



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

**Results for Calendar Year 2013**

**Review of Administrative Rules, Legislation**

**and**

**Rules Requested by Small Business**

**In Compliance with**

**Chapter 201M, Hawaii Revised Statutes**

# HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

## ANNUAL REPORT SUMMARY 2013

### Table of Contents

#### SECTION I

Message from the Director .....	3
Message from the Chair .....	4-5
Overview.....	6
Annual Summary.....	7
Small Business Regulatory Flexibility Act.....	7-8
Administrative Rule Review.....	8-16
Legislative Activity.....	16
Small Business Impact Statement <i>and</i> Governor's Administrative Directive No. 09-01.....	16-17
Board Members .....	17-18
Activities and Projects .....	18-19
Administrative Rule Review Requested by Small Business .....	20

#### SECTION II

Legislative Review.....	22-24
Appendix.....	25
Chapter 201M, Hawaii Revised Statutes.....	26-36
Administrative Rule Review Matrix.....	37-38
Administrative Directive No. 09-01.....	39-43

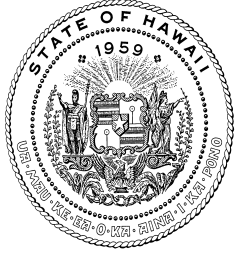
# **SECTION I**

## **MESSAGE FROM DIRECTOR**



As the Director of the Department of Business, Economic Development and Tourism, I continue to thank the members of the Small Business Regulatory Review Board for their dedicated work. The service of this Board is and always will be an essential part of the rule-review process so that the regulatory burden on the small business community is manageable.

*Richard C. Lim*



## SMALL BUSINESS REGULATORY REVIEW

---

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586 2596  
Fax 808 586 3833

Neil Abercrombie  
**Governor**

Richard C. Lim  
**Director, DBEDT**

### MESSAGE FROM THE CHAIR

Mary Alice Evans  
**Deputy Director, DBEDT**



#### Members

**Chu Lan Shubert-Kwock**  
Chair  
*Oahu*

**Anthony Borge**  
Vice Chair  
*Oahu*

**Leslie Mullens**  
Second Vice Chair  
*Maui County*

**Barbara Bennett**  
*Kauai County*

**Howard Lum**  
*Oahu*

**Kyoko Y. Kimura**  
*Maui County*

**Craig Takamine**  
*Hawaii County*

**Richard C. Lim**  
Director, DBEDT  
Voting Ex Officio

The year 2013 marked a new Small Business Regulatory Review Board (SBRRB) from an 11 Member Board to a 9 Member Board appointed by the Governor, Senate President and House Speaker approved by the full Senate with the DBEDT Director as an additional voting member. Board Members are representative of their diverse business expertise areas from our 4 islands.

The Board's Mission is to represent the economic interest of small businesses in Hawaii at the State & County level when it comes to all State and County Agencies Rules and Regulations, whether existing, proposed or amended which will impact their well-being and our State's economy whether positively or negatively. Agencies submit new/amended rules and regulations to our Board for review and comments – the Board, upon open questions and open discussions, may suggest amendments based on the negative or positive impact to small businesses before taking a vote to either recommend proceeding towards public hearing or not to the Governor, who has the final say.

Recent Rule changes affect Food Safety/inspections, pesticides, water safety, health coverage, early childhood education subsidy, shoreline management, fishing restrictions, licensing requirements for architects, nurses, continuing education for nurses, nursing aides, liquor control rules, workmen's compensation, etc. To date, SBRRB has reviewed close to 600 rules in the State of Hawaii, taking hundreds of hours of study by Board Members.

### **MESSAGE FROM THE CHAIR - *continued***

I am honored to be voted as Chair of this Board as the Chair carries a larger responsibility of working daily with our assigned Economic Development Specialist (Administrator) and deciding on Agenda matters, conducting hearings and ensuring an orderly and effective discussion between agencies, testifiers and our Board Members before voting the matter up or down. Furthermore, the Chair ensures SBRRB continues to outreach small businesses through the Board's RegAlert, electronic communication, brochures, and meetings with agencies, our stakeholders and the public. We take in complaints and enlist the assistance of our Agencies, Legislators and our Governor when rules and regulations need revision.

