

**SMALL BUSINESS
REGULATORY
REVIEW BOARD
ORIENTATION MANUAL**



STATE OF HAWAII • DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

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PART I

ADMINISTRATIVE

INFORMATION

Board Member Terms

Purpose: The Small Business Regulatory Review Board (SBRRB), which is administratively attached to DBEDT, was established on July 1, 1998 with the passage of the Hawaii Small Business Regulatory Flexibility Act (RFA). Pursuant to the RFA, the purpose and responsibilities of the SBRRB include:

- 1) Commentary on small business impact statements to the rule-drafting departments,
- 2) Identification and commentary on business impact of existing administrative rules,
- 3) Recommendations to the Governor's Office, Departments or the Legislature regarding the need for an administrative rule or legislative change,
- 4) Recommendations to the Mayors or County Councils regarding County rules, and
- 5) Review of small business petitions and complaints on business impact.

Restrictions: Sec. 26-34, Hawaii Revised Statutes (HRS) / **Number of Seats:** 11

Contact / Email / Phone: 1) Dori Palcovich / dori.palcovich@hawaii.gov / 808 586-2594

2) Jet'aime Ariola / jetaime.k.ariola@hawaii.gov / 808 798-0737

Meeting Location/Duration/Frequency:

Meeting Location: Leiopapa A Kamehameha Building – State Office Tower 235 S. Beretania Steet, Conference Room 405, Honolulu, HI 96813 (Subject to Change)/ Board meetings are held remotely through ZOOM and in person.

Meeting Frequency: Monthly / Third Thursday of the month

Meeting Time: 10:00 AM

Meeting Duration: Approx. 2 - 4 hours

Chairperson: Mary Albiz / Vice Chair: Robert Cundiff / Second Vice Chair Jonathan Shick

Legal Authority: Chapter 201M, HRS / **201M-5(b)(8), HRS – “There shall be at least one representative from each county.”**

Membership:

Member Name	Initial Appointment Date	Second Appointment Date	Term Ends	Term #	Seat / Representing	Remarks
Gomes, Tessa	4/2022		6/30/2026	1	Senate / Oahu (C&CH)	1 st Term
			6/30/2023	1	Senate	
Atmospera-Walch, Dr. Nancy	4/2015	7/01/2016/2020	6/30/2024	2	Senate / Oahu (C&CH)	2 nd Term
Morioka, Sanford	4/2022		6/30/2027	1	House / Oahu (C&CH)	2 nd Term
Lee, James Kimo	4/2019	4/2022	6/30/2024	2	House / Hawaii County	2 nd Term
Shick, Jonathan	4/2019	4/2022	6/30/2026	2	House / Oahu (C&CH)	2 nd Term
Yamanaka, Garth	4/2015	4/2019	6/30/2023	3	Governor / Hawaii County	3 rd Term
Cundiff, Robert	4/2015	7/01/2016/2020	6/30/2024	2	Governor / Oahu (C&CH)	2 nd Term
Mary Albiz	4/2018	6/2020	6/30/2024	2	SBRRB / Maui County	2 nd Term
William Lydgate	4/2018	4/2022	6/30/2026	2	SBRRB / Kauai County	2 nd Term
DBEDT, Director	NA	NA	NA	s	DBEDT	Ex Officio Voting Member

Board Member Resumes

Experience

Island Art Party – December 2018 – Present, Owner

Responsible for the overall success of the business and primarily responsible for the marketing, private event sales, operations, inventory ordering, accounting and customer experience.

Hawaii Pacific Parks Association – October 2017 – January 2019,

Haleakala National Park - Sales Associate/Interpretation

Responsible for souvenir displays and sales, answering visitor questions, promoting safe enjoyment of the park, and assisting with year-end inventory counts

FocalPoint Business Coach July 2016 – Present, VP of Business Development

Responsible for keeping sales funnel full and promoting FocalPoint Business Coaching in the community. Responsible for scheduling workshops and trainings.

Kainos Home and Training Center August 2012 – July 2016

Production, Sales and Marketing Coordinator

Was responsible for bringing in contract assembly, mailings, production, small parts cleaning and shrink-wrapping jobs for our clients with developmental disabilities. Within 3 months we had 100% time on paid work through my departure in July of 2016. Also, responsible for general marketing of the agency in coordination with the development office. Results included numerous monetary and in-kind donations for various events put on by the agency.

Jigsaw Java, Inc. Jan 2008 – December 2012

Founder and CEO; Created and built the concept of a shop that combines the ambience of Starbucks with the fun and enjoyment of a tranquil amusement park. The shop's focus was Jigsaw Puzzles and other puzzles and games that stimulated the brain; hosted events such as birthday and celebration parties; social, professional, and corporate meetings; team and skills building; and educational and developmental activities.

Ernst & Young, LLP and Global Tax Network, LLP 2001 – 2008, Tax Paraprofessional

Responsible for office administration supporting completion of Expatriate Tax Returns and Consulting Projects. Responsible for Community Involvement Activities.

Community Association for Rehabilitation (CAR, Non-Profit) 1998 – 2000, Manager of Supported Employment Program

Rehab Manager, Employment Program for Adults with Developmental Disabilities.

Responsible for locating employment, training, and support for Adults with Developmental Disabilities. Managed support staff, scheduling, billing and reports to the Department of Rehabilitation.

Education

Santa Clara University, BS, Sociology 1980 – 1984

Activities and Societies: Santa Clara Community Action Program (coordinator of Tutor Exchange Program 1983-84), Women's Rugby Club

Associations

Small Business Regulatory Review Board, State of Hawaii (2018-present)

Rotary Club of Upcountry (2016-present),

Rotary Club of Peninsula Sunrise (President 2011-12, Treasurer 2012-2016)

Rotary District 5000 and 5150 (Asst. Governor 2013-2015, 2019-2020, Secretary 2015-2016,

Youth Services Chair 2015-2016, RYLA Director 2015-2016, 2018-present)

Redwood City Downtown Business Group (Board Member 2010 through 2016)

BNI (Bus. Networking Int'l) (2008-2012, 2016-Present, Various Leadership positions)

Nancy Atmospera-Walch

Nancy Atmospera-Walch received both an associates' degree and a bachelor's degree from the School of Nursing, an M.P.H. in Health Education, and a DNP (Doctor of Nursing Practice) all from the University of Hawaii at Manoa. She is an RN (Registered Nurse) and is licensed as an NHA (Nursing Home Administrator).

Dr. Atmospera-Walch is the owner and sole proprietor of AIM Healthcare Institute and president and chief executive officer of Advantage Health Care Provider, Inc. In addition, she has received numerous certifications, awards and honors over the years. She is also a member of several professional organizations.

Robert Cundiff, Biography

Robert Cundiff is a Principal with Lokama Group, a Business Management Consulting firm based in Hawaii, and is currently assisting in Business Development with Hawaiian Legacy Hardwoods (HLH) and the Hawaiian Legacy Reforestation Initiative (HLRI), along with providing support to the Agriculture and Logistics/Distribution Industries. He is past President of Rengo Packaging, Inc., a corrugated packaging manufacturer and diversified packaging provider to Businesses in Hawaii and the Pacific Rim. Former President of Hawaii Box & Packaging, Inc. prior to the acquisition by Rengo Co. Ltd.



Retired as General Manager of Weyerhaeuser, a national and international containerboard packaging and recycling business established in 1900, in 2008 with the closure of the Honolulu packaging plant. Weyerhaeuser's Honolulu facility provided Hawaii and the Pacific Rim with packaging solutions for more than 50 years, and Rob spent 26 years with Weyerhaeuser.

While with Rengo Packaging, Rob was instrumental in bringing corrugated manufacturing back to Hawaii with the construction of a 160,000 sq ft manufacturing facility in Kapolei, Hawaii in 2014.

Rob has a BA, Business and Economics, Magna Cum Laude, from Hawaii Loa College (now Hawaii Pacific University) and post Graduate certificate from Tokai University in Japan. While living in Japan, Rob conducted several basketball clinics with major universities, caddied for a Professional Golfer in the JPGA, worked with Honda Racing Company and played basketball in the premier Tokyo League with Pierce Arrow.

Rob was a scholar-athlete throughout college earning the Ward F. Mardfin Award for Excellence in Business and Economics, NAIA First Team All-District 29 and Honorable Mention to the NAIA All-American Basketball Team in his Senior year.

Active in many community organizations, he has served on the Boards of the Hawaii Employers Council (Chairman), Board of Water Supply (Mayoral appointment and City Council confirmation), Junior Achievement of Hawaii, 200 Club and Kailua Little League (President & Safety Officer). Rob currently serves on the Board of Parks & Recreation for the City & County of Honolulu (Mayoral Appointment and City Council Confirmation), the Small Business Regulatory Review Board (Governor Appointment and Senate Confirmation), Executive Committee Board member of Ahahui Koa Anuenuue (AKA), June Jones Foundation and the Polynesian Football Hall of Fame Advisory Board. In addition, Rob has been a volunteer Manager and Coach with youth basketball, baseball and soccer for over 10 years.

Rob has 3 children and resides in Hawaii, where he was born and raised.

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Rob has 3 children and resides in Hawaii, where he was born and raised.

TESSA GOMES

• wedding and event planner •

ABOUT ME

I love a good challenge, and believe that if I can bring a useful skill to the table, why wouldn't I? I'm a hard worker, successful business owner, and above all else - a mother and a wife. My family is my highest priority, always.

EDUCATION

- University of Hawaii at Manoa, Management & Marketing, Economics
- Kapiolani Community College Culinary Arts
- Punahou School,

EXPERIENCE

2021 Fred and Kate Events

Owner, Principal Designer

- Owns and manages a wedding and event planning company on Oahu since 2014
- Client management, vendor management, and logistics
- Troubleshooting, problem solving, managing wedding crisis

2019 Gourmet Events Hawaii

General Manager

- Responsible for day to day employee relationships, sales goals, budget, etc.
- Long term goals and strategic planning for GE and its sister company
- Oversaw and managed up to 900 events per year

2004 The Wedding Cafe

General Manager

- Managed The Wedding Café as it grew from 1 business to 3 businesses.
- Responsible for recruiting, hiring and training staff to fit the brand

Other previous jobs include: Front Service Manager at the Hilton Hawaiian Village, Manager at Canada 3000 Airlines, Rich International, and Aloha Airlines.

SKILLS

- Extensive recruitment and training experience
- Current Vice President for Holy Nativity School Board of Directors
- Current Secretary for Oahu Wedding Association Board of Directors
- Former PTO President at Holy Nativity School
- FUN FACTS: I love wedding cake, I'm an extroverted introvert, and I can do ice carvings!

JAMES KIMO LEE

233 Akala Road, HI 96720 Phone: 808-896-6770 Email:
kimoleejr@gmail.com **OBJECTIVE**

Proven local developer and collaborative community leader seeks position in a dynamic organization committed to advancing the health and future of our Hawai'i Island community.

EDUCATION Chaminade University, Honolulu, HI

Bachelor of Arts in Business Administration

Hawaii State Real Estate License

ACTIVITIES

May 1987 1982-1992

- Small Business Regulatory Review Board - *Board Member 2019 to present*
- Japanese Chamber of Commerce & Industry Hawai'i - *Board Member 2010-2016*
- Hawai'i Island Chamber of Commerce – *Member since 2010*
- State Historic Preservation - Hawai'i Island Burial Council – *Board Member 2009 to 2015*
- Hawai'i Leeward Planning Conference – *Member*
- Hawai'i County Fire Commission – *Member 2006 to present*
- Historic Hawai'i Foundation – *Board Member 2013 to 2015*
- Catholic Church Land Asset Management – *Board Member-2006 to present*
- Hawai'i Health Systems Corporation – *East Hawai'i*

Regional Board Member – May 2016 to present **WORK EXPERIENCE** **W.H. Shipman, Ltd – Kea’au HI June 2005 – present** *Director of Development*

- Responsible for management of 17,000 acres of kama’aina family-owned Shipman lands dating back to 1882 in the Puna District of Hawai’i Island and in Oregon.

- Responsible for planning, management and development of all industrial, commercial, agricultural and residential properties. Ensure that properties are maintained and operated in a manner that is in the best long term interest of the company, consistent with its commitment to be a good corporate citizen. Oversee property management and maximize cash flow.

- Work directly with the Board of Directors to create long range development plans. Engage community and government in land stewardship activities, commercial/industrial development and leasing, and agricultural leasing for variety of Shipman properties including farmlands, the W. H. Shipman Business Park, Kea’au Village town center, and Durham Hall Business Park and Cipole Business Park in the SW Portland suburb of Tigard, Oregon.

- Develop and facilitate long range sustainability and planned development for balanced community use for Kea’au lands – a mix of agriculture, commercial, office, industrial, residential and conservation uses with strong municipal and government services.

- Manage Shipman Industrial Park and Kea’au Village town square with a rigorous approach to architecture, balanced development of services and careful, place-based land planning. Coordinated Kea’au Community Master Plan to include facilitation of community focus groups, construction and development of a number of new building projects designed to create a healthy, vibrant Kea’au community, including the HMSA Building, Long’s Drugs new town center, and the restoration and plantation-centric design of DOE Complex buildings.

- Cultivate community-based partnerships with local farmers, businesses and local, county and state government entities land to incubate new agricultural businesses, ensuring agricultural diversity

and start-up farming, offering strong infrastructure, and land license terms [L][SEP]

- Ensure that properties are maintained and operated in a manner that is in the best long term interest of the company, consistent with its commitment to be a good corporate citizen. [L][SEP]

- Oversee property management and maximize cash flow. [L][SEP]

- Develop internal and external partnerships, participate in community outreach activities, and advance [L][SEP] legislative advocacy initiatives. [L][SEP]

Oceanside 1250/Hokulia SEPT 2000 - JUNE 2005

Vice President of Development

- Involved in planning, managing and budgeting development of project. [L][SEP]

- Coordinate Federal, State, County and local officials, consultants (archeologists, kahu, cultural resource [L][SEP] managers) and community on development plans, approvals and necessary implementation of policies [L][SEP] and procedures. [L][SEP]

- Manage team of 60 direct reports, in addition to management of daily activities of onsite consultants, [L][SEP] contractors and development team. [L][SEP]

- Prepare and present reports to government agencies, community groups, consultants and community to [L][SEP] ensure open, direct and honest communication about the project. [L][SEP]

JGL Enterprises OCT 1992 – SEPT 2002

Executive Vice President of Real Estate Development

- Responsible for securing land, negotiation of land purchases, processing of entitlements, securing site and building construction contracts and securing permanent financing for a Real Estate Development company on Oahu and Maui. [L][SEP]

- Worked closely with City and County to bring projects to fruition in a seamless and coordinated way. [L][SEP]

- Projects included Makakilo Cliffs on Oahu and Keonekai Villages on Kihei, Maui. [L][SEP]

Consulted and negotiated with lessor and lessee' percentage lease and common area maintenance fees. [L] [SEP]

Managed legal, planning, design, marketing, sales, construction and maintenance staff.

