HD2). As of this writing, the Director of the Department of Commerce and Consumer Affairs and the Attorney General have provided substantive commentary on the proposed brochure. The Board has extended an invitation to both individuals to attend a board meeting for further review and discussion.

? **Board Website** – Revamped the Board’s website located at: [www.hawaii.gov/dbedt/business/start\\_grow/small-business-info/sbrrb](http://www.hawaii.gov/dbedt/business/start_grow/small-business-info/sbrrb). Information

on the site includes current Board agendas, meeting minutes, Board member composition, and links to business-related sites.

? **Board Brochure** – Redesigned the Board’s general brochure to distribute at small business functions, forums and tradeshow.

? **Power Point Presentation** – Redesigned the Board’s power point presentation to present at small business functions and forums.

? **Member Business Cards** – Provided business cards for each member to distribute at small business functions and forums as part of the Board’s ongoing marketing efforts.

? **Member Nominations and Recruitment** – Continued to actively recruit new members pursuant to Section 201M-5, as “nominations to fill vacancies shall be made from names submitted by the review board.” Further, “the appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.” Several names were submitted to the Governor for approval. Of those names, the Board is proud to announce four new members nominated during the past year, Mr. Charles Au, Mr. Richard Schnitzler, Mr. Bruce Bucky, and Mr. Peter Yukimura. To date, the Board has only one vacancy, representing Kauai.

? **“Conflict of Interest” Training** - Provided members with a review of the State’s general ethics rules by the Attorney General’s Office regarding conflict of interest concerns that would alert the members to specific issues in the event members find themselves in a situation that would potentially pose a conflict.

# ADMINISTRATIVE RULE REVIEW REQUESTED BY SMALL BUSINESS

In compliance with Section 201M-5 (f), HRS, the following outlines administrative rules and legislative issues requested by small business owners for the Board to review, from the period December 2005 to December 2006.

## **1. Section 12-1.10(b) of the Revised Ordinances of Honolulu, Department of Customer Services / Section 5.54 Taximeters User Requirements and Handbook 44**

**Issue:** In December 2005, Mr. Charles Morita, owner of Taximeter Radios & Service, LLC, submitted correspondence regarding issues and concerns with the Honolulu City and County's Department of Motor Vehicles and the State's Department of Agriculture (DOA). 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, inspections and standards of taximeters, the validity of "Handbook 44," and an effective manner of calculating weights and measures, "so as to be relevant and informative to industry stakeholders."

In response to these issues, in January, August and September the Board met with Mr. Morita, representatives from the taxi industry, a representative from the City and County of Honolulu, and representatives from DOA's Quality Assurance Division which oversees the Measurement Standards Branch.

**Board Recommendation:** The Board determined that the rules governing the standards and inspections of taximeters should be re-reviewed. The Board recommended that DOA begin an open dialogue with Mr. Morita to improve upon the overall communication efforts with the taxi industry regarding ongoing issues, to

revisit the administrative rules governing taximeters, and to review and assess the potential tampering with taximeter seals.

**Status:** The Measurement Standards Branch has informed the Board that it has held a meeting with the County of Honolulu and that it will keep Mr. Morita, as well as the taxi industry, apprised of ongoing issues.

## **2. Newsflash 2005-16, Ethics CPE Requirement**

**Issue:** Mr. Isaac Choy, President of the Hawaii Association of Public Accountants, was concerned that the new ethics CPE requirements lacked specific processes and procedures. Specifically, there were no ethical training requirements for certified public accountants (CPA's), that the Hawaii State Board of Accountancy does not have a clear set of rules regarding regulatory authority to mandate ethical conduct among CPA's, and that some type of ethical training should be included in the accountant's required 40 hours of annual training. Essentially, Mr. Choy was requesting from the Board that formal guidelines be established.

**Board Recommendation:** Board member, Mr. Charles Au, attended a meeting of the Hawaii State Board of Accountancy, and requested that accountants be allowed to use four additional hours for ethics training and to incorporate that requirement into the rules within the next year.

**Status:** The Hawaii State Board of Accounting was very receptive to this recommendation. Although, it is the CPE vendor's ultimate decision regarding the content of the courses, the recommendation will be taken into strong consideration.

## **3. Application to Renew Nurse Aid Certification**

**Issue:** Several certified nurse aides approached the Board regarding a memorandum which they received indicating that the State of Hawaii was unable to approve the ir

nurse aide's recertification. It further stated that in order to be eligible for recertification, nurse aides must be employed for "at least one day" in a long-term care skilled nursing or intermediate care facility, and approved by the State of Hawaii. At a meeting with the Board, representatives associated with sending out the memoranda, discussed the purpose of the program and why nurse aides working in patient care homes were excluded from automatic re-certification and re-education when nurse aides in hospitals, assisted-living care homes, and assisted-living homes were automatically re-certified and re-educated.

**Board Recommendation:** The Board sent memoranda to representatives from the Department of Commerce and Consumer Affairs, the Department of Health, Healthcare Association, Hawaii Long Term Care Association, and the Alliance of Residential Care Administrators with the following recommendations:

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

**Status:** The Board is expecting to re-review this issue at a Board meeting in 2007.

#### **4. Senate Bill 1843 SD1 HD 2 CD 1, "Relating to Procurement"**

**Issue:** Ms. Karen Hong, Account Executive at Finance Insurance, Ltd., and several small business owners requested a business impact review from the Board entailing procedures of the Department of Transportation regarding the State of Hawaii's general terms and conditions of the "defense and indemnity clause" requiring

contractors to defend the State. It was conveyed that over the past several years, the requirement to defend the State was not tied to a contractor's negligence, and that it rarely applied. However, recently the State's Attorney General has enforced this provision and has asked contractors to pay the cost of the State's defense based on the contractual obligation to do so. As a result, it was conveyed that the cost to defend the State could ultimately be very expensive and purportedly bankrupt a small business.