Our Board works hard and all of us are volunteering our time and expertise to ensure our constituents, small businesses in Hawaii, are effectively represented and protected. Our collaboration with State and County Agencies ensures that Rules and Regulations benefit our State, protect and grow our economy. I would like to thank our administrative agency, DBEDT for its support, our Legislators for creating us in 1998, our stakeholders, the small business owners, chambers of commerce, our Board Members and our State and County Agencies for valuing our input and recommendations to the Governor. The year 2013 has been a very successful year for the SBRRB.

*Chu Lan Shubert-Kwock, Chair, SBRRB*

## **OVERVIEW**

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covered from January 2013 through December 2013. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes (HRS), the annual summary is based on the following:

### **[201M-5] Small business regulatory review board; powers**

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to any agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies or the legislature regarding its review of any proposed new or amended rules.

## **ANNUAL SUMMARY**

### **SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168. Subsequently, the role of the Board has been codified in Chapter 201M, Hawaii Revised Statute (HRS), as amended. (See Appendix 1)

Statutorily, the Board is comprised of nine members, eight current or former owners or officers of businesses from across the State, and the Director of Business, Economic Development, and Tourism (DBEDT) or the Director's designated representative to serve as an "ex officio" voting member. The Board is administratively attached to DBEDT and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board is also charged with reviewing existing rules upon request from small business owners or at the Board's initiative. For requests regarding County rules, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members have in the past volunteered their time attending State agency meetings, making presentations by performing outreach activities to small business organizations, and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State agencies.

As an effective and efficient means of review, each member is assigned to one or more State agency as a "discussion leader," and is responsible for the initial review



of the administrative rules of that State agency prior to consideration by the full Board. As of December 2013, the Board was operating with eight of the statutorily required nine members.

## **ADMINISTRATIVE RULE REVIEW**

Since its inception, the Board reviewed a total of 586 sets of proposed new and amended administrative rules; the results are categorized in Appendix 2. During 2013, the Board reviewed and made recommendations on 35 sets of new and amended rules, both pre- and post-public hearing; a summary is categorized below.

### **Office of the Lieutenant Governor**

No key matters of small business impact have been noted.

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

No key matters of small business impact have been noted.

### **Department of Agriculture**

#### **HAR Title 4 Chapter 143 Coffee**

**Comment** – The Board recommended that the proposed amendments proceed to public hearing.

### **Department of Attorney General**

#### **HAR Title 5 Chapter 31 Child Support**

**Comment** – The Board recommended that the request for public hearing be approved.

### **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**

**HAR Title 15 Chapter 315 Mortgage Credit Certificate  
Program**

**Comment** – The Board took no action on this proposal for public hearing due to lack of quorum as a result of two board members needing to recuse themselves from voting. After public hearing, no action was taken because the rules had already been signed off by the Governor.

**Department of Commerce & Consumer Affairs**

**HAR Title 16 Chapter 88 Naturopaths**

**Comment** – The Board recommended that the proposed rule amendments go out to public hearing.

**HAR Title 16 Chapter 115 Professional Engineers, Architects,  
Surveyors and Landscape Architects**

**Comment** – The Board recommended that the rules, after public hearing, be sent to the Governor for approval.

**Department of Defense**

No key matters of small business impact have been noted.

**Department of Education**

No key matters of small business impact have been noted.

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

No key matters of small business impact have been noted.

**Department of Health (DOH)**

**HAR Title 11 Chapter 25 Rules Relating to Certification of  
Public Water System Operators**

**Comment** – The Board recommended that the rules proceed to public hearing.

**HAR Title 11 Chapter 50 Food Safety Code, and Repeal of  
Chapter 12 Food Establishment Sanitation**

**Comment** – The Board recommended that the Board approve the request to go out to public hearing.

**HAR Title 11 Chapter 54 Water Quality Standards**

**Comment** – The Board recommended that the rules proceed to public hearing as soon as possible.

**HAR Title 11 Chapter 55 Water Pollution Control**

**Comment** – The Board recommended that the rules proceed to public hearing as soon as possible.

**HAR Title 11 Chapter 60.1 Air Pollution Control**

**Comment** – The Board recommended that the after public hearing statement be approved.

**HAR Title 11 Chapter 164.1 Emergency Rules Relating to Examinations  
for Tuberculosis**

**Comment** – The discussion of these rules were essentially a “preview” of the proposed amendments that would be forthcoming to this Board. Therefore, no action was taken by the Board.