[L] [SEP] **Department of Housing and Community Development, City & County of Honolulu JUNE 1989 – SEPT 1992** [L] [SEP] *Housing and Community Development Specialist*

Responsible for securing funding and design approval through City Council. [L] [SEP]

Prepared request for proposal, secured contractor and managed development and budget of project. [L] [SEP]

Prepared and processed 201e application for building code exemptions. [L] [SEP]

Inspected and reported on-site and house construction required for monthly draw request and daily status [L] [SEP] reports. [L] [SEP]

Negotiated lessor's percentage lease and common area maintenance fees. [L] [SEP]

Reviewed and approved eligibility requirements for low to moderate tenants. Coordinated variety of [L] [SEP] initiatives around conceptual designs, advertising, construction and rental of units and leasing of commercial spaces.

[L] [SEP] **Hawai'i State Senate-Judiciary Committee NOV 1988 – JAN 1989** [L] [SEP] *Budget/Legislative Analyst* [L] [SEP]

Researched and prepared fact sheets and drafted bills for proposed laws. [L] [SEP]

Made recommendation to Chairman involving State funding, reviewed Judiciary administration, staffing [L] [SEP] and budget. [L] [SEP]

Addressed constituent's concerns and charted progress of budget and expenditures of community [L] [SEP] improvements. [L] [SEP] **South**

Pacific Properties AUGUST 1986 – OCT 1988 [L] [SEP] *Assistant Project Manager/Property Manager* [L] [SEP]

□ Assisted in negotiating architectural specifications, design, floor plans, and construction contracts for site work, house construction, drapes, appliances, and landscaping.

□ Provided reports of onsite construction and assisted in preparing project cash flows. [L] [SEP]

□ Initiated condominium association with homeowners, reviewed market appraisals, construction costs and [L] [SEP] loan package.

The Gentry Companies FEBRUARY 1983 – JULY 1986

[L] [SEP] *Leasing Agent/Property Management Trainee*, [L] [SEP]

□ Negotiated and executed contracts for lease of industrial park lots and buildings including presentation of lots or building, negotiations of percentage lease, common area maintenance, terms, rent collection, terms of delinquency, termination of contracts.

[L] [SEP]

□ Prepared pro forma of maintenance schedule and suggested recommendations to Property Manager regarding maintenance contracts and staffing requirements.

CHARACTER PROFILE [L] [SEP]

□ Native Hawaiian community collaborator, strong multi-tasking ability, flexible, motivated, creative, driven, high level of personal integrity, and eager to learn. [L] [SEP]

□ Excellent organizational, time management, budgeting and communication skills. [L] [SEP]

□ Collaborative, inclusive, transparent team player skilled at building and nurturing relationships. [L] [SEP]

□ Good listener and results-oriented leader. [L] [SEP]

□ Work well independently and under pressure. Highly engaged in local business community and [L] [SEP] committed to promoting the advancement of growth opportunities on Hawai'i Island. [L] [SEP]

Will Lydgate Bio
12/6/2017

About Will Lydgate

Will Lydgate is a leader in the new Hawaiian specialty chocolate industry. A chocolate educator, Ag-Tourism pioneer, and farmer of chocolate that has been rated among the best in the world by the Cocoa of Excellence Awards, Will speaks on topics that hold the key to transforming our cultural relationship with chocolate and revitalizing agriculture in HI.

Fresh from his Tedx talk titled *Changing the way we think about Chocolate*, Will's mission is to spread the much-needed message that dark chocolate is not only delicious---one of the most powerful health foods known to man, it also holds an important key to the future prosperity of the Hawaiian islands.

Will is from the island of Kauai, HI where his family first emigrated in 1867, making him the fifth-generation of Hawai'i Lydgates. Will hosts popular chocolate farm tours and tastings five days per week at his Steelgrass Farm in Wailua. In addition to chocolate, his farm raises award-winning honey, vanilla, and tropical fruits.

Will is a founding member of the Hawaii Chocolate and Cacao Association and additionally is an accomplished instrumental performer, music producer, and educator.

Sanford Morioka

sanford@ee3.com

(808)372-4294

COMPANY: Edward Enterprises, Inc.
TITLE: President
ADDRESS: Physical: 240 Puuhale Road #101 Honolulu, HI 96819

EDUCATION BACKGROUND:

Graduate of Iolani School
BBA from University of Portland
- Marketing/Management

WORK HISTORY:

Wallace Computer Services, Inc – 1989 – 2000
- Portland, OR – Account Executive
- Seattle, WA – Sr. Account Executive, Major Accounts
K/P Corporation – 2000 – 2002
- Seattle WA – Account Executive
Edward Enterprises, Inc. – 2002 – Present
- Honolulu, HI

I've been in the Printing Industry for 32 years. I Spent 17 years in the Pacific Northwest – 4 years in college at the University of Portland, 13 years in the printing industry. I returned back to Hawaii in 2002, and have spent the last 19 years with Edward Enterprises.

With Edward Enterprises, I have held the following positions:

- Account Executive
- Business Development Manager
- Vice President, Business Development
- Sr Vice President, Chief Sales Officer
- President

PREVIOUS SERVICE ON BOARDS/COMMITTEES:

U/H Shidler Alumni Board of Directors
Hawaii Food Manufacturer's Association – Marketing Committee
Postal Customer Council Hawaii – Board of Directors

CURRENT SERVICE ON BOARDS:

Edward Enterprises, Inc – Board of Directors
Palama Settlement – Executive Board of Directors
Honolulu Japanese Chamber of Commerce – Board of Directors

Mark Ritchie

Mark Ritchie is the designated representative for the Director of the Department of Business, Economic Development and Tourism (DBEDT), and serves as the ex officio voting member for the Small Business Regulatory Review Board.

Mark joined DBEDT in 2015 as a Branch Chief for the Business Support Services. He works on a number of economic development programs including - Community-based Economic Development (CBED), which includes grants and loans for small businesses; Enterprise Zones, which gives businesses tax benefits in exchange for job creation; and HiSTEP (Hawaii State Trade Expansion Program), which assists Hawaii companies with exporting products and services to larger markets outside the state.

Prior to DBEDT, Mark held positions in a Hawaii Life Science start-up, a major Silicon Valley tech company, in addition to economic development positions in several global trade and inward investment organizations. Mark holds a BA in political economy from UC Berkeley and a master's degree in international business from the Fletcher School, Tufts/Harvard Universities.

Jonathan Shick, PE, CCM, PMP, CSRP, RRO, STS

jonathans@ponocg.com
99-1790 Hoapono Pl * Aiea, HI 96701 * 808-321-0697

- PROFILE**
- ~ Results-oriented construction and consulting professional with 13+ years in healthcare, condominium, hospitality, residential, and renewable energy industries with a strong emphasis in structural and building envelope construction.
 - ~ Verifiable track record of successful completion of multimillion dollar projects through active involvement of all aspects of project from inception through owner occupancy.
 - ~ Actively involved in all phases of construction projects from development, assessment, engineering, and construction, seeking to bring exceptional quality and value to clients.
 - ~ Exceptional client relationships through business development and marketing campaigns in new target markets.

PROFESSIONAL EXPERIENCE

PONO CONSULTING GROUP, LLC Honolulu, HI February 2015 to Present
Owner – Develop lasting solutions through innovative and collaborative efforts during all phases of construction from condition assessment and initial conceptual design thru complete engineering and design and delivery of construction project while focusing on quality and service. Services include condition assessment and design services, construction management, project management, quality assurance, and third-party peer review, observation, and testing.

Key Projects with Pono Consulting Group:

1450 Young Street - Exterior Façade Renovation, Honolulu, HI

Construction Value: Estimated at \$1.5 Million. Provide construction management services acting as Owner's Representative for the exterior renovation of a 28-story condominium, including spall repair, exterior coatings, sealant replacement, and deck coatings.

- Act as Owner's representative providing coordination between client and designer and contractor
- Quality Assurance observation and documentation services of work being performed and materials installed

Waikiki Banyan – Fire Alarm Upgrade, Waikiki, HI

Construction Value: \$890,000. Provide construction management services acting as Owner's Representative for the upgrade of the existing fire alarm system at the 832-unit Waikiki Banyan Condominium in Waikiki.

- Act as Owner's representative providing coordination between client and contractor
- Quality Assurance observation and documentation services of work being performed and materials installed
- Troubleshooting and resolution of design/installation issues due to existing conditions

Maile Terrace - Exterior Building Envelope Renovation, Honolulu, HI

Construction Value: Estimated at \$2.5 Million. Provide turnkey construction management services for complete building envelope renovation of two residential buildings including roofing, spall repair, waterproof coatings, railing replacement, sealant replacement, and painting.

- Pre-construction services including assessment and design of repair solutions, education and guidance to client to determine path forward for repair scopes, contractor pre-qualification, bidding, and contract management services
- Construction phase services including coordination with designers, manufacturers, and contractors for submittal processing, quality assurance observations and reporting, project management, coordination meetings, project close out services

OPTERRA ENERGY SERVICES Honolulu, HI

February 2015 to Sept 2017

Construction Manager – Responsibilities include initial conditions assessments, development of construction drawings and specifications to facilitate bidding and permitting of construction projects, construction management services including overseeing all aspects of construction activities on multiple sites, coordination with various Dept. of Education (DOE) entities. Developed, implemented, and maintained project schedule across multiple sites and multiple contractors. Provide quality assurance and daily management of multiple contractors across multiple sites. Perform daily task and production reporting to DOE and project stakeholders.

Key Projects with OpTerra Energy Services:

Hawaii Dept. of Education – Ka Hei Program, Various Schools, HI

Construction Value: Estimated at \$200 Million. Comprehensive energy conservation program aimed at reducing DOE utility expenses through the implementation of energy reduction measures including Solar PV, lighting retrofit, plug load reduction, mechanical optimization, water conservation, and Net-Zero Energy sites.

- Management of Phase 1 of program – Installation of Rooftop and Parking Canopy PV systems at all public school in the State of Hawaii, including 1 MW of parking lot canopy projects and ~7 MW of rooftop PV deployment and associated roofing rehabilitation and retrofit
- Projected \$62 Million in energy savings from deployment of solar PV

ALLANA BUICK & BERS, INC Honolulu, HI

June 2011 to February 2015

Senior Consultant – Responsibilities include initial conditions assessments, development of construction drawings and specifications to facilitate bidding and permitting of construction projects, business development and marketing, construction administration services, solar project development, engineering, and construction, fostering new and existing client relations to build new opportunities and maintain existing opportunities.

Key Projects with Allana Buick & Bers:

USS Bowfin Museum – Solar Energy Collectors, Pearl Harbor, HI

Construction Value: \$910K. Full-service project management for installation of 178 kW solar PV system at USS Bowfin Museum at Pearl Harbor.

- First design-build contractor model completed by firm
- Successful design and installation of integrated roofing and solar PV solution to provide customer with 70% offset of electric usage

The Imperial Plaza – Exterior Curtainwall Firesafing Installation, Honolulu, HI

Construction Value: \$1.9M. Construction management and monitoring services for the installation of remedial exterior curtainwall firesafing as part of litigation settlement.

- On-time completion of project at a project savings of ~35%
- Expeditious resolution of construction issues to maintain code compliance and construction schedule while ensuring the highest level of resident satisfaction

Hale Kulanui – Exterior Spall Repair, Coatings, and Railings, Honolulu, HI

Construction Value: \$1.4M. Project Construction Administration and Management services to ensure contractor compliance with construction documents, maintain client relationships with residents and property manager.

- Successful resolution of construction issues to facilitate exterior renovation
- Provide innovative solutions to existing building conditions including parking deck coatings, structural concrete repairs, domestic piping replacement

DRI COMPANIES Irvine, CA

July 2009 to May 2011

Project Manager – Responsibilities include maintaining project records, scheduling, RFIs, submittals, estimating, business development, and safety, ensuring highest levels of quality control while maintaining project costs and schedules. Collaborate with design engineers in developing roofing details, fall protection systems, and structural design packages. Foster an atmosphere of staff development through technical training, safety seminars, peer-to-peer coaching, and ongoing customer relationships. Developed, implemented, and maintained project schedule across multiple sites and maintained direct coordination of project activities with multiple stakeholders. Responsible for daily production and quality control reports per USACE CQM standards.

Construction Projects with DRI:

NAVFAC - Pearl Harbor: Install PV Systems, Pearl Harbor, HI

Contract Value: \$10.8M. Oversaw installation of 2.6 MW of solar systems on multiple facilities within Pearl Harbor.

- Largest PV installation on Oahu at time of install
- Recipient of first NAVFAC – Hawaii Quarterly Safety Recognition, 4th Quarter 2010

NASA - Johnson Space Center: Hurricane Ike Roof Repairs, Houston, TX

Contract Value: \$8.4M. Daily on-site project management and project administration, overseeing all aspects of construction, ensuring complete adherence to contract documents and manufacturer's guidelines.

- First construction project to be released under ARRA funds
- Successful replacement of roofing systems while maintaining full operation of critical mission facilities without interruption

KITCHELL CONTRACTORS, INC Phoenix, AZ

June 2005 to July 2009

Assistant Superintendent – Site Construction Management including: collaboration with clients, vendors, subcontractors, and design teams. Implemented conflict resolution and coordination of all aspects of construction and reconstruction efforts, including safety and quality compliance of over \$100M worth of scope. Developed, implemented, and maintained project schedule across multiple stakeholders, phases, and contractors. Maintained adherence to specifications and manufacturer's guidelines by developing Quality Assurance program for all aspects of construction, including exterior coating system and roof replacement. Daily site management of field activities including exterior façade, windows, roofing, structural steel, and interior finishes.

Construction Projects with Kitchell:

Marian Medical Center - Hospital Expansion Project, Santa Maria, CA

Contract Value: \$145M. Oversaw structural steel erection and metal decking, exterior envelope coordination, 3D modeling coordination, provided quality assurance for all aspects of construction and design review.

- Completion of structural steel skeleton 1 month ahead of schedule, reducing overall project costs by approximately \$1 million

St. John's Regional Medical Center - Defects Repair, Oxnard, CA

Original Contract Value: \$200M. Transformer Replacement (\$450K), Emergency Power Upgrade (\$3M), Roof Replacement (\$4M), Elastomeric Coating (\$8M), AHU Replacement(\$2M). Responsible for managing all aspects of building envelope reconstruction, including roofing, exterior skin and windows, below grade waterproofing, and exterior coating.

- Largest healthcare remediation project in US at the time
- Sarnafil Project of the Year 2007
- 2nd Place BASF Global Project of the Year

St. Rose Hospitals - San Martin Campus, Las Vegas, NV

Contract Value: \$81M. Oversaw interior construction including millwork, plumbing and electrical, medical equipment, and operable fire doors.