**Board Recommendation:** At this writing, the Board had not made a formal recommendation.

**Status:** This issue will be further discussed at a Board meeting in 2007.

## **Appendices**

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

## **1. Chapter 201M, Hawaii Revised Statutes**



[CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT]

Section

201M-1 Definitions

201M-2 Determination of small business impact; small  
business impact statement

201M-3 Small business statement after public hearing

201M-4 Advisory committee on small business; consultation  
process for proposed rules

201M-5 Small business regulatory review board; powers

201M-6 Petition for regulatory review

201M-7 Periodic review; evaluation report

201M-8 Waiver or reduction of penalties

201M-9 Executive order

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

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

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

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

"Board" means the small business regulatory review board.

"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]

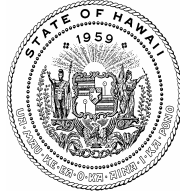
## **2. Board Member Listing**

Island	Member	Company	Address	Discussion Leader	Phone	E-mail
Maui	<b>Lynne Woods (Chairperson)</b>	Maui Real Estate Ventures, Inc.	373 Kolahala Drive Kula, Maui, HI 96790	Department of Commerce & Consumer Affairs, Department of Labor & Industrial Relations (back-up), Office of the Governor, Public Utilities Commission (Back-up)	(808) 276-0107	<a href="mailto:lynne@billwoods.com">lynne@billwoods.com</a>
Oahu	<b>Sharon L. Pang (Vice Chairperson)</b>	Care Companions & Consulting, LLC	1400 Pensacola Street, Suite 505 Honolulu, HI 96813	Department of Health-Medical Division, Department of Human Services, Department of Education	(808) 942-3122	<a href="mailto:carecompanions@aol.com">carecompanions@aol.com</a>
Oahu	<b>Michael C. L. Yee (2<sup>nd</sup> Vice Chairperson)</b>	EnviroServices & 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	<a href="mailto:mike@gotoetc.com">mike@gotoetc.com</a>
Maui	<b>Dorvin Leis</b>	Dorvin D. Leis, Co., Inc.	1100 Alakea Street, Ste 1400, Honolulu, HI 96813	Department of Accounting & General Services, University of Hawaii, Office of the Lieutenant Governor	(808) 356-2699	<a href="mailto:lisal@leisinc.com">lisal@leisinc.com</a>
Hawaii	<b>George Handgis</b>	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	<a href="mailto:handgis@hawaii.rr.com">handgis@hawaii.rr.com</a>
Oahu	<b>Donald L. Dymond</b>	Kalapawai Market	306 S. Kalaheo Ave. Kailua, HI 96734	Department of Budget & Finance, Public Utilities Commission, Department of Defense	(808) 262-4359	<a href="mailto:mdymond@hawaii.rr.com">mdymond@hawaii.rr.com</a>
Oahu	<b>Charles K.H. Au</b>	Erwin Cabrinha & Au, LLP	598 Halekauwila Street Honolulu, HI 96813	Department of Taxation, Department of Hawaiian Home Lands	(808) 533-4244	<a href="mailto:charles@eca-advisors.com">charles@eca-advisors.com</a>
Hawaii	<b>Richard Schnitzler</b>	Hamakua Macadamia Nut Co.	P.O. Box 44715 Kawaihae, HI 96743	Department of Agriculture, Department of Business, Economic Development & Tourism	(808) 882-1116	<a href="mailto:hawnnut@hialoha.net">hawnnut@hialoha.net</a>
Oahu	<b>Bruce E. Bucky</b>	Hildgund Jewelry	1188 Bishop Street, Suite 2305 Honolulu, HI 96813		(808) 523-1123	<a href="mailto:Hildgund@aol.com">Hildgund@aol.com</a>
Kauai	<b>Peter Yukimura</b>	Koa Trading Co.	PO Box 1031 Lihue, HI 96766		(808) 246-4406	<a href="mailto:pmyuki@hawaiian.net">pmyuki@hawaiian.net</a>

### **3. Administrative Rules Reviewed**

	Month/Year	Support	Oppose	No Comment	Support w/Rec.	Sup. w/Res.	Support/Oppose	Pending	
<b>FY 2000</b>	<b>Total FY 2003</b>	<b>78</b>	<b>4</b>	<b>1</b>	<b>10</b>	<b>2</b>	<b>1</b>		
<b>FY 2004</b>	Aug-03	2		1					
	Sep-03	0			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							
	<b>FY 2005</b>	Jul-04	5						
Aug-04		3	1		1				
Sep-04		4							
Oct-04		2			1				
Nov-04		1							
Dec-04		2	1		1				
Jan-05		6				1			
Feb-05		5				2			
Mar-05		4				1			
Apr-05		6							
May-05		5							
Jun-05		4							
<b>FY 2006</b>	Jul-05	4							
	Sep-05	10							
	Oct-05	2			1				
	Nov-05	7					1		
	Dec-05	3				1			
	Jan-06	1							
	Feb-06	0							
	Apr-06	8			1				
	May-06	4							
	Jun-06	4							
	<b>FY 2007</b>	Jul-06	3						
		Aug-06	3						
Sep-06		1							
Oct-06		2							
Nov-06		8		2					
<b>Totals</b>		<b>219</b>	<b>8</b>	<b>5</b>	<b>16</b>	<b>12</b>	<b>3</b>	<b>0</b>	

## **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

***Small Business Regulatory Review Board***

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***Honolulu, Hawaii 96813***

***Phone (808) 586-2594***

***Fax (808) 586-2548***