**Department of Human Resources Development**

No key matters of small business impact have been noted.

**Department of Human Services (DHS)**

**HAR Title 17 Chapter 799 Preschool Open Doors Program**

**Comment** – The Board recommended that the proposed amendments proceed to public hearing.

**HAR Title 17 Chapter 1700 Overview through HAR Title 17**

**Chapter 1745 Funeral Payments Program**

**Comment** – The Board recommended that the proposed amendments, also known as the Obamacare rules, proceed to public hearing.

**HAR Title 17 Chapter 1722.3 Basic Health Hawaii, Chapter 1725 Assets, Chapter 1727 QUEST, and Chapter 1739.1 Authorization, Payment and Claims in the Fee-for-Service Medical Assistance Program for Non-institutional Services**

**Comment** – The Board recommended that the proposed rule amendments, after public hearing, proceed to the Governor for adoption.

**HAR Title 17 Chapter 1443 Feeding Assistant Training Program, Chapter 1444 Nurse Aide Training and Competency Evaluation Program, and Chapter 1445, Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings, and Repeal of HAR Chapter 1420 Homemaker Services for Community Long-Term Care Programs, Chapter 1438 Nursing Home without Walls, HAR Chapter 1440 Home and Community-Based Services for Elderly Foster Family**

**Community Care Program, HAR Chapter 1441 Personal Care  
Services, Chapter 1442 HIV Community Care Program**

**Comment** – The Board approved the statement after public hearing.

**Department of Labor & Industrial Relations (DLIR)**

**Amendments to HAR Title 12 Chapter 45.2 State Fire Code,  
repeal of Chapter 45.2 Sections 1 through 154, and Adoption of  
Title 12 Chapter 45.3 State Fire Code**

**Comment** – The Board recommended that that the proposed rule amendments proceed to public hearing.

**HAR Title 12 Chapter 15-90 Hawaii Worker's Compensation  
Medical Fee Schedule and Exhibit A**

**Comment** – Upon hearing from DLIR Director Dwight Takamine and many testifiers in support of these proposed rules, the Board recommended that the request go out to public hearing. After public hearing, upon hearing from Director Takamine, the Board recommended that statement after public hearing be approved. The Board also requested from DLIR a report showing results from fraud.

**HAR Title 12 Chapter 46 Hawaii Civil Rights Commission**

**Comment** – The Board recommended that the proposed set of rule changes which conform to the respective statutes to the Governor for approval go out to public hearing for public input.

**Department of Land & Natural Resources (DLNR)**

**HAR Title 13 Chapter 95-1 Island-Based Fisheries Rules**

**Comment** – The Board recommended that the rules request go out to public hearing.

**HAR Title 13 Chapter 54, “Puako Bay and Puako Reef, Hawaii,”  
Section 1 “Definitions,” Section 2 “Prohibited Activities,” Section  
3 “Permitted Activities,” HAR Title 13 Chapter 57 “Keauhou  
Bay, Hawaii,” Section 1 “Definitions,” Section 2 “Prohibited  
Activities,” Section 3 “Permitted Activities,” and “Map of  
Keauhou Bay Fisheries Management Area, Hawaii,” Repeal of  
HAR Title Chapter 60.3 “West Hawaii Regional Fisheries  
Management Area,” and Adoption of Title 13 Chapter 60.4  
“West Hawaii Regional Fishery Management Area, Hawaii,”  
HAR Title 13 Chapter 75 Section 12.4 “Lay nets”**

**Comment** – The Board recommended the following proposed rule changes after the public hearing: 1) establishment of a list of 40 fish species permitted for aquarium take, only “throw” fish on the white list could be collected live for aquarium use, and size and bag limits are proposed for three species on the White List; 2) prohibition of take or possession of nine species of inshore sharks and rays and two invertebrate crown-of-thorns predators; 3) establishment of a 1,500 foot section of Ka’ohe Bay (Pebble Beach), South Kona, as a Fish Replenishment Area where aquarium collecting and/or recreational fish feeding is prohibited; and to oppose spear or speared aquatic life until further notice of the impact; the motion did not pass.