- Implemented quality assurance program for successful completion of interior and exterior building punch list

EDUCATION

Master of Civil Engineering (Structural) - Norwich University - 2009
Bachelor of Science Civil Engineering – Clemson University – 2005
 Minor - Environmental Engineering
 Bilingual - English and Spanish

PROFESSIONAL QUALIFICATIONS

Professional Engineer, CA: C82170
 Licensed General Contractor, HI: CT-32664
 Certified Construction Manager: 10/2017
 Registered Roof Observer: 08/2015
 Certified Solar Roofing Professional: 10/2012
 Project Management Professional: 03/2011
 Safety Trained Supervisor: 04/2011
 USACE Construction Quality Management: 09/2009
 OSHA 30-Hour Construction Safety: 06/2017
 Building Science Seminar, Vancouver, BC: 10/2008
 Johns Mansville Built-up Roofing Systems Institute: 10/2011
 Member: Project Management Institute
 Member: American Society of Civil Engineers
 Member: Structural Engineering Institute
 Member: Chamber of Commerce of Honolulu
 Member: RCI, Inc
 Member: Construction Management Association of America

HONORS AND ACTIVITIES

Sales and Marketing Executives International: Attend monthly events to develop new opportunities and expand clientele base and improve sales techniques
Honolulu Chamber of Commerce: Active member in Young Professionals Organization focusing on improvement of business skillsets and development
West Oahu Professionals Network: Local Business Networking Group to expand business opportunities and outreach to community
Presbyterian College: Organized Lacrosse Club which led to varsity program
Clemson Club Soccer: President 2003-2004, Vice President 2003. Organized second largest invitational tournament in the country for collegiate club soccer
Translator: Mission Trip to Honduras Summer 2003, 2004, 2005
Kitchell: Emerging Leaders Program: 2008-2009
Kitchell: QA Building Envelope Series: 2007
OpTerra: Hawaii Hau'oli Award for exceeding customer expectations
Allana Buick & Bers: 2013 Employee of the Year – Hawaii Office

**Garth Yamanaka
Yamanaka Enterprises, Incorporated**

I. Bio

Garth first got his start in real estate as a commercial investor in 1999. After graduating from the University of Hawaii-Hilo with a degree in Marine Science, he started a career in the residential appraisal profession by training in Las Vegas, Nevada, in 2001. In 2006, he created his own appraising company, G&H Appraisals Inc., and in 2007, received his SRA designation from the Appraisal Institute.

Building on his foundation as a real estate appraiser for almost a decade, Garth decided to join Yamanaka Enterprises, Inc. as real estate agent as well. His role at Yamanaka Enterprises, Inc. includes doing both commercial and residential sales, as well as being the property manager for residential, commercial, industrial, and large agricultural parcels.

In addition, Garth is an active member of the Rotary Club of South Hilo, Treasurer of the Rotary Club of South Hilo Foundation, board member of the Kanoiehua Industrial Area Association (KIAA) and Hawaii Island representative on the State of Hawaii Small Business Regulatory Review Board.

II. Education/Training:

- A. University of Hawaii-Hilo, Bachelor of Science Degree, Marine Science
- B. Post Graduate Studies with emphasis in area of Residential Appraisal from the Appraisal Institute. Received SRA designation from the Appraisal Institute in 2007.
- C. Hawaii Certified Residential Appraiser License obtained in 2007 requires 28 hrs of continuing education every 2 years.
- D. Hawaii Real Estate License obtained in 2011 requires 20 hrs of continuing education every 2 years.

III. Business Positions:

- A. 2001 – 2006: Wade & Associates, Las Vegas, Nevada - Appraiser
- B. 2006 – Present: G & H Appraisals Inc., Hilo, Hawaii - Owner and appraiser

- C. 2014 – Present: Kam Ave Holdings LLC, Hilo, Hawaii – Owner
- D. 2011 – Present: Yamanaka Enterprises Inc., Hilo, Hawaii – Vice President, Property Manager, Sales Agent

IV. Real Estate & Business/Associations/Professional Organization:

- A. 2007 - Present, SRA Designated Member of the Appraisal Institute
- B. 2011 - Present, National Association of Realtors (NAR)
- C. 2012 - Present, Board member Kanoelehua Industrial Area Association
- D. 2013 - Active member Rotary Club of South Hilo
- E. 2014 – Present, Treasurer, Rotary Club of South Hilo Foundation
- F. 2015 – Present, Board member Small Business Regulatory Review Board

DBEDT Staff List and Duties

<i>Staff</i>	<i>Title</i>	<i>Address</i>	<i>Phone</i>	<i>E-mail</i>	<i>Areas of Assistance</i>
Dori Palcovich	DBEDT / Economic Development Specialist / Director's Office	250 S. Hotel Street, 5 th Floor P.O. Box 2359 Honolulu, HI 96804	(808) 586-2594	dori.palcovich@hawaii.gov	Substantive and novel questions about Board procedures and policy; substantive research requests; questions about HAR, HRS, legislation & testimony.
Jet'aime Ariola	DBEDT / Program Specialist	250 S. Hotel Street, 5 th Floor P.O. Box 2359 Honolulu, HI 96894	(808) 798-0737	jetaime.k.ariola@hawaii.gov	Manages the SBRRB's program and operations, provides administrative services to the Administrator, the SBRRB Chair and members, and acts as liaison with other State and County agencies, small business, community organizations and members of the general public.
Alison Kato	Deputy Attorney General / Office of the Attorney General	425 Queen St. Honolulu, HI 96813	(808) 586-1180	alison.s.kato@hawaii.gov	Legal questions including Sunshine Law meeting rules, interpretation of statutes & rules.
SBRRB		Website address: http://sbrrb.hawaii.gov/		DBEDT.sbrrb.info@hawaii.gov	

PHONE CALLS TO STATE GOVERNMENT

You can use the following toll-free access lines to call State government.

Dial as follows 1 (808):

- From Hawaii, 974-4000 (+ State extension)
- From Kauai, 274-3141 (+ State extension)
- From Maui, 984-2400 (+ State extension)
- From Molokai/Lanai, 1-800-468-4644 (+ State extension).
- State extension = last 5 digits of local phone no.

Discussion Leader Assignments

DISCUSSION LEADER ASSIGNMENTS

(SBRRB / SBRRB / Members / DiscussionLeaderAssignments 2024)

1. Office of the Governor <http://governor.hawaii.gov>

Address: Governor Josh Green, M.D.
Executive Chambers
State Capitol
Honolulu, HI 96813

Phone: (808) 586-0034
Fax: (808) 586-0006

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Mary Albitz

2. Office of the Lieutenant Governor <http://ltgov.hawaii.gov>

Address: Lieutenant Governor Sylvia Luke
State Capitol, Fifth Floor
Honolulu, HI 96813

Phone: **Oahu/** (808) 586-0255
Maui/ 984-2400 ext. 60255
Hawaii/ 974-4000 ext. 60255
Kauai/ 274-3141 ext. 60255
Molokai/Lanai/ 1(800) 468-4644 ext. 60255
Fax: (808) 586-0231

Discussion Leader: Mary Albitz
Back-up Discussion Leader: Garth Yamanaka

3. Department of Accounting & General Services <http://ags.hawaii.gov>

Address: Keith Regan, Comptroller
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 586-0400
Fax: (808) 586-0775
Email: dags@hawaii.gov

Discussion Leader: Mark Ritchie
Back-up Discussion Leader: Mary Albitz

4. Department of Agriculture <http://hdoa.hawaii.gov>

Address: Sharon Hurd, Chairperson
Board of Agriculture
1428 South King Street
Honolulu, HI 96814

Phone: (808) 973-9550
Fax: (808) 973-9613
Email: hdoa.info@hawaii.gov

Discussion Leader: Will Lydgate
Back-up Discussion Leader: James Kimo Lee

5. Department of the Attorney General <http://ag.hawaii.gov>

Address: Anne Lopez, Attorney General
Hale Auhau
425 Queen Street
Honolulu, HI 96813

Phone: (808) 586-1282
Fax: (808) 586-1239

Discussion Leader: Will Lydgate
Back-up Discussion Leader: Robert Cundiff

6. Department of Budget & Finance <http://budget.hawaii.gov>

Address: Luis Salaveria, Director Phone: (808) 586-1518
P.O. Box 150 Fax: (808) 586-1976
Honolulu, HI 96810 Email: HI.BudgetandFinance@hawaii.gov

Discussion Leader: Mark Ritchie
Back-up Discussion Leader: Garth Yamanaka

7. Public Utilities Commission..... <http://puc.hawaii.gov>

Address: Leo R. Asuncion, Jr., Chair Phone: (808) 586-2020
Kekuanaoa Building Fax: (808)586-2066
465 South King Street, Room 103 Email: puc@hawaii.gov
Honolulu, HI 96813

Discussion Leader: Tessa Gomes
Back-up Discussion Leader: Jonathan Shick

8. Department of Business, Eco Dev. & Tourism..... <http://dbedt.hawaii.gov>

Address: James Tokioka, Director Phone: (808) 586-2355
P.O. Box 2359 Fax: (808) 586-2377
Honolulu, HI 96804 Email: dbedt.director@hawaii.gov

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Will Lydgate

9. Department of Commerce & Consumer Affairs..... <http://cca.hawaii.gov>

Address: Nadine Ando, Director Phone: (808) 586-2850
335 Merchant Street Fax: (808) 586-2856
Honolulu, HI 96813 Email: dcca@dcca.hawaii.gov

Discussion Leader: Tessa Gomes
Back-up Discussion Leader: TBD

10. Department of Defense..... <http://dod.hawaii.gov>

Address: Major General Kenneth Hara, Phone: (808) 733-4246
Office of the Adjutant General Fax: (808) 733-4499
3949 Diamond Head Road
Honolulu, HI 96816

Discussion Leader: Jonathan Shick
Back-up Discussion Leader: Mark Ritchie

11. Department of Education..... <http://hawaiipublicschools.org>

Address: Keith Hayashi, Superintendent
1390 Miller Street
Honolulu, HI 96813

Phone: (808) 586-3230
Fax: (808) 586-3314
Email: doe_info@hawaiidoe.org

Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: TBD

12. Department of Hawaiian Home Lands..... <http://dhhl.hawaii.gov>

Address: Kali Watson, Chairperson
P.O. Box 1879
Honolulu, HI 96805

Phone: (808) 620-9501
Fax: (808) 620-9529
Email: dhhl.hawaii@gmail.com

Discussion Leader: James Kimo Lee
Back-up Discussion Leader: Garth Yamanaka

13. Department of Health..... <http://health.hawaii.gov>

Address: Dr. Kenneth Fink, MD, Director
1250 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 586-4410
Fax: (808) 586-4368
Email: webmail@doh.hawaii.gov

Discussion Leader: Sanford Morioka
Back-up Discussion Leader: Mary Albitz

14. Department of Human Resources Development..... <http://hrd.hawaii.gov>

Address: Brenna Hashimoto, Director
235 South Beretania Street, Suite 1400
Honolulu, HI 96813

Phone: (808) 587-1100
Fax: (808) 587-1106
Email: dhrd@hawaii.gov

Discussion Leader: Sanford Morioka
Back-up Discussion Leader: Nancy Atmospera-Walch

15. Department of Human Services..... <http://humanservices.hawaii.gov>

Address: Cathy Betts, Director
P.O. Box 339
Honolulu, HI 96809-0339

Phone: (808) 586-4993
Fax: (808) 586-4890
Email: dhs@dhs.hawaii.gov

Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: Sanford Morioka

16. Department of Labor & Industrial Relations..... <http://labor.hawaii.gov>

Address: Jade Butay, Director
830 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 586-8844
Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

Discussion Leader: Mary Albitz
Back-up Discussion Leader: Tessa Gomes

17. Department of Land and Natural Resources..... <http://dlnr.hawaii.gov>

Address: Dawn Chang, Chairperson
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Phone: (808) 587-0401
Fax: (808) 587-0390
E-mail: dlnr@hawaii.gov

Discussion Leader: Jonathan Shick
Back-up Discussion Leader: TBD

18. Department of Public Safety..... <http://dps.hawaii.gov>

Address: Tommy Johnson, Director
919 Ala Moana Boulevard, 4th Floor
Honolulu, HI 96814

Phone: (808) 587-1288
Fax: (808) 587-1282
Email: psd.office.of.the.director@hawaii.gov

Discussion Leader: Jonathan Shick
Back-up Discussion Leader: William Lydgate

19. Department of Taxation..... <http://tax.Hawaii.gov>

Address: Gary Suganuma, Interim Director
P.O. Box 259
Honolulu, HI 96809-0259

Phone: (808) 587-1540
Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: Will Lydgate

20. Department of Transportation..... <http://hidot.hawaii.gov>

Address: Ed Sniffen, Director
Aliiaimoku Building
869 Punchbowl Street, Room 509
Honolulu, HI 96813

Phone: (808) 587-2150
Fax: (808) 587-2167

Discussion Leader: James Kimo Lee
Back-up Discussion Leader: Sanford Morioka

21. University of Hawaii..... <http://www.hawaii.edu>

Address: David Lassner, President
Bachman Hall, Room 202
2444 Dole Street
Honolulu, HI 96822

Phone: (808) 956-7651
Email: david@hawaii.edu

Address: Lee Putnam, Chair, Board of Regents
Bachman Hall, Room 209
2444 Dole Street
Honolulu, HI 96822

Phone: (808) 956-8213
Fax: (808) 956-5156
Email: bor@hawaii.edu

Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: Mark Ritchie

22. City and County of Honolulu..... <http://www.honolulu.gov/>

Address: **Rick Blangiardi, Mayor**
530 South King Street, Room 300
Honolulu, HI 96813

Phone: (808) 768-4141

Discussion Leader: Jonathan Shick
Back-up Discussion Leader: Tessa Gomes

23. County of Maui..... <https://www.mauicounty.gov/>

Address: **Richard T. Bissen, Jr., Mayor**
200 S. High St.
Kalana O Maui Bldg 9th Fl.
Wailuku, HI 96793

Phone: (808) 270-7855

Discussion Leader: Mary Albitz
Back-up Discussion Leader: James Kimo Lee

24. County of Hawai'i..... <https://www.hawaiicounty.gov/>

Address: **Mitch Roth, Mayor**

Phone: (808) 961-8211

East Hawai'i
25 Aupuni Street
Hilo, HI 96720

West Hawai'i
74-5044 Ane Keohokalole Highway
Bldg C
Kailua-Kona, HI 96740

Phone: (808) 323-4444

Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: James Kimo Lee

25. County of Kaua'i.....<https://www.kauai.gov/Mayor>

Address: **Derek S.K. Kawakami, Mayor**
4444 Rice St., Suite 235
Lihue, HI 96766

Phone: (808) 241-4900
Email:mayor@kauai.gov

Discussion Leader: William Lydgate
Back-up Discussion Leader: TBD

PART II
SUNSHINE LAW
& MEETING
PROCEDURES

Sunshine Law Meeting Notice Requirements

Quick Review: Sunshine Law Meeting Notice Requirements (July 2019)

For boards subject to the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), here is a quick review of the Sunshine Law's notice requirements for public meetings, which includes amendments that went into effect on July 1, 2018 and July 2, 2019.

All Hawaii State and county boards that are subject to the Sunshine Law **must provide timely notice of all regular, special, or rescheduled meetings, and of executive meetings that are anticipated in advance**, in accordance with section 92-7, HRS. Please note that **meetings held by interactive conference technology** (section 92-3.5, HRS), and **limited meetings** (section 92-3.1, HRS) are subject to the following provisions on notice as well as other conditions set forth in the applicable sections of the Sunshine Law. **Emergency meetings** (section 92-8, HRS) must also be noticed, but notice may be filed within a shorter time period than the normal six days, and there are additional conditions.

Contents: Notice **must** include the following:

- Agenda listing all items to be considered at the meeting,
- Date of the meeting,
- Time of the meeting,
- Location of the meeting,
- Instructions on how to request a disability accommodation, and
- If applicable, the purpose of an executive meeting.