**HAR Title 13 Sections 230-4 Penalties and Prosecution, 230-8  
Definitions, 230-21 Definitions, 230-22 Twelve-month rule, 230-  
25 Particular categories, 230-27 Permittee required to report  
change of residence, and 230-28 Appeals**

**Comment** – The Board recommended sending the proposed rules to public hearing, and to the Governor for adoption after public hearing.

**HAR Title 13 Chapter 231 Operations of Boats, Small Boat Harbors, and Permits, Chapter 251 Waikiki and Ka'anapali Ocean Waters, Chapter 253 Registration and Permit Fees, Section 13-256-3 Commercial Operator Permit Requirements, and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements**

**Comment** – The Board recommended that the proposed amendments proceed to the Governor to public hearing.

**Department of Public Safety**

No key matters of small business impact have been noted.

**Department of Taxation**

**HAR Title 18 Chapter 231 Administration of Taxes**

**Comment** – The Board recommended that the proposed amended rules proceed to public hearing.

**HAR Title 18 Chapter 235 Income Tax Law, HAW Title 18 Chapter 235-12.501T and 235-12.5-06T, Relating to Renewal Energy Technology Income Tax Credit**

**Comment** – The Board recommended that the proposed amended rules proceed to public hearing.

**Department of Transportation**

No key matters of small business impact have been noted.

## **University of Hawaii**

No key matters of small business impact have been noted.

## **Counties**

### **City and County of Honolulu- Liquor Commission**

**New Sections 3-81-20 General Right of Inspection, 2-82-38.26 Bottle Service for On-Premise Consumption, 3-82-41.3 Management or Operating Agreements, and 3-84-73.1 Quality of Liquor, and Proposed Amendments to Sections 3-80-1.1 Definitions, 3-81-17.53 License Fees; When Due and How Calculated, 3-81-17.54 Gross Sales Reports, 3-17.55 Additional License Fees on Gross Sales, 3-82-31.8 Recorking, 3-82.38.5 Registration of Employees, 3-82-38.8 Semi-Annual Submission of Employee List, 3-82-38.9 Licensee and Manager in Charge of Premises, 3-82-38.25 Restrictions or Conditions on Licenses, 3-82-41.2 Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members, 3-83-53.1 License Applications; Notice of Hearing; Affidavits, 3-83-61.1 Renewal of Existing License, 3-83-62 Architectural Requirements/Alteration of Licensed Premises, 3-84-72.2 Premises Lighting; Doors, 3-84-78.01 Conduct of Employees, 3-84-78.01 Conduct of Employees, 3-84-78.06 Solicitation of Business Outside of Premises, 3-84-78.52 Stacking of Drinks, and 3-85-91.12 Licenses under Safekeeping**

**Comment** – In addition to the rule amendments proceeding to public hearing, the Board recommended that under Section 3-82-31.8 Recorking, clarification be made that recorking to its original bottle is not the mandatory responsibility of the licensee, but that the licensee may choose to record or to allow a patron to remove the left-over liquor from the premises.

## **County of Maui**

No key matters of small business impact have been noted.

## **County of Hawaii**

No key matters of small business impact have been noted.

## **County of Kauai**



**Planning Commission**

**Kauai County Code, Chapter 10 Section A, Lihue Town Core Urban**

**Design District**

**Comment** - The Board recommended to the County of Kauai Planning Commission that the proposed amendments go to public hearing.

**Department of Water**

**Part III of the Rules and Regulations for Water Service Connections,**

**Section IX – Adjustment of Bills for Undetected Underground Leaks and**

**Unforeseen Damages**

**Comment** - The Board recommended the proposed amendments proceed to public hearing.

**LEGISLATIVE ACTIVITY**

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of this report for specific legislation the Board followed during the 2013 session.

**SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S**

**ADMINISTRATIVE DIRECTIVE NO. 09-01**

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

On October 29, 2009, AD 09-01 (Appendix 3) was issued to update the policy and procedures by which State departments and agencies request Governor's approval for a public hearing of any proposed adoption, amendment or repeal of administrative rules developed under Chapter 91, HRS.

## **BOARD MEMBERS**

Pursuant Section 201M-5 (c), "a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled."

At the June 2013 board meeting, Ms. Chu Lan Shubert-Kwock was elected Chair; Mr. Anthony Borge was elected as Vice Chair, and Ms. Leslie Mullens as Second Vice Chair.

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

In addition, “nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations. Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government.” At the end of December 2013, the board has the following members:

- Chu Lan Shubert-Kwock, ABC Mortgage & Chu Lan Properties, representing the City and County of Honolulu
- Howard Lum, Aloha Gourmet Products, Inc., representing the City and County of Honolulu
- Anthony Borge, RMA Sales, representing the City and County of Honolulu
- Barbara Bennett, *For Kauai Magazine*, representing Kauai County
- Leslie Mullens, PlayBook Consulting Group, representing Maui County
- Kyoko Y. Kimura, Beach Club Consulting Company, LLC, representing Maui County
- Craig Takamine, Takamine Construction, Inc., representing Hawaii County
- Richard C. Lim, DBEDT Director, Voting Ex Officio Member

## **ACTIVITIES AND PROJECTS**

The following activities and projects were performed in 2013.

▪ **Website** – DBEDT’s website and the Board’s webpage were re-vamped as a result of Governor Abercrombie’s initiative to standardize all the State department’s websites. During 2013, the SBRRB’s webpages were regularly updated; see: <http://dbedt.hawaii.gov/sbrrb>.

▪ **Brochures and Evaluation Survey** – During 2013, a new Board Brochure and an Evaluation Survey were created for outreach purposes and to distribute at the board meetings. In addition, the Board updated and re-instituted its “Small Business Bill of Rights” brochure.

▪ **Press Releases and Articles** – A press release was sent out in September 2013 announcing this Board’s elected officers and members. As of the printing of this Report, it had not been published by any of the business publications.

▪ **RegAlert** – In 2013, the Board approved to create an investigative committee to review the re-activation of RegAlert. RegAlert is a small business regulatory alert system, created to assist in reducing the regulatory burden on Hawaii small businesses. Its intent is to allow the Board to serve as the “voice of small business” on both new and proposed administrative rules directly to the rule-making State and County agencies. Through RegAlert, business owners would be able to keep apprised of proposed rule changes on selected rules and given an opportunity to provide input to the agencies promulgating proposed and amended rules through the Board.

▪ **Meeting Schedule** – The Board agreed to meet the third Wednesday of each month in 2014, with the exception of December due to the holidays and January due to the conflict with the opening of the State of Hawaii legislative session.

**ADMINISTRATIVE RULE REVIEW**  
**REQUESTED BY SMALL BUSINESS**

During 2013, the Board has not been approached by small business owners in accordance with Section 201M-5 (f), HRS.

# **SECTION II**

## **LEGISLATIVE REVIEW**

The Board provided testimony on the following measures during the 2013 Legislative Session.

1. **Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015**

**Background:** At its February 2013 board meeting, the Board members unanimously supported this measure.

**Recommendation:** The recommendation by the Committee on Economic Development, Government Operations and House to Advise and Consent to the nomination was approved on April 22, 2013.

2. **Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014**

**Background:** At its February 2013 board meeting, the Board members unanimously supported this measure.

**Recommendation:** The recommendation by the Committee on Economic Development, Government Operations and House to Advise and Consent to the nomination was approved on April 22, 2013.

3. **Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board,**

**Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire  
June 30, 2016**

**Background:** At its February 2013 board meeting, the Board members unanimously supported this measure.

**Recommendation:** The recommendation by the Committee on Economic Development, Government Operations and House to Advise and Consent to the nomination was approved on April 22, 2013.

**4. Governor's Message No. 529, Submitting for Consideration and  
Confirmation to the Small Business Regulatory Review Board,**

**Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014**

**Background:** At its February 2013 board meeting, the Board members unanimously supported this measure.

**Recommendation:** The recommendation by the Committee on Economic Development, Government Operations and House to Advise and Consent to the nomination was approved on April 22, 2013.

**5. Governor's Message No. 530, Submitting for Consideration and  
Confirmation to the Small Business Regulatory Review Board,**

**Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30,  
2016**

**Background:** At its February 2013 board meeting, the Board members unanimously supported this measure.



**Recommendation:** The recommendation by the Committee on Economic Development, Government Operations and House to Advise and Consent to the nomination was approved on April 22, 2013.

**6. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015**

**Background:** At its February 2013 board meeting, the Board members unanimously supported this measure.

**Recommendation:** The recommendation by the Committee on Economic Development, Government Operations and House to Advise and Consent to the nomination was approved on April 22, 2013.

**7. Governor's Message No. 792, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Craig Takamine, for a term to expire June 30, 2016**

**Background:** At its April 2013 board meeting, the Board members unanimously supported this measure.

**Recommendation:** The recommendation by the Committee on Economic Development, Government Operations and House to Advise and Consent to the nomination was approved on April 22, 2013.

## **Appendix**

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 09-01

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

## CHAPTER 201M

### SMALL BUSINESS REGULATORY FLEXIBILITY ACT

#### Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact; small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business; consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

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

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

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

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

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

**§201M-2 Determination of small business impact; small business impact statement.** (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses

and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher

standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
  - (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
  - (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
  - (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
  - (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.
- (d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

**[\$201M-3] Small business statement after public hearing.**

(a) For any proposed rule that affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
  - (A) Attended the public hearing;
  - (B) Testified at the hearing; and
  - (C) Submitted written comments; and

- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

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

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

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

- (1) Specifically address each issue and concern raised in the board's request for a written response; and
- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

**[§201M-4] Advisory committee on small business; consultation process for proposed rules.** (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to

complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

**§201M-5 Small business regulatory review board; powers.**

(a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of nine members, who shall be appointed by the governor pursuant to section 26-34; provided that:

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



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

(c) **Except for the ex officio member**, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

**§201M-6 Petition for regulatory review.** (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;

- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

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

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

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

**§201M-7 Periodic review; evaluation report.** (a) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board; provided that, by June 30 of each year, each agency shall submit to the small business regulatory review board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

(b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section

at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the next regular session of the legislature. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6; am L 2012, c 241, §4]

**§201M-8 Waiver or reduction of penalties.** (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
  - (2) The violation was unintentional or the result of excusable neglect; or
  - (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
  - (2) When a violation involves willful or criminal conduct;
  - (3) When a violation results in serious health and safety impacts;
  - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
  - (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
  - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D).

(c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

**[\$201M-9] Executive order.** The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

## **2. Administrative Rule Review Matrix**

	Month/Year	Support	Oppose	No Comment/ No Action	Support w/Rec.	Sup. w/Res.	Support/ Oppose	Pending
FY 2000 to FY 2012		434	12	54	26	17	6	0
FY 2013	Jul-12	0						
	Aug-12	0						
	Sep-12	0						
	Oct-12	0						
	Dec-12	6		2				
	Jan-13	0						
	Feb-13	3						
	Mar-13	3						
	Apr-13	0						
	May-13	3		2				
	Jun-13	3						
FY 2014	Jul-13	0						
	Aug-13	5		1				
	Sep-13	0						
	Oct-13	3		1				
	Nov-13	1			1			
	Dec-13	3						
	Jan-14							
	Feb-14							
	Mar-14							
	Apr-14							
	<b>Totals</b>	<b>464</b>	<b>12</b>	<b>60</b>	<b>27</b>	<b>17</b>	<b>6</b>	<b>0</b>

### **3. Administrative Directive 09-01**





EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

October 29, 2009

**ADMINISTRATIVE DIRECTIVE NO. 09-01**

**To:** All Agency Heads

**Subject:** Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It rescinds Administrative Directive No. 99-02, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated August 2, 1999.