File/post/mail/email: At least **six calendar days before** non-emergency meetings, notice **must** be:

- Electronically posted on the State Calendar (State agencies) or the appropriate county calendar (county agencies), which is the official filing;
- Filed with the Office of the Lt. Governor (State boards), or the county clerk's office (county boards) for physical posting by those offices in a central location in a public building (e.g., State Capitol or county buildings), and a proof of filing retained (but a failure to meet this requirement doesn't require cancellation of the meeting);
- Physically posted at the board's office for public inspection;
- Physically posted at the meeting site (when feasible); and
- Provided to persons requesting notification by postal or electronic mail.

Practice tips:

- Newspaper publication under section 1-28.5, HRS, is not required for Sunshine Law notices.
- The Sunshine Law now requires that boards maintain a list of persons who wish to receive the notice by **postal or electronic** mail. While people on the postal mailing list have always had a Sunshine Law remedy available in the event a board fails to

timely mail its notice to them, in the past an email list was an unofficial form of notice not required by the Sunshine Law. Now that the email list is part of the Sunshine Law's requirements, if a board fails to properly maintain its email list, or to send notices by email in a timely manner, there is now a Sunshine Law remedy available to the email recipient. For persons **who had requested to be on a board's email or postal mailing list, the emails should be sent out and the meeting notices should be postmarked for delivery by regular U.S. Postal Service at least six calendar days before the meeting, or OIP will routinely advise the board to cancel the meeting.**

- If the agenda electronically posted on the County Calendar does not reflect the date of the actual posting, then county boards should print and time-stamp a copy of the posted agenda to retain as proof of the date that the agenda was posted. The State Calendar provides this information, so State boards can just print out and keep a copy of the posted agenda in its files.
- Boards are not required by the Sunshine Law to file a notice when **cancelling a meeting**. A board's mere failure to be present at a noticed meeting automatically cancels the meeting. However, as a courtesy to the public, OIP recommends taking down the electronic calendar notice, posting notification of the cancelled meeting at the board's office and at the meeting location, and informing those people who have asked to receive notice by email.
- When a board is unable to complete an agenda, the Sunshine Law allows the board to **continue a meeting** by announcing a reasonable date and time for the continued meeting to those in attendance at the meeting. At the continued meeting, the discussion may only be a continuation from the original meeting, taking up discussions where the board left off. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting. Boards need not file notices for continued meetings, but if practicable, a board should fill out and attach OIP's "Notice of Continuance of a Meeting" form to the agenda that was filed for the meeting to be continued and then post it at the board's office as well as electronically posting it and sending it to the board's email list. A board should not place the items continued from a previous meeting together with new items on the agenda for a new meeting unless it is prepared to hear testimony again on the continued agenda items, as they would then effectively be agenda items to be considered at the new meeting rather than agenda items still under consideration as part of a continued meeting. For more detailed information, see OIP's "Quick Review: Continuance of a Meeting Under the Sunshine Law," which is posted, along with the Notice form, on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).
- Boards wishing to **change the date or time of a meeting** should cancel the original meeting and file a new notice at least six days in advance of the new date and time.

- If a board must **change the location** of a meeting on the day of the meeting (for example, the room loses power or air conditioning), it should call the meeting to order at the noticed location, and then announce that the meeting will be recessed and continued shortly thereafter in the new location, in accordance with section 92-7(d), HRS. A written notification of the new meeting location should be posted at the originally noticed location.
- If there is a non-emergency **joint meeting** with two or more boards, then each board is responsible for meeting the Sunshine Law’s requirements, but they can coordinate to avoid duplicative actions. **All boards must ensure that notices are mailed to persons on their own postal and email mailing lists; but if a person is on more than one mailing list, then only one of the boards must send the notice to that person.** If one board meets all Sunshine Law requirements, but the other board in a joint meeting fails to do so, then the first board can proceed with the meeting without the second board. The second board must cancel its meeting and cannot have a quorum or more of its members in attendance at what was originally planned as a joint meeting with the first board. For additional information about joint meetings, see OIP’s “Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law,” which is posted on the [Training page at oip.hawaii.gov](#).
- To meet the Sunshine Law’s requirement to include instructions on how to request an auxiliary aid or accommodation, the State Disability and Communication Access Board (DCAB) recommends the following language for a board’s agenda: “If you require an auxiliary aid or accommodation due to a disability, please contact (808) _____ (voice/tty) or email [the board] at _____ by [date].” For more information, contact DCAB at (808) 586-8121.

Failure to follow the Sunshine Law’s notice requirements may necessitate cancelling the meeting. If the meeting nevertheless proceeds, a court may void any final action taken in violation of the Sunshine Law’s notice requirements. A suit to void any final action must be commenced within 90 days of the action.

For guidance and examples on how to write an agenda, please consult related materials on [OIP’s Training page at oip.hawaii.gov](#), which include Agenda Guidance for Sunshine Law Boards, a Public Meeting Notice Checklist, a Notice of Continuance form and a Quick Review on Meeting Continuances. For additional assistance, please contact OIP’s Attorney of the Day by calling (808) 586-1400 or emailing oipt@hawaii.gov.

Sunshine Law, Chapter 92, Hawaii Revised Statutes



[Home](#) » [Laws / Rules / Opinions](#) » [Sunshine Law](#) » Chapter 92, Hawaii Revised Statutes: Public Agency Meetings and Records

CHAPTER 92, HAWAII REVISED STATUTES: PUBLIC AGENCY MEETINGS AND RECORDS

This is an unofficial version of part I of chapter 92, Hawaii Revised Statutes. It contains all amendments enacted through the Legislature's **2019** regular session and effective July 2, 2019. Incorporated herein are [Act 244](#) (effective July 2, 2019) and [Act 64](#) (effective July 1, 2018).

Hawaii Revised Statutes (unofficial version)

CHAPTER 92 PUBLIC AGENCY MEETINGS AND RECORDS

PART I. MEETINGS

SECTION

92-1 DECLARATION OF POLICY AND INTENT

92-1.5 ADMINISTRATION OF THIS PART

92-2 DEFINITIONS

92-2.5 PERMITTED INTERACTIONS OF MEMBERS

92-3 OPEN MEETINGS

92-3.1 LIMITED MEETINGS

92-3.5 MEETING BY INTERACTIVE CONFERENCE TECHNOLOGY; NOTICE; QUORUM

92-4 EXECUTIVE MEETINGS

92-5 EXCEPTIONS

92-6 JUDICIAL BRANCH, QUASI-JUDICIAL BOARDS AND INVESTIGATORY FUNCTIONS; APPLICABILITY

92-7 NOTICE

92-7.5 BOARD PACKET; FILING; PUBLIC INSPECTION; NOTICE

92-8 EMERGENCY MEETINGS

92-9 MINUTES

92-10 LEGISLATIVE BRANCH; APPLICABILITY

92-11 VOIDABILITY

92-12 ENFORCEMENT

92-13 PENALTIES

PART I. MEETINGS

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and action of governmental agencies – shall be conducted as openly as possible. To implement this policy the legislature declares that:

(1) It is the intent of this part to protect the people's right to know;

(2) The provisions requiring open meetings shall be liberally construed; and

(3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

§92-1.5 Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

§92-2 Definitions. As used in this part:

“Board” means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.

“Chance meeting” means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

“Interactive conference technology” means any form of audio or audio and visual conference technology, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

“Meeting” means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1]

§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties

faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and

(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

(A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

(B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

§92-3.1 Limited meetings. (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

(1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;

(2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

(3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:

(1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;

(2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;

(3) No more than one limited meeting per month shall be held by a county council for any one board or community group;

(4) No limited meetings shall be held outside the State; and

(5) Limited meetings shall not be used to circumvent the purpose of part I, chapter 92.

(c) At all limited meetings, the board shall:

(1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;

(2) Make the videotape available at the next regular meeting; and

(3) Make no decisions at the meeting.

(d) Each county council shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the effectiveness and application of limited meeting procedures provided in subsection (b), including any recommendations or proposed legislation. [L 1995, c 212, §1; am L 2008, c 20, §1; am L 2014, c 221, §2; am L 2016, c 56, §1, 2]

§92-3.5 Meeting by interactive conference technology; notice; quorum. (a) A board may hold a meeting by interactive conference technology; provided that the interactive conference technology used by the board allows interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations.

(b) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by interactive conference technology shall be terminated when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.

(d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2]

§92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. (L 1975, c 166, pt of §1; am L 1985, c 278, §2)

§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;

(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;

(5) To investigate proceedings regarding criminal misconduct;

(6) To consider sensitive matters related to public safety or security;

(7) To consider matters relating to the solicitation and acceptance of private donations; and

(8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.

(a) This part shall not apply:

(1) To the judicial branch.

(2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:

(A) Hawaii labor relations board, chapters 89 and 377;

(B) Labor and industrial relations appeals board, chapter 371;

(C) Hawaii paroling authority, chapter 353;

(D) Civil service commission, chapter 26;

(E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;

(F) Crime victim compensation commission, chapter 351; and

(G) State ethics commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11; am L 1998, c 240, §6]

§92-7 Notice. (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

(b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall timely post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.

(c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.

(d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4;

am L 1995, c 13, §2; am L 2012, c 177, §2; am L 2014, c 68, §1; am L 2017, c 64, §2; am L 2018, c 63, §1; am L 2019, c 244, §2]

[§92-7.5] Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section. [L 2017, c 64, §1]

§92-8 Emergency meetings. (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:

- (1) *The board states in writing the reasons for its findings;*
- (2) *Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;*
- (3) *An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and*
- (4) *Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.*

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

- (1) *The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;*

(2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;

(3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;

(4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and

(5) The board limits its action to only that action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.

(c) For purposes of this part, an "unanticipated event" means:

(1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;

(2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or

(3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64, §3; am L 2019, c 244, §3]

§92-9 Minutes. (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Written minutes shall include, but need not be limited to:

(1) The date, time and place of the meeting;

(2) The members of the board recorded as either present or absent;

(3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and

(4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that

minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:

- (1) The date, time, and place of the meeting;
- (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- (3) A record, by individual member, of motions and votes made by the board; and
- (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

(c) All or any part of a meeting, of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1; am L 2017, c 64, §4]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

§92-12 Enforcement. (a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.

(d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.

(e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:

(1) There is likelihood that the party bringing the action will prevail on the merits;

(2) Irreparable damage will result if a stay is not ordered;

(3) No irreparable damage to the public will result from the stay order; and

(4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5; am L 2012, c 176, §3]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

Uniform
Information
Practices Act,
Chapter 92F,
Hawaii Revised
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UNIFORM INFORMATION PRACTICES ACT (UIPA)

This is an unofficial version of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”). It contains all amendments enacted through the Legislature’s **2020** regular session.

Hawaii Revised Statutes (unofficial version)

CHAPTER 92F UNIFORM INFORMATION PRACTICES ACT (MODIFIED)

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PART 1. GENERAL PROVISIONS AND DEFINITIONS

[§92F-1] Short title. This chapter shall be known and may be cited as the Uniform Information Practices Act (Modified). [L 1988, c 262, pt of §1]

[§92F-2] Purposes; rules of construction. In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.

The policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of Article I of the Constitution of the State of Hawaii.

This chapter shall be applied and construed to promote its underlying purposes and policies, which are to:

- (1) Promote the public interest in disclosure;*
- (2) Provide for accurate, relevant, timely, and complete government records;*
- (3) Enhance governmental accountability through a general policy of access to government records;*
- (4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and*
- (5) Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy.*

[§92F-3] General definitions. Unless the context otherwise requires, in this chapter:

“Agency” means any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

“Government record” means information maintained by an agency in written, auditory, visual, electronic, or other physical form.

“Individual” means a natural person.

“Person” means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

“Personal record” means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual’s education, financial, medical, or employment history, or items that contain or make reference to the individual’s name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. [L 1988, c 262, pt of §1]

[§92F-4] Funding, services, and other federal assistance. Where compliance with any provision of this chapter would cause an agency to lose or be denied funding, services, or other assistance from the federal government, compliance with that provision shall be waived but only to the extent necessary to protect eligibility for federal funding, services, or other assistance. [L 1992, c 118, §1]

PART II. FREEDOM OF INFORMATION

§92F-11 Affirmative agency disclosure responsibilities. (a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

(c) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

(d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

(e) The office of information practices may adopt rules, pursuant to chapter 91, to protect agency records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of agencies' other lawful responsibilities and functions. [L 1988, c 262, pt of §1; am L 2010, c 100, §§1, 3; am L 2017, c 165, §1]

§92F-12 Disclosure required. (a) Any other provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

(1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;

(2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases, except to the extent protected by section 92F-13(1);

(3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;

(4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;

(5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;

(6) Results of environmental tests;

(7) Minutes of all agency meetings required by law to be public;

(8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;

(9) Certified payroll records on public works contracts except social security numbers and home addresses;

(10) Regarding contract hires and consultants employed by agencies:

(A) The contract itself, the amount of compensation,

(B) The duration of the contract, and

(C) The objectives of the contract,

except social security numbers and home addresses;

(11) Building permit information within the control of the agency;

(12) Water service consumption data maintained by the boards of water supply;

(13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;

(14) The name, compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to 302A-639, and 302A-701, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not require the creation of a roster of employees; and provided further that this paragraph shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;

(15) Information collected and maintained for the purpose of making information available to the general public; and

(16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.

(b) Any provision to the contrary notwithstanding, each agency shall also disclose:

(1) Any government record, if the requesting person has the prior written consent of all individuals to whom the record refers;

(2) Government records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access;

(3) Government records pursuant to a showing of compelling circumstances affecting the health or safety of any individual;

(4) Government records requested pursuant to an order of a court;

(5) Government records pursuant to a subpoena from either house of the state legislature; and

(6) Information from the motor vehicle registration files, provided that the person requesting such files shall have a legitimate reason as determined by rules. [L 1988, c 262, pt of §1; am L 1989, c 160 §3; am L 1991, c 167, §1; am L 1992, c 185, §1; am L 1996, c 89, §8; am L 2000, c 253, §150; am L 2004, c 92, §3; am L 2005, c 92, §3; am L 2005, c 85, §1; am L 2007, c 14, §1; am L 2012, c 133, §5]

§92F-13 Government records; exceptions to general rule. This part shall not require disclosure of:

(1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

(2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;

(3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;

(4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and

(5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature. [L 1988, c 262, pt of §1; am L 1993, c 250, §1]

§92F-14 Significant privacy interest; examples. (a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual.

(b) The following are examples of information in which the individual has a significant privacy interest:

(1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;

(2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;

(4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:

(A) Information disclosed under section 92F-12(a)(14); and

(B) The following information related to employment misconduct that results in an employee's suspension or discharge:

(i) The name of the employee;

(ii) The nature of the employment related misconduct;

(iii) The agency's summary of the allegations of misconduct;

(iv) Findings of fact and conclusions of law; and

(v) The disciplinary action taken by the agency;

when the following has occurred: the highest non judicial grievance adjustment procedure timely invoked by the employee or the employee's representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision or, for decisions involving county police department officers, ninety days have elapsed following the issuance of the decision;

(5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;

(6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except:

(A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;

(B) Information on the current place of employment and required insurance coverages of licensees; and

(C) The record of complaints including all dispositions;

(8) Information comprising a personal recommendation or evaluation;

(9) Social security numbers; and

(10) Information that if disclosed would create a substantial and demonstrable risk of physical harm to an individual.

[L 1988, c 262, pt of §1; am L 1993, c 191, §1; am L 1995, c 242, §1; am L 2004, c 92, §4; am L 2014, c 121, §2; am L 2015, c 140, §1; am L 2020, c 47, §3]

§92F-15 Judicial enforcement. (a) A person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.

(b) In an action to compel disclosure, the circuit court shall hear the matter de novo; provided that if the action to compel disclosure is brought because an agency has not made a record available as required by section 92F-15.5(b) after the office of information practices has made a decision to disclose the record and the agency has not appealed that decision within the time period provided by 92F-43, the decision of the office of information practices shall not be subject to challenge by the agency in the action to compel disclosure. Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous, except that in an action to compel disclosure brought by an aggrieved person after the office of information practices upheld the agency's denial of access to the person as provided in section 92F-15.5(b), the opinion or ruling upholding the agency's denial of access shall be reviewed de novo. The circuit court may examine the government record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

(c) The agency has the burden of proof to establish justification for nondisclosure.

(d) If the complainant prevails in an action brought under this section, the court shall assess against the agency reasonable attorney's fees and all other expenses reasonably incurred in the litigation.

(e) The circuit court in the judicial circuit in which the request for the record is made, where the requested record is maintained, or where the agency's headquarters are located shall have jurisdiction over an action brought under this section.

(f) Except as to cases the circuit court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way. [L 1988, c 262, pt of §1; am L 1989, c 192, §3; am L 2012, c 176, §4]

[§92F-15.3] Notice to the office of information practices. When filing a civil action that is under, related to, or is affected by this chapter, a person shall notify the office of information practices in writing at the time of the filing. The office of information practices may intervene in the action. [L 1998, c 82, §1]

§92F-15.5 Alternative method to appeal a denial of access. (a) When an agency denies a person access to a government record, the person may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the person's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the person and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the person of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-15(a). [L 1989, c 192, §1]

[§92F-16] Immunity from liability. Anyone participating in good faith in the disclosure or nondisclosure of a government record shall be immune from any liability, civil or criminal, that might otherwise be incurred, imposed or result from such acts or omissions. [L 1988, c 262, pt of §1]

[§92F-17] Criminal penalties. (a) An officer or employee of an agency who intentionally discloses or provides a copy of a government record, or any confidential information explicitly described by specific confidentiality statutes, to any person or agency with actual knowledge that disclosure is prohibited, shall be guilty of a misdemeanor, unless a greater penalty is otherwise provided for by law.

(b) A person who intentionally gains access to or obtains a copy of a government record by false pretense, bribery, or theft, with actual knowledge that access is prohibited, or who intentionally obtains any confidential information by false pretense, bribery, or theft, with actual knowledge that it is prohibited [by] a confidentiality statute, shall be guilty of a misdemeanor. [L 1988, c 262, pt of §1]

§92F-18 Agency implementation. (a) Each agency shall:

- (1) Issue instructions and guidelines necessary to effectuate this chapter; and*
- (2) Take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of government records are informed of the requirements of this chapter.*

(b) Each agency shall compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices. The public reports shall be filed with the office of information practices on or before December 31, 1994. The public reports shall include:

- (1) The name and location of each set of records;*
- (2) The authority under which the records are maintained;*
- (3) The categories of individuals for whom records are maintained;*
- (4) The categories of information or data maintained in the records;*
- (5) The categories of sources of information in the records;*
- (6) The categories of uses and disclosures made of the records;*
- (7) The agencies and categories of persons outside of the agency which routinely use the records;*
- (8) The records routinely used by the agency which are maintained by:*

(A) Another agency; or

(B) A person other than an agency;

(9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;

(10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;

*(11) The agency procedures whereby an individual may request access to records;
and*

(12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.

(c) Each agency shall supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete. Each agency shall file the supplemental, amended, or new report with the office of information practices, which shall make the reports available for public inspection. [L 1988, c 262, pt of §1; am L 1989, c 192, §4; am L 1991, c 167, §2; am L 1992, c 118, §2; am L 1993, c 57, §1]

§92F-19 Limitations on disclosure of government records to other agencies. (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

(1) Necessary for the performance of the requesting agency's duties and functions and is also:

(A) Compatible with the purpose for which the information was collected or obtained; or

(B) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;

(2) To the state archives for the purposes of historic preservation, administrative maintenance, or destruction;

(3) To another agency, another state, or the federal government, or foreign law enforcement agency or authority, if the disclosure is:

(A) For the purpose of a civil or criminal law enforcement activity authorized by law; and

(B) Pursuant to:

(i) A written agreement or written request, or

(ii) A verbal request, made under exigent circumstances, by an officer or employee of the requesting agency whose identity has been verified, provided that such request is promptly confirmed in writing;

(4) To a criminal law enforcement agency of this State, another state, or the federal government, or a foreign criminal law enforcement agency or authority, if the information is limited to an individual's name and other identifying particulars, including present and past places of employment;

(5) To a foreign government pursuant to an executive agreement, compact, treaty, or statute;

(6) To the legislature, or a county council, or any committee or subcommittee thereof;

(7) Pursuant to an order of a court of competent jurisdiction;

(8) To authorized officials of another agency, another state, or the federal government for the purpose of auditing or monitoring an agency program that receives federal, state, or county funding;

(9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions;

(10) To the department of human resources development, county personnel agencies, or line agency personnel offices for the performance of their respective duties and functions, including employee recruitment and examination, classification and compensation reviews, the administration and auditing of personnel transactions, the administration of training and safety, workers' compensation, and employee benefits and assistance programs, and for labor relations purposes; or

(11) Otherwise subject to disclosure under this chapter.

(b) An agency receiving government records pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the records as the originating agency. [L 1988, c 262, pt of §1; am L 1993, c 250, §2; am L 1994, c 56, §21]

PART III. DISCLOSURE OF PERSONAL RECORDS

[§92F-21] Individual's access to own personal record. Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1988, c 262, pt of §1]

§92F-21.5 REPEALED. L 1990, c 250, §4.

§92F-22 Exemptions and limitations on individual access. An agency is not required by this part to grant an individual access to personal records, or information in such records:

(1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:

(A) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or

(B) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.

(2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.

(3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.

(4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.

(5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1988, c 262, pt of §1; am L 1993, c 250, §3]

92F-23 Access to personal record; initial procedure. Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of receipt of the request by the agency unless the personal record requested is exempted under section 92F-22. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay.

[L 1988, c 262, pt of §1; am L 2000, c 254, §1]

[§92F-24] Right to correct personal record; initial procedure. (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

(1) Make the requested correction or amendment; or

(2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1988, c 262, pt of §1]

§92F-25 Correction and amendment; review procedures. (a) Not later than thirty business days after receipt of a request for review of an agency refusal to allow correction or amendment of a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow correction or amendment of a personal record, the agency shall so state in writing and:

(1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's disagreement with the refusal of the agency to correct or amend it; and

(2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1988, c 262, pt of §1; am L 1989, c 192, §6]

§92F-26 Rules. The office of information practices shall adopt rules, pursuant to chapter 91, establishing procedures necessary to implement or administer this part, which the agencies shall follow, in order to ensure uniformity among state and county agencies. [L 1988, c 262, pt of §1; am L 1989, c 192, §7; am L 2017, c 165, §2]

§92F-27 Civil actions and remedies. (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this part, and after appropriate administrative remedies under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

(b) Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous, except that the opinion or ruling upholding the agency's denial of access to the aggrieved person shall be reviewed de novo. The circuit court may examine the record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

(c) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(d) In any action brought under this section in which the court determines that the agency knowingly or intentionally violated a provision of this part, the agency shall be liable to the

complainant in an amount equal to the sum of:

(1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall an individual complainant entitled to recovery receive less than the sum of \$1,000; and

(2) The costs of the action together with reasonable attorney's fees as determined by the court.

(e) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(f) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after notification of the agency denial, or where applicable, the date of receipt of the final determination of the office of information practices. [L 1988, c 262, pt of §1; am L 1989, c 192, §8; am L 2012, c 176, §5]

§92F-27.5 Alternative method to appeal a denial of access. (a) When an agency denies an individual access to that individual's personal record, the individual may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the individual's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the individual and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the individual of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-27. [L 1989, c 192, §2]

[§92F-28] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. Nothing in this part shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

(1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or

(2) Where any statute, administrative rules, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1988, c 262, pt of §1]

PART IV. OFFICE OF INFORMATION PRACTICES; DUTIES

§92F-41 Office of information practices; established. (a) There is established an office of information practices within the department of accounting and general services for administrative purposes; provided that:

(1) Any quasi-judicial functions of the office of information practices shall not be subject to the approval, review, or control of the comptroller; and

(2) The comptroller shall not have the power to supervise or control the office of information practices in the exercise of its functions, duties, and powers under section 92F-42.

(b) The governor shall appoint a director of the office of information practices to be its chief executive officer and who shall be exempt from chapter 76.

(c) All powers and duties of the office of information practices are vested in the director and may be delegated to any other officer or employee of the office.

(d) The director may employ any other personnel that are necessary, including attorneys and clerical staff. The office of information practices shall follow and be subject to all applicable personnel laws. All personnel of the office of information practices shall be employed without regard to chapter 76.

(e) The office of information practices shall make direct communications with the governor and legislature. [L 1988, c 262, pt of §1; am L 1989, c 192, §9; am L 1998, c 137, §4; am L 2000, c 253, §150; am L 2015, c 92, §4]

§92F-42 Powers and duties of the office of information practices. The director of the office of information practices:

(1) Shall, upon request, review and rule on an agency denial of access to information or records, or an agency's granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter;

(2) Upon request by an agency, shall provide and make public advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;

(3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter;

- (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;*
- (5) May examine the records of any agency for the purpose of paragraphs (4) and (18) and seek to enforce that power in the courts of this State;*
- (6) May recommend disciplinary action to appropriate officers of an agency;*
- (7) Shall report annually to the governor and the state legislature on the activities and findings of the office of information practices, including recommendations for legislative changes;*
- (8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this chapter;*
- (9) Shall review the official acts, records, policies, and procedures of each agency;*
- (10) Shall assist agencies in complying with the provisions of this chapter;*
- (11) Shall inform the public of the following rights of an individual and the procedures for exercising them:*
- (A) The right of access to records pertaining to the individual;*
 - (B) The right to obtain a copy of records pertaining to the individual;*
 - (C) The right to know the purposes for which records pertaining to the individual are kept;*
 - (D) The right to be informed of the uses and disclosures of records pertaining to the individual;*
 - (E) The right to correct or amend records pertaining to the individual;
and*
 - (F) The individual's right to place a statement in a record pertaining to that individual;*
- (12) Shall adopt rules that set forth an administrative appeals structure which provides for:*
- (A) Agency procedures for processing records requests;*
 - (B) A direct appeal from the division maintaining the record; and*
 - (C) Time limits for action by agencies;*

(13) Shall adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served;

(14) Shall adopt rules which set forth uniform standards for the records collection practices of agencies;

(15) Shall adopt rules that set forth uniform standards for disclosure of records for research purposes;

(16) Shall have standing to appear in cases where the provisions of this chapter or part I of chapter 92 are called into question;

(17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter; and

(18) Shall take action to oversee compliance with part I of chapter 92 by all state and county boards including:

(A) Receiving and resolving complaints;

(B) Advising all government boards and the public about compliance with chapter 92; and

(C) Reporting each year to the legislature on all complaints received pursuant to section 92-1.5. [L 1988, c 262, pt of §1; am L 1989, c 192, §10; am L 1998, c 137, §5; am L 2015, c 92, §5]

[§92F-43] Agency appeal of a decision by the office of information practices. (a) An agency may not appeal a decision by the office of information practices made under this chapter or part I of chapter 92, except as provided in this section. Within thirty days of the date of the decision, an agency may seek judicial review of a final decision rendered by the office of information practices under this chapter or part I of chapter 92, by filing a complaint to initiate a special proceeding in the circuit court of the judicial circuit in the State where:

(1) The request for access to a record was made;

(2) The act the office determined was prohibited under part I of chapter 92 occurred; or

(3) The agency's principal place of business is located.

(b) The agency shall give notice of the complaint to the office of information practices and the person who requested the decision for which the agency seeks judicial review by serving a copy of the complaint on each; provided that the office of information practices and the person who requested the decision shall not be required to participate in the proceeding; and provided further that the court shall proceed to review the decision pursuant to the rules applicable to a special proceeding, upon the expiration of time that an answer to the complaint would otherwise need to be filed under the rules of court by the office of information practices or the person upon whom the

complaint was served. The office of information practices or the person who requested the decision may intervene in the proceeding.

(c) Within thirty days of service of the complaint, the office of information practices shall file a certified copy of the record that it compiled to make its decision in the circuit court and mail a copy of the index to that record to the appealing agency. The circuit court's review shall be limited to the record that was before the office of information practices when it rendered the decision, unless the circuit court finds that extraordinary circumstances justify discovery and admission of additional evidence. The circuit court shall uphold a decision of the office of information practices, unless the circuit court concludes that the decision was palpably erroneous. [L 2012, c 176, §1]

State Ethics Code



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

September 15, 2011

EXECUTIVE MEMORANDUM

MEMO NO. 11-11

To: All Agencies, Boards and Commissions Subject to Chapter 92, Part I,
Hawai'i Revised Statutes

Subject: Posting Meeting Notices on the State Online Calendar

All State agencies, boards and commissions that are subject to HRS Chapter 92, Part I (the Sunshine Law) are required to file all meeting notices with the Lieutenant Governor's Office at least six (6) days prior to said meetings, under HRS Section 92-7(a) and (b).

Although many State boards and commissions also post these notices on their websites or on the State Online Calendar, not all do, and as a result, the public cannot easily obtain information on all board and commission meetings and misses opportunities to participate in them.

To provide the public with as many opportunities to participate in government as we can, all state agencies, boards, commissions, authorities, committees, councils and the like that are subject to the Sunshine Law, are to post all meeting notices and agendas on the State Online Calendar <http://calendar.ehawaii.gov/calender/html/event> (<http://calendar.ehawaii.gov/calendar/html/event>) as soon as such notices are filed with the Lieutenant Governor's Office. The electronic posting of meeting notices on the State Online Calendar will make the information more readily available and the business of boards and commissions more transparent to the public.

It is important to note that posting meeting notices and agendas on the State Online Calendar is in addition to, and not a substitute for filing meeting notices with the Office of the Lieutenant Governor. Please designate someone in your department, agency, board or commission who will be responsible for posting meeting notices and agendas onto the State Online Calendar. If an account to post items on the State Online Calendar has not been established, follow the attached protocol to establish one.

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawai'i

Standards of
Conduct,
Chapter 84,
Hawaii Revised
Statutes

HAWAII REVISED STATUTES
CHAPTER 84
STANDARDS OF CONDUCT

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CHAPTER 84 STANDARDS OF CONDUCT

Preamble

The purpose of this chapter is to (1) prescribe a code of ethics for elected officers and public employees of the State as mandated by the people of the State of Hawaii in the Hawaii Constitution, Article XIV; (2) educate the citizenry with respect to ethics in government; and (3) establish an ethics commission which will administer the codes of ethics adopted by the constitutional convention and by the legislature and render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

Part I. General Provisions

§84-1 Construction. This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

§84-2 Applicability. This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention, but excluding justices and judges; provided that in the case of elected delegates and employees of the constitutional convention, this chapter shall apply only to the enforcement and administration of the code of ethics adopted by the constitutional convention.

§84-3 Definitions.

"Business" includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

"Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.

"Employment" means any rendering of services for compensation.

"Financial interest" means an interest held by an individual, the individual's spouse, or dependent children which is:

- (1) An ownership interest in a business.
- (2) A creditor interest in an insolvent business.
- (3) An employment, or prospective employment for which negotiations have begun.
- (4) An ownership interest in real or personal property.
- (5) A loan or other debtor interest.
- (6) A directorship or officership in a business.

"Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

"Official authority" includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action.

"State agency" includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

"Task force" means a group convened by resolution, statute, executive order, proclamation, or by invitation of the legislature, governor, or another state officer, to study a specific subject or issue, for a specific defined period of time, and to report to, offer a recommendation to, or advise the legislature, governor, or a state officer.

Part II. Code of Ethics

§84-10 University of Hawaii; technology transfer activities; exemption. (a) Sections 84-12, 84-13, 84-14 to 84-16, and 84-18 shall not apply to technology transfer activities sponsored by the University of Hawaii; provided that the technology transfer activities comply with the regulatory framework and research compliance program and policies approved by the University of Hawaii board of regents.

(b) As used in this section, "technology transfer activities" means the process of transferring scientific findings from the public sector to the private sector for the purpose of commercial development and application for personal or financial gain. "Technology transfer activities" may include creating joint ventures, limited partnerships, or other corporate forms; allocating equity shares, partnership interests, or other forms of participation; identifying new technologies; protecting technologies through patents and copyrights; forming development and commercialization strategies, arrangements, or projects; and other related activities.

§84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

§84-11.5 Reporting of gifts. (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all the following conditions are met:

- (1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
- (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the legislator or employee; and
- (3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

(b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.

- (c) The gifts disclosure statement shall contain the following information:
- (1) A description of the gift;
 - (2) A good faith estimate of the value of the gift;

- (3) The date the gift was received; and
- (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

- (d) Excluded from the reporting requirements of this section are the following:
- (1) Gifts received by will or intestate succession;
 - (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
 - (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
 - (4) Political campaign contributions that comply with state law;
 - (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
 - (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
 - (7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of a legislator or employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

- (f) This section shall not affect the applicability of section 84-11.

§84-12 Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone; provided that this section shall not preclude a person who serves as the designee or representative of an entity that is a member of a task force from disclosing information to the entity which the person acquires as the entity's designee or representative.

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, or to prevent a person from serving on a task force or from serving on a task force committee, or from making statements or taking official action as a legislator, or a task force member or a task force member's designee or representative. Every legislator, or task force member or designee or representative of a task force member shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator or task force member or task force member's designee or representative believes may be affected by the legislator's or task force member's official action.

§84-13.5 Washington Place; campaign activities. The governor shall not allow Washington Place to be used for any events intended to solicit funds, support, or votes for any candidate for elective public office.

§84-14 Conflicts of interests. (a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which the employee has a substantial financial interest; or
- (2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify the department head's self on any matter described in paragraphs (1) and (2) will not be in violation of this subsection if the department head has complied with the disclosure requirements of section 84-17.

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which the person has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that state or county agency unless the employee has complied with the disclosure requirements of section 84-17.

(f) Subsections (a), (b), and (d) shall not apply to a task force member or the designee or representative of that task force member whose service as a task force member would not otherwise cause that member, designee, or representative to be considered an employee, if the task force member or the designee or representative of that task force member complies with the disclosure requirements under section 84-17.

§84-15 Contracts. (a) A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:

- (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
- (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
- (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned. This subsection shall not apply to any contract that is awarded in accordance with subsection (a) with a person or business represented or assisted by a person who was a member of a task force or served as the designee or representative of a task force member.

§84-16 Contracts voidable. In addition to any other penalty provided by law, any contract entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The attorney general shall have the authority to enforce this provision.

§84-17 Requirements of disclosure. (a) For the purposes of this section, the terms:

"Disclosure period" refers to the period from January 1 of the preceding calendar year to the time of the filing of the employee's or legislator's disclosure of financial interests.

"Substantially the same" refers to no more than ten amendments or changes to the information reported for the preceding disclosure period.

- (b) The disclosure of financial interest required by this section shall be filed:
- (1) By any person enumerated in subsection (c), except a member of the legislature, between January 1 and May 31 of each year;
 - (2) By a member of the legislature between January 1 and January 31 of each year;
 - (3) Within thirty days of a person's election or appointment to a state position enumerated in subsection (c); or
 - (4) Within thirty days of separation from a state position if a prior financial disclosure statement for the position was not filed within the one hundred eighty days preceding the date of separation;

provided that candidates for state elective offices or the constitutional convention shall file the required statements no later than twenty days prior to the date of the primary election for state offices or the election of delegates to the constitutional convention.

(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

- (1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;
- (2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;
- (3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;
- (4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;
- (5) The hearings officers of every state agency and department;

- (6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;
- (7) The superintendent, the deputy superintendent, the assistant superintendents, the complex area superintendents, the state librarian, and the deputy state librarian of the department of education;
- (8) The administrative director and the deputy director of the courts;
- (9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory;
- (10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures;
- (11) The administrator and assistant administrator of the office of Hawaiian affairs; and
- (12) The Hawaii unmanned aerial systems test site chief operating officer.

(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication:

- (1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, the trustees of the office of Hawaiian affairs, and candidates for state elective offices;
- (2) The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;
- (3) The administrative director of the State;
- (4) The president, the vice presidents, the assistant vice presidents, the chancellors, members of the board of regents, and the provosts of the University of Hawaii;
- (5) The members of the board of education and the superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;
- (6) The administrative director and the deputy director of the courts;
- (7) The administrator and the assistant administrator of the office of Hawaiian affairs; and
- (8) The members of the following state boards, commissions, and agencies:
 - (A) The board of directors of the agribusiness development corporation established under section 163D-3;
 - (B) The board of agriculture established under section 26-16;
 - (C) The state ethics commission established under section 84-21;
 - (D) The Hawaii community development authority established under section 206E-3;
 - (E) The Hawaiian homes commission established under the Hawaiian Homes Commission Act of 1920, as amended, and section 26-17;
 - (F) The board of directors of the Hawaii housing finance and development corporation established under section 201H-3;
 - (G) The board of land and natural resources established under section 171-4;
 - (H) The state land use commission established under section 205-1;
 - (I) The legacy land conservation commission established under section 173A-2.4;
 - (J) The natural area reserves system commission established under section 195-6;
 - (K) The board of directors of the natural energy laboratory of Hawaii authority established under section 227D-2;
 - (L) The board of directors of the Hawaii public housing authority established under section 356D-3;
 - (M) The public utilities commission established under section 269-2; and
 - (N) The commission on water resource management established under section 174C-7.

(e) The information on the financial disclosure statements shall be confidential, except as provided in subsection (d). The commission shall not release the contents of the disclosures except as

may be permitted pursuant to this chapter. Any person who releases any confidential information shall be subject to section 84-31(c).

[Note: This reference to section 84-31(c) pertains to previous statutory language which was deleted by Act 221, SLH 1995.]

(f) Candidates for state elective offices, including candidates for election to the constitutional convention, shall only be required to disclose their own financial interests. The disclosures of financial interests of all other persons designated in subsection (c) shall state, in addition to the financial interests of the person disclosing, the financial interests of the person's spouse and dependent children. All disclosures shall include:

- (1) The source and amount of all income of \$1,000 or more received, for services rendered, by the person in the person's own name or by any other person for the person's use or benefit during the preceding calendar year and the nature of the services rendered; provided that required disclosure under this paragraph for the income source of the spouse or dependent child of a person subject to subsection (d) shall be limited to the name of the business or other qualifying source of income, and need not include the income source's address; provided further that other information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed;
- (2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business having a value of \$5,000 or more or equal to ten per cent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed;
- (3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation;
- (4) The name of each creditor to whom the value of \$3,000 or more was owed during the disclosure period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed;
- (5) The street address and, if available, the tax map key number, and the value of any real property in which the person holds an interest whose value is \$10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration; provided that disclosure shall not be required of the street address and tax map key number of the person's residence;
- (6) The names of clients personally represented before state agencies, except in ministerial matters, for a fee or compensation during the disclosure period and the names of the state agencies involved; and
- (7) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of \$5,000 or more.

(g) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least \$1,000 but less than \$10,000; at least \$10,000 but less than \$25,000; at least \$25,000 but less than \$50,000; at least \$50,000 but less than \$100,000; at least \$100,000 but less than \$150,000; at least \$150,000 but less than \$250,000; at least \$250,000 but less than \$500,000; at least \$500,000 but less than \$750,000; at least \$750,000 but less than \$1,000,000; or \$1,000,000 or more. An amount of stock may be reported by number of shares.

(h) The state ethics commission shall provide a long form of disclosure on all even-numbered years and a short form of disclosure for subsequent annual filings on all odd-numbered years in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period.

(i) Failure of a legislator, a delegate to the constitutional convention, or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter. Any legislator, delegate to a constitutional convention, or employee who fails to file a disclosure of financial interests when due shall be assessed an administrative fine of \$75. The state ethics commission, upon the expiration of time allowed for filing, may post on its website for public inspection a list of all persons who have failed to file financial disclosure statements. The state ethics commission shall notify a person, by in-person service, electronic mail to the person's state electronic mail address, or first class mail, of the failure to file, and the disclosure of financial interests shall be submitted to the state ethics commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a disclosure of financial interests has not been filed within ten days of the due date, an additional administrative fine of \$10 for each day a disclosure remains unfiled shall be added to the administrative fine. All administrative fines collected under this section shall be deposited in the State's general fund. Any administrative fine for late filing shall be in addition to any other action the state ethics commission may take under this chapter for violations of the state ethics code. The state ethics commission may waive any administrative fines assessed under this subsection for good cause shown.

(j) The chief election officer, upon receipt of the nomination paper of any person seeking a state elective office, including the office of delegate to the constitutional convention, shall notify the state ethics commission of the name of the candidate for state office and the date on which the person filed the nomination paper. The state ethics commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements and shall immediately assess a late filing penalty fee against those candidates of \$50 which shall be collected by the state ethics commission and deposited into the general fund. The state ethics commission may investigate, initiate, or receive charges as to whether a candidate's financial disclosure statement discloses the financial interests required to be disclosed. After proceeding in conformance with section 84-31, the state ethics commission may issue a decision as to whether a candidate has complied with section 84-17(f) and this decision shall be a matter of public record.

§84-17.5 Disclosure files; disposition. (a) All financial disclosure statements filed by a legislator, employee, or delegate to a constitutional convention shall be maintained by the state ethics commission during the term of office of the legislator, employee, or delegate and for a period of six years thereafter. Upon the expiration of the six-year period, the financial disclosure statement and all copies thereof shall be destroyed.

(b) Upon the expiration of six years after an election for which a candidate for state elective office or a constitutional convention has filed a financial disclosure statement, the state ethics commission shall destroy the candidate's financial disclosure statement and all copies thereof.

(c) Financial disclosure statements provided for in section 84-17(d) shall cease to be public records once the six-year period in subsection (a) or (b) has run.

(d) Nothing herein shall bar the state ethics commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation.

§84-18 Restrictions on post employment. (a) No former legislator or employee shall disclose any information which by law or practice is not available to the public and which the former legislator

or employee acquired in the course of the former legislator's or employee's official duties or use the information for the former legislator's or employee's personal gain or the benefit of anyone.

(b) No former legislator, within twelve months after termination of the former legislator's employment, shall represent any person or business for a fee or other consideration, on matters in which the former legislator participated as a legislator or on matters involving official action by the legislature.

(c) No former employee, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration, on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served. This section shall not apply to a former task force member who, but for service as a task force member, would not be considered an employee.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such legislator or employee from appearing before any agency in relation to such employment.

(e) This section shall not apply to any person who is employed by the State for a period of less than one hundred and eighty-one days.

(f) For the purposes of this section, "represent" means to engage in direct communication on behalf of any person or business with a legislator, a legislative employee, a particular state agency or subdivision thereof, or their employees.

§84-19 Violation. (a) Any favorable state action obtained in violation of the code of ethics for legislators or employees and former employees is voidable in the same manner as voidable contracts as provided for under section 84-16; and the State by the attorney general may pursue all legal and equitable remedies available to it.

(b) The State by the attorney general may recover any fee, compensation, gift, or profit received by any person as a result of a violation of the code of ethics by a legislator or employee or former legislator or employee. Action to recover under this subsection shall be brought within one year of a determination of such violation.

(c) Any violation of this chapter by an employee, candidate for election to and elected delegate to the constitutional convention shall be punishable only in accordance with the code of ethics adopted by the constitutional convention.

Part III. State Ethics Commission

§84-21 State ethics commission established; composition. (a) There is established within the office of the auditor for administrative purposes only a commission to be known as the state ethics commission. The commission shall consist of five members appointed by the governor from a panel of ten persons nominated by the judicial council. Each member of the commission shall be a citizen of the United States and a resident of the State. Members of the commission shall hold no other public office.

(b) The chairperson of the commission shall be elected by the majority of the members of the commission. The term of each member of the commission shall be for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. A vacancy on the commission shall be filled for the remainder of the unexpired term in the same manner as the original

appointment, except that the judicial council shall nominate for gubernatorial appointment two persons for a vacancy.

(c) No member of the commission shall hold office for more than one hundred and twenty days after the expiration of the member's term. If the governor fails to appoint a person to a vacant office within sixty days after receipt of the list of nominees from the judicial council, council shall select a person from its list of nominees to fill the vacant office, notwithstanding subsection (b) and section 26-34 to the contrary.

(d) The governor may remove or suspend any member of the commission upon the filing of a written finding with the commission, and upon service of a copy of the written finding on the member to be removed or suspended.

Part IV. Administration and Enforcement

§84-31 Duties of commission; complaint, hearing, determination. (a) The ethics commission shall have the following powers and duties:

- (1) It shall prescribe forms for the disclosures required by Article XIV of the Hawaii Constitution and section 84-17 and the gifts disclosure statements required by section 84-11.5 and shall establish orderly procedures for implementing the requirements of those provisions;
- (2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion;
- (3) It shall initiate, receive, and consider charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings;
- (4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized in this section with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry;
- (5) It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law;
- (6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within six years of an alleged violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission.

- Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter;
- (7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, delegates to the constitutional convention, and employees on matters of ethics in government employment; and
 - (8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall notify in writing every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The state ethics commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter or of the code of ethics adopted by the constitutional convention has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. Upon the commission's issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel and (4) to have the right of cross-examination. All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the State's general fund.

(d) A decision of the commission pertaining to the conduct of any legislator, delegate to the constitutional convention, or employee or person formerly holding such office or employment shall be in writing and signed by three or more of the members of the commission. A decision of the commission rendered after a hearing together with findings and the record of the proceeding shall be a public record.

(e) A person who files a frivolous charge with the commission against any person covered by this chapter shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys' fees. In any case where the commission decides not to issue a complaint in response to a charge, the commission shall upon the written request of the person charged make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in commission proceedings within one year after the commission renders a decision. The commission's decision shall be binding upon the court for purposes of a finding pursuant to section 607-14.5.

(f) The commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions where the identity of such persons is not otherwise a matter of public record under this chapter.

§84-31.3 Filing of false charges. (a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any state official, state employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in section 710-1060.

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and any other expenses incurred in relation to the person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above plus an equal amount to the general fund of the State.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

§84-32 Procedure. (a) With respect to legislators and employees removable only by impeachment: when the ethics commission after due hearings pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint shall contain a statement of the facts alleged to constitute the violation. The complaint shall be a matter of public record. The legislature shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the legislature is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the legislature, or the fact that no disciplinary action is taken, shall be a matter of public record.

(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the governor who shall take appropriate disciplinary action unless the governor determines that disciplinary action is not warranted. The governor shall notify the commission of the disciplinary action taken or the fact that no disciplinary action was taken, within sixty days of the referral of the complaint. The complaint and

any disciplinary action taken, or the fact that no disciplinary action is taken, shall be a matter of public record.

(c) With respect to former employees and former legislators, when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against a former employee or former legislator, it shall issue a complaint and refer the matter to the attorney general who may exercise whatever legal or equitable remedies which may be available to the State. The complaint shall be a matter of public record.

(d) With respect to delegates to the constitutional convention removable only by impeachment: when the ethics commission after due hearing pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a delegate to the constitutional convention, it shall issue a complaint and refer the matter to the appropriate body of the constitutional convention. The complaint shall be a matter of public record. The appropriate body of the constitutional convention shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the constitutional convention is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the constitutional convention, or the fact that no disciplinary action is taken, shall be a matter of public record.

§84-33 Disciplinary action for violation. In addition to any other powers the civil service commission or other authority may have to discipline employees, the civil service commission or authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the code of ethics.

§84-34 No compensation. The members of the ethics commission shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

§84-35 Staff. The ethics commission may employ and at pleasure remove such persons, including an executive director, as it may deem necessary for the performance of its functions. Effective July 1, 2005, the salary of the executive director shall be the same as the salary of the director of health. The commission shall fix the compensations of its employees within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapter 76.

§84-35.5 Prohibition from political activity. The members of the ethics commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment.

§84-36 Cooperation. The ethics commission may request and shall receive from every department, division, board, bureau, commission, or other agency of the state cooperation and assistance in the performance of its duties.

§84-37 Concurrent jurisdiction. Notwithstanding any provision contained herein, pursuant to Article III, section 12 of the Constitution of the State of Hawaii each house of the legislature may prescribe further rules of conduct covering its members and may investigate and discipline a member for any violation of its rules or the code of ethics.

§84-38 Judicial branch. The powers and duties assigned in this part IV to the governor shall, with respect to employees in the judicial branch, be assigned to the chief justice of the supreme court.

§84-39 Administrative fines. (a) Where an administrative fine has not been established for a violation of this chapter, any person, including a legislator or employee, who violates this chapter shall

be subject to an administrative fine imposed by the state ethics commission that shall not exceed \$1000 for each violation. All fines collected under this section shall be deposited in the general fund.

- (b) No fine shall be assessed under this section unless:
 - (1) The state ethics commission convenes a hearing in accordance with section 84-31(c) and chapter 91 and a decision has been rendered by the commission; or
 - (2) The state ethics commission and respondent agree to resolve any charge of an alleged violation prior to completion of the contested case process and the resolution includes payment of an administrative fine or restitution, or both.

Part V. Mandatory Ethics Training

§84-41 Applicability of part. This part applies to legislators, members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State.

§84-42 Mandatory ethics training course. All state officers and employees enumerated in section 84-41 shall complete an ethics training course administered by the state ethics commission as provided in this part. For the purposes of this part, “ethics training” includes education and training in:

- (1) The ethics laws set forth in this chapter; and
- (2) The lobbying laws set forth in chapter 97.

§84-43 Ethics training course. (a) The state ethics commission shall establish, design, supervise, and conduct ethics training designed specifically for the officers and employees to whom this part applies.

- (b) The ethics training course shall include:
 - (1) Explanations and discussions of the ethics laws, administrative rules, and relevant internal policies;
 - (2) Specific technical and legal requirements;
 - (3) The underlying purposes and principles of ethics laws;
 - (4) Examples of practical application of the laws and principles; and
 - (5) A question-and-answer participatory segment regarding common problems and situations.

The state ethics commission shall develop the methods and prepare any materials necessary to implement the course.

- (c) The state ethics commission shall:
 - (1) Administer the ethics training course;
 - (2) Designate those of its legal staff who are to conduct the ethics training course; and
 - (3) Notify each officer or employee enumerated in section 84-41 that their attendance in this course is mandatory.

(d) The ethics training course shall be held in January of each year for those who have not attended the course previously. The course shall last at least two hours in length.

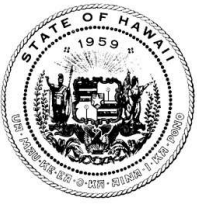
(e) The state ethics commission may repeat the course as necessary to accommodate all persons who are required to attend.

(f) Each state agency shall provide to the state ethics commission the names of those required to take the course in a timely manner and assist the commission by providing adequate meeting facilities for the ethics training course.

[This revision of the code of ethics is unofficial and for convenience only. Consult Hawaii Revised Statutes for the official codification of this law.]

October 26, 2017

Ethics Checklist



HAWAII STATE ETHICS COMMISSION

ETHICS CHECKLIST

This flyer lists restrictions contained in the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”), for state officials, employees, and board and commission members. (Justices and judges are excluded, as they are subject to their own ethics board.) Those subject to the State Ethics Code should review this list, and contact the State Ethics Commission (“Commission”) for advice when needed. Though the list is intended to be comprehensive, those subject to the State Ethics Code should not hesitate to contact the Commission whenever ethics issues arise. Further, our office should be contacted if there are any questions regarding the scope of the following restrictions. Contact us at: telephone number (808) 587-0460, fax number (808) 587-0470, or e-mail address ethics@hawaiiethics.org. Our web site address is www.state.hi.us/ethics. Mailing address: P.O. Box 616, Honolulu, Hawaii 96809.

- Gifts:** Do not accept or solicit gifts unless you are sure of the application of the gifts section of the State Ethics Code, HRS § 84-11.
- Gifts Disclosure:** If you receive more than \$200 of legally acceptable gifts from a single source between June 1 of one year and June 1 of the following year, check with our office as to whether you need to file a gifts disclosure form.
- Confidential Information:** Do not disclose, or use confidential information for your, or anyone’s, personal benefit.
- Favoritism; Fair Treatment:** Do not use, or attempt to use, your official position to give yourself or anyone any preferential treatment or any unwarranted advantage.
- Supplemental Compensation:** Do not accept extra pay or anything of value in conjunction with the performance of your official duties, unless provided for by law.
- State Resources:** Do not use state time, equipment (computers, e-mail, etc.), facilities, personnel, the state seal, office supplies or other state resources for private business purposes or political campaigning. The term “business” includes non-profit organizations.

- Financial Transactions With Subordinates:** Do not engage in substantial financial transactions with subordinates, or persons or businesses you inspect or supervise. Check with our office as to the meaning of “substantial,” as the application of the term may be different depending on the circumstances.
- Conflicts of Interests:** Do not take official action if the action affects your financial interests, or a business or undertaking in which you have a financial interest, unless you are sure of the application of the State Ethics Code. The financial interests of a spouse or dependent child are treated the same as your financial interests. Also, do not take action affecting an undertaking in which you, in your private capacity, represent a person or business. (Note: This section does not apply to legislators.)
- Acquiring New Employment or Financial Interests:** Do not accept new employment, or new financial interests without checking with our office, if the business or undertaking you will work for, or have a financial interest in, may be subject to official action by you. (Note: This section does not apply to legislators.)
- Contingent Compensation:** Do not assist or represent a person or business before a state or county agency for contingent compensation. (Note: Courts are not considered state agencies.)
- Representing or Assisting Persons or Businesses:** Do not assist or represent (1) a person or business for compensation before your own department or agency, or (2) on matters you have been officially involved in, or (3) on matters you will be officially involved in.
- State Contracts:** (1) If you contract with the State, or have a significant interest in a company that contracts with the State, make sure the contract is awarded in accordance with HRS § 84-15(a). (2) Check with our office before privately assisting or representing a person or business trying to obtain a state contract, if you have been involved officially with the contract or its subject matter.
- Financial Interests Disclosure Statement:** File this statement at the appropriate times if required by the position you hold in state government.
- Post Employment:** After leaving your state agency or department, (1) do not disclose confidential information or use such information for your, or anyone’s, personal benefit; (2) for one year do not personally represent any person or business for compensation on matters before your former agency or department unless you are sure of the application of the State Ethics Code; and (3) for one year, do not personally represent a person or business for compensation regarding matters you have participated in officially. Note: Parts (2) and (3) apply to those who served the State for more than 180 days. Call our office regarding the definition of the term “personal representation.”

Legal Opinion:
Conflict of
Interest under
the State Ethics
Code

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
COMMERCE AND ECONOMIC DEVELOPMENT DIVISION
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 588-1180

May 8, 2006

MEMORANDUM

TO: Members of the Small Business Regulatory Review Board

FROM: Margaret S. Ahn
Deputy Attorney General

RE: Conflict of Interest under the State Ethics Code

This is in response to the Chairperson's inquiry as to when a member of the Small Business Regulatory Review Board (SBRRB) should abstain from taking official action on a matter before the board under the conflict of interest provision of the State Ethics Code.

The relevant provision of the law is section 84-14(a), Hawaii Revised Statutes (HRS), which states that no **employee** shall take any **official action** directly affecting a business or other undertaking in which he has a substantial **financial interest**. (Emphasis added). "Employee" specifically includes board members. Section 84-3, HRS. "Official action" means a decision, recommendation, approval, disapproval, or other action or inaction, which involves the use of discretionary authority. Section 84-3, HRS. Therefore, official action would include not just voting on a matter before the Board but also making recommendations on the matter. "Financial interest" means an ownership, directorship, or officership in a business; a creditor interest; a debtor interest; an ownership interest in real or personal property; and employment or prospective employment for which negotiations have begun. Interests held by the board member, the member's spouse, or the member's dependent children constitute a financial interest of the board member. Section 84-3, HRS.

A slightly less stringent standard applies to board members who are mandated by statute to have particular qualifications, as do the members of the Small Business Regulatory Review Board. Such a board member "shall only be prohibited from taking official action that directly **and specifically** affects a business or undertaking in which he has a substantial financial interest, **provided that the substantial financial interest is related to the member's particular qualifications.**" (Emphasis added). Section 84-14(a), HRS.

The particular qualifications of SBRRB members are contained in Section 201M-5(b) and (c), HRS. Qualified board members must be either a current or former owner or officer of a business; they must reflect a variety of businesses in the State; and there must be at least two board members from each county. The most likely scenario for SBRRB members would involve a review of administrative rules that would “directly and specifically” affect the member’s business, of which he or she is an owner or officer, which is one of the qualifications to sit on the SBRRB. In this case, the board member should refrain from discussing the member’s recommendations and from voting on the administrative rules.

The State Ethics Commission has recognized that under certain statutes, members of a board are mandated to be part of the association the board is tasked with regulating, and it is their very expertise that qualifies them to participate in the regulating. However, if an administrative rule would have a **direct and specific** effect on the member’s business, then that member is prohibited from taking official action with respect to that rule. For example, the Ethics Commission ruled that a board member who owned schools instructing candidates for licensure was prohibited from participating in policy decisions affecting: (1) the qualifications of the schools or their instructors; and (2) education and training requirements for licensure candidates. The Commission concluded that these areas would directly and specifically affect the member’s occupation. Advisory Opinion No. 519.

Based on the foregoing, the SBRRB members are cautioned when reviewing, discussing, and voting on administrative rules, to bring to the board’s attention those rules that could have a direct and specific effect on their own businesses.

PART III
MARKETING
MATERIAL

SMALL BUSINESS BILL OF RIGHTS

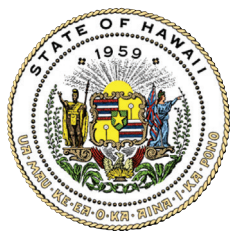
Message from the Department of Business, Economic Development & Tourism

Small businesses are the heart of Hawaii's economy and are central to our way of life. The State of Hawaii recognizes that more than 95% of all businesses in Hawaii are small businesses and they employ more than 60% of Hawaii's workforce. Accordingly, Hawaii's citizens should be able to expect and enjoy a business culture that encourages and supports small business.

The Small Business Bill of Rights is an explanation or summary of the rights and expectations of small business.

This Bill of Rights outlines some of the more important rights and tenants that are available to small business owners and affect the way they do business in Hawaii.

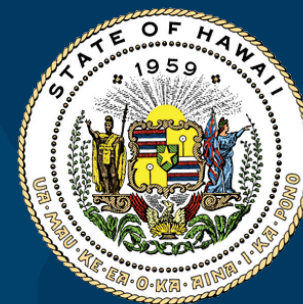
As Hawaii's business advocate, the Small Business Regulatory Review Board is dedicated to achieving complete fulfillment of the following rights, and believes that adherence to them will be mutually beneficial to all businesses in our State.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

Small Business Bill of Rights

State of Hawaii



**Small Business
Regulatory Review Board**

"Hawaii's Business Advocate"

(808) 798-0737 • DBEDT.sbrrb.info@hawaii.gov
<https://sbrrb.hawaii.gov>

Hawaii Small Business Bill of Rights

Small business owners and operators should be informed of their rights, responsibilities and obligations and be assured that these rights will be protected throughout their contact with agencies and departments of the State of Hawaii, among them:

- I. The right to expect state agencies to provide a prompt, accurate, and courteous response to a request for information and to work together to ensure ready access to the information needed to assist businesses in their relationships with state government;
- II. The right to a clear, stable, and predictable regulatory and record-keeping environment with easily accessible information and administrative rules in as clear and concise language as is practicable, including the posting of all proposed administrative rule changes on the Internet website of the office of the lieutenant governor;
- III. The right to request and receive timely notice of an agency's rulemaking proceedings. The notice should be mailed to all persons who have made a written request for such a notice;
- IV. The right to be treated equally and fairly, with reasonable access to state services;
- V. The right to a one-stop permitting process that will, in the long term, include a centralized Internet website-based application system.

This site's goals are to have quick and responsible timeframes to process state and county permits, licenses, registrations, and approvals, when appropriate, to simplify and reduce the filing of forms affecting business;

- VI. The right to a timely response to an application for a permit, license, registration, or approval necessary to operate the small business, within the established maximum period of time for that agency in accordance with section 91-13.5, Hawaii Revised Statutes;
- VII. The right to renewal of essential permits, licenses, registrations, or approvals, absent a specific reason for nonrenewal. All issuing agencies shall take action to grant or deny any renewal application for a business or development-related permit, license, registration, or approval within the established maximum period of time for that agency. The reasons for a denial should be clearly stated and under conditions set forth in law;
- VIII. Whenever a contested case hearing is provided by law, in the event a regulatory agency takes action against a business, the right to expect a timely hearing. Officials conducting such hearings should be impartial. Small businesses should be provided a full and complete hearing to present their explanation of any alleged violation, deficiency, or

wrongdoing. In any hearing, there should be a presumption that the small business did not commit an alleged violation or wrongdoing until the agency proves otherwise by a preponderance of the evidence. The small business should have the right to present evidence, both oral and written. This evidence must be fully considered by the agency. In the event of an unfavorable decision, the business should have the right to a judicial review pursuant to section 91-14, Hawaii Revised Statutes;

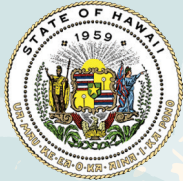
- IX. The right to privacy regarding confidential and proprietary business information when competing for state procurement contracts. No state agency shall mandate the disclosure of confidential or proprietary business information as a condition of obtaining any contract or payment under any contract when a contract is to be awarded on a firm fixed price or cost plus fixed price basis;
- X. The right to all of the protections afforded in the Taxpayer Bill of Rights, P.L. 104-168;
- XI. The right to submit complaints regarding a violation of these rights or any other administrative acts of state and county agencies with the office of the ombudsman, in accordance with chapter 96, Hawaii Revised Statutes;
- XII. The right to request information and an opinion from the office of information practices, in accordance with chapters 92 and

92F, Hawaii Revised Statutes, with regard to access to information from public meetings or the release of government documents;

- XIII. The right to provide information to the division of consumer advocacy in accordance with chapter 269, Hawaii Revised Statutes, with regard to issues under the purview of the public utilities commission;
- XIV. The right to request information from the office of consumer protection, in accordance with chapter 487, Hawaii Revised Statutes, with regard to business and consumer issues;
- XV. The right to access the small business advocate in the department of business, economic development, and tourism regarding any dispute with a state agency to ensure government resources are coordinated on behalf of small business and the rights of businesses are being upheld; and
- XVI. The right to administrative rule review pursuant to the Small Business Regulatory Flexibility Act by filing a petition with the small business regulatory review board in accordance with section 201M-6, Hawaii Revised Statutes.

SBRRB BROCHURE

Small Business Regulatory Review Board



Purpose:

- The Small Business Regulatory Review Board (SBRRB) reviews proposed new and amended rules that impact small business*.
- The SBRRB makes recommendations to State Departments or the Legislature regarding the need for a rule change or legislation.
- For requests regarding County rules, the SBRRB may make recommendations to the County Council or the Mayor for appropriate action.

*"Small business," under Chapter 201M, is defined, in part, as a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees.

Who we are:

- Volunteers, appointed by the Governor and ratified by the Senate.
- Small business owners/officers.

We work with these State Departments:

- Accounting & General Services
- Agriculture
- Budget & Finance
- Business, Economic Development & Tourism
- Commerce & Consumer Affairs
- Education
- Hawaiian Home Lands
- Health
- Human Services
- Labor and Industrial Relations / HIOSH
- Land and Natural Resources
- Public Safety
- Taxation
- Transportation
- Office of the Attorney General
- Office of the Lieutenant Governor
- Public Utilities Commission
- University of Hawai'i

This is how we can help you!

- We review new and existing rules in conjunction with an impact statement on small business.
- We review all rules that affect small businesses before and after public hearings, followed by our recommendations to the Governor.
- We act as a resource to the State Legislature, State Departments and Counties regarding the small business impact of new laws, rules and ordinances.
- We can also organize and hold conferences on problems affecting small businesses.

This is how you can help us:

If you would like to share a concern that you have on regulatory issues, or administrative rules that you would like us to review, submit a:

*Petition for Regulatory Review
(201M-6, HRS)
or
Regulation for Review*

Contact Us:

Website: <https://sbrrb.hawaii.gov/>
Email: DBED.sbrrb.info@hawaii.gov

Telephone: (808) 798-0737

 @SBRRBHI  @SBRRBHI

SBRRB POWERPOINT PRESENTATION

Small Business Regulatory Review Board (SBRRB)

Department of Business, Economic Development and Tourism

How was the SBRRB established?

- Created- 1980 U.S. Congress passed the Regulatory Flexibility Act (RFA)
- Purpose- Ensure regulators do not burden small businesses disproportionately by imposing uniform regulations on all entities, regardless of size.
- Created- 1998 Hawaii's Small Business Regulatory Flexibility Act went into effect based on the federal act by creating Chapter 201M HRS.

SBRRB's Vision and Mission

Vision

Make Hawai'i the most business-friendly state in the nation

Mission

Work toward a regulatory environment that encourages & supports the vitality of small business in Hawai'i

What is the SBRRB's Purpose?

- Chapter 201M, HRS created SBRRB:
 - Advocates for “for-profit” small business & entrepreneurs
 - Small business defined as a “for profit” “with fewer than 100 FT/PT employees,”
Section 201M-1, HRS
- Authority to comment, make recommendations on small business regulations & administrative rules

BOARD MEMBERS

DBEDT Staff:
Dori Palcovich
Jetaime Ariola



Mark Ritchie
DBEDT Director
designated
Representative



Mary Albitz
Chair
Maui County



Garth Yamanaka
Hawai'i County



James Lee
Hawai'i County



Sanford Morioka
City & County of Honolulu



Tessa Gomes
City & County of Honolulu



Robert Cundiff
Vice Chair
City & County of Honolulu



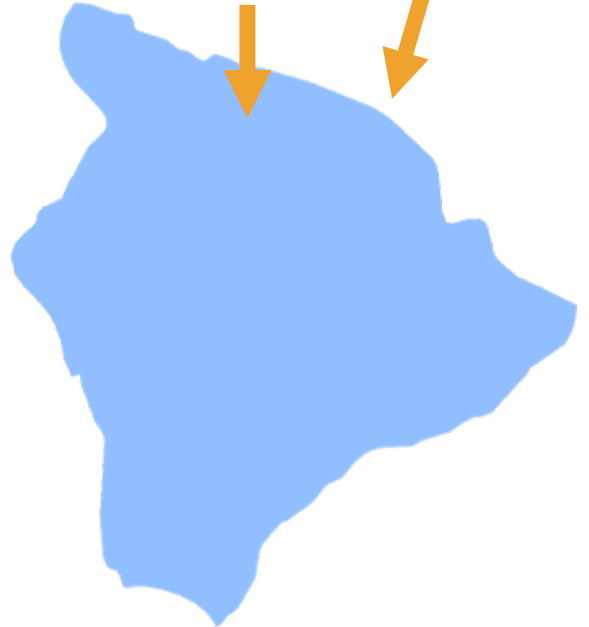
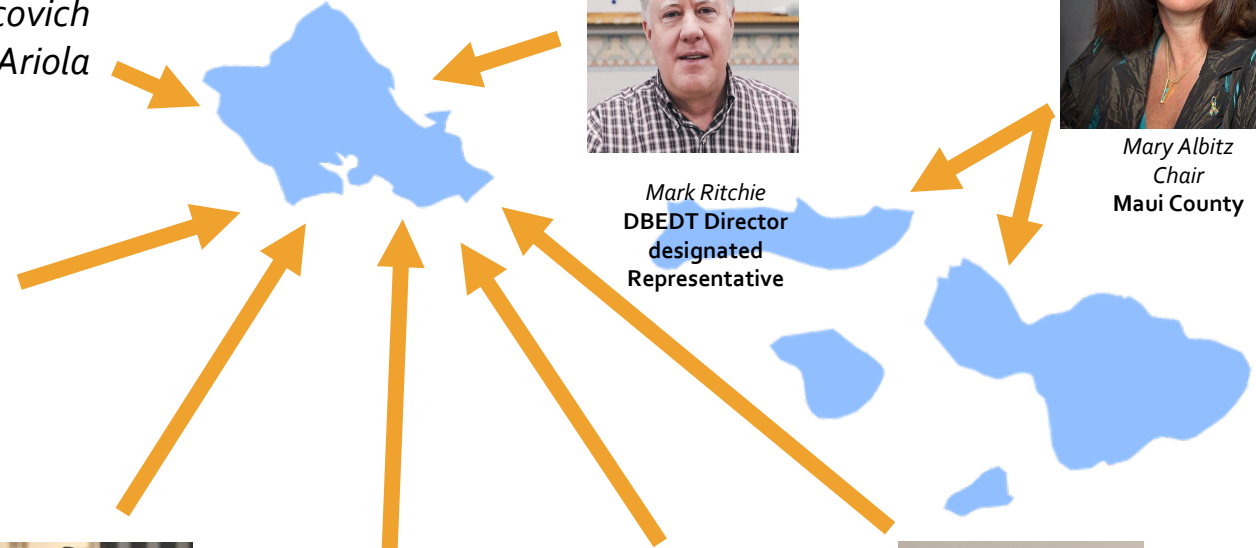
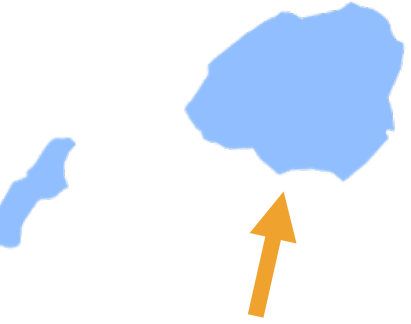
Dr. Nancy Atmospera-Walch
City & County of Honolulu



Jonathan Shick
Second Vice Chair
City & County of Honolulu



William Lydgate
Kaua'i County



What Can the SBRRB Do for Small Businesses?

- Identify Burdensome Regulations
 - Suggest alternatives for compliance and recommend modifications to rules that unevenly impose burdens on small business
- Work with State and County agencies to avoid unnecessary burdens on small businesses during rule writing

How Small
Business Can
Help the
SBRRB

The SBRRB wants to hear from you!

- Get involved as rules are being written
- Submit a *Regulation for Review* through the SBRRB website
- Submit a *Petition for Regulatory Review Chapter 201M-6 HRS*

Tools for Small Businesses on our website

<https://sbrrb.hawaii.gov/>

- Rule Making Process
- Rule Status Tracker
- Meeting Dates, Agenda, Minutes
& Packet Information
- Regulation for Review



How to CONTACT the SBRRB



<https://sbrrb.hawaii.gov/>



DBEDT.sbrrb.info@hawaii.gov



(808) 798-0737



Visit Monthly SBRRB meetings

Currently, meetings are hybrid via Zoom and at the No. 1 Capitol District Building, 250 S. Hotel Street – Conference Room 436, Honolulu, HI 96813



[@SBRRBHI](#)

On Behalf of
The Small
Business
Regulatory
Review Board

MAHALO

PRESS



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SMALL BUSINESS REGULATORY REVIEW BOARD

JOSH GREEN, M.D.
GOVERNOR

JAMES KUNANE TOKIOKA
DIRECTOR

DORI PALCOVICH
ADMINISTRATOR

FOR IMMEDIATE RELEASE

June 29, 2023

SMALL BUSINESS REGULATORY REVIEW BOARD ELECTS 2023-2024 OFFICERS

HONOLULU – The Department of Business, Economic Development and Tourism (DBEDT) Small Business Regulatory Review Board (SBRRB) has announced its officers for fiscal year 2024 to 2025.

Mary Albitz, chair (Maui) – A member since 2018, Ms. Albitz is the owner of Island Art Party, a paint and sip studio located in Kīhei.

Robert Cundiff, vice chair (O‘ahu) – Mr. Cundiff has been a board member since 2015 and served as the SBRRB chair for the last four years. He is a principal of Lokama Group, a business/management consulting service.

Jonathan Shick, second vice-chair (O‘ahu) – Mr. Shick works for Pono Consulting Group LLC and has been an SBRRB member since 2019.

Other board members include Nancy Atmospera-Walch (O‘ahu), Garth Yamanaka (Hawai‘i), James (Kimo) Lee (Hawai‘i), Will Lydgate (Kaua‘i), Stanford Morioka (O‘ahu), and Tessa Gomes (O‘ahu).

“The SBRRB oversees rules and regulations for Hawai‘i small businesses promulgated by state and county agencies. I believe that the SBRRB is very committed to improving the regulatory climate in the state for the benefit of small businesses. We appreciate the board members for giving their time and expertise to this program,” said DBEDT Director James Kunane Tokioka.

“The SBRRB is ‘open for business’ and continues to meet monthly via electronic means,” stated SBRRB Administrator Dori Palcovich. “We encourage those small businesses that may have specific regulatory concerns with Hawai‘i Administrative Rules to join the monthly meetings.”

For more information on SBRRB meetings, please visit sbrrb.hawaii.gov.

About Small Business Regulatory Review Board (SBRRB)

The SBRRB was established on July 1, 1998 with the passage of the Small Business Regulatory Flexibility Act. The responsibilities of the SBRRB include:

- 1) Commentary on small business impact statements to the rule-drafting agencies.
- 2) Identification and commentary on business impact of existing administrative rules.
- 3) Recommendations to the Governor's Office, state agencies or the legislature, on any proposed new or amended administrative rules or changes in legislation.
- 4) Recommendations to the mayors or county councils regarding county rules; and
- 5) Review of small business petitions and complaints on business impact.

The SBRRB is comprised of 10 volunteer members who are current or former owners or officers of businesses from across the state, and the director of DBEDT or the director's designated representative, who serves as an "ex officio" member. Three members are appointed by the Senate President, three members by the Speaker of the House, two members by the SBRRB, and two appointed by the Governor.

Further, the appointments reflect a representation of a variety of businesses in the state with no more than two members from the same type of business and at least one representative from each county.

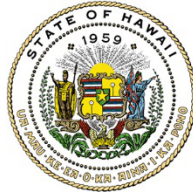
About Department of Business, Economic Development and Tourism (DBEDT)

DBEDT is Hawai'i's resource center for economic and statistical data, business development opportunities, energy and conservation information, and foreign trade advantages. DBEDT's mission is to achieve a Hawai'i economy that embraces innovation and is globally competitive, dynamic and productive, providing opportunities for all Hawai'i's citizens. Through its attached agencies, the department fosters planned community development, creates affordable workforce housing units in high-quality living environments, and promotes innovation sector job growth.

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(808) 587-9006
lacianne.a.goshi@hawaii.gov
dbedt.hawaii.gov



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SMALL BUSINESS REGULATORY REVIEW BOARD

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

DORI PALCOVICH
SBRRB ADMINISTRATOR

FOR IMMEDIATE RELEASE

October 4, 2022

SMALL BUSINESS REGULATORY REVIEW BOARD WEBSITE ENHANCEMENTS

Redesign simplifies information gathering and regulation updates

HONOLULU – The Department of Business, Economic Development and Tourism’s (DBEDT) Small Business Regulatory Review Board (SBRRB) is pleased to announce enhancements to the SBRRB website that will make it simpler for small business owners and other users to navigate government regulations.

“Small businesses want to succeed, generate income, and grow, but sustainability may be impacted by rules and regulations,” said Robert Cundiff, SBRRB chair. “If you are a small business and a state or county government rule or regulation is negatively impacting your business, we want to hear about it.”

Enhancements include:

- A redesigned homepage with specific actions for that small business, business intermediaries such as trade groups and associations, and government can take;
- Enhanced filtering for meeting information so users can quickly see which departments are being discussed during each meeting;

- A directory of business and trade organizations;
- A redesigned rulemaking process graphic that more clearly defines all steps of the process;
- A redesigned email newsletter template and updated signup page that allows recipients to select the specific agencies