**Legal Reference:**

Section 91-3(c), Hawaii Revised Statutes, provides that, "the adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor."

Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

**Policy:**

Whenever any department or agency requests executive approval for the proposed adoption, amendment, or repeal of a rule, the director of the department or agency shall ensure that the proposed changes conform to existing legal provisions, including Chapter 91, Hawaii Revised Statutes. In requesting the adoption, amendment, or repeal of any rule, the director will explain or submit the following:

1. Explain the exact changes to be made and the purpose, reasons for the changes, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing.

2. Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.
3. Identify the final result expected by instituting the proposal (e.g. a program improvement/clarification of statute).
4. Identify any program and financial impacts on the State that will arise upon the implementation of the proposal to include:
  - a. Long- and short-range program impacts, and
  - b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period, and the assumptions used to arrive at the estimates.
5. Describe long- and short-term impacts to the public or the economy of the State.
6. Identify the alternatives explored in lieu of implementing the proposal.
7. Provide an explanation of whether the proposal will affect small business. For purposes of this Directive, a proposal will affect small business if the proposal will impact a for-profit enterprise consisting of fewer than 100 full-time or part-time employees and will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

If a proposal affects small business, the department or agency will describe:

- a. Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposal;
- b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule; and
- c. Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M.

Procedure:

1. Approval of the Governor is required prior to any rule change proceeding to a public hearing.

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

- a. Obtain the Attorney General's approval "as to form" prior to submitting the rule to me for approval for public hearing; provided that as to rules proposed for adoption, amendment, or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General. The Department of the Attorney General will complete its pre-hearing review on an expeditious basis;
- b. Provide the Governor's office with a copy of the proposed rule, including the information requested in "Policy" items 1 through 7 above; and
- c. At the time the rules are submitted to the Governor's Office, concurrently provide copies to the Director of Budget and Finance (B&F) and to the Director of Business, Economic Development and Tourism (DBEDT) for their prompt review. B&F and DBEDT comments will be forwarded directly to the Governor.

2. Notice of Public Hearings.

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

3. Final Approval After Public Hearing.

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

- a. Indicate whether any revision is being recommended to the proposed rule, amendment, or repeal based on facts and circumstances brought out in the public hearing;
- b. If a revision or change is recommended, provide a copy of the proposed rule with revisions and changes to the Attorney General for approval "as to form" prior to resubmitting the rule to the Governor for final approval; provided that as to rules proposed for adoption, amendment or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General.

The Attorney General's office will approve the form within two weeks of receipt if the changes are not substantive. If the changes are determined to be substantial or material by the Attorney General, an additional public hearing will be held.

If a re-hearing of a proposed rule is sought, the procedures required for approval to proceed to public hearing will again be followed;

- c. Indicate whether the proposal affects small business, and, if so, whether a "Small Business Statement," which provides the information described in HRS Chapter 201M, has been submitted to the Small Business Regulatory Review Board; and
  - d. Submit three copies of the proposal in standard format and in accordance with Chapter 91, HRS, for the Governor's final approval. The original and a copy of the rules adopted by the department or agency will be signed by the director of the department, by the chairperson of a board or commission of a principal department, or by the chairperson of a board or commission if the rule has been adopted by a board or commission which is assigned to a department for administrative purposes. The third copy may use a facsimile of the required signatures.
4. Distribution of Approved Adopted Rules.
- a. A complete set consisting of three copies approved by the Governor will be filed at the Office of the Lieutenant Governor.
  - b. The Office of the Lieutenant Governor will provide one copy to the agency adopting, amending, or repealing the rule.
  - c. Each department or agency adopting, amending, or repealing the rule will provide one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

LINDA LINGLE

APPROVED AS TO FORM:

  
Attorney General

***No. 1 Capitol District Building  
250 South Hotel Street  
Honolulu, Hawaii 96813***

***Telephone – (808) 586-2594***

***Facsimile – (808) 586-2572***

***Website: <http://dbedt.hawaii.gov/sbrrb>***

***Email: [sbrrb@dbedt.hawaii.gov](mailto:sbrrb@dbedt.hawaii.gov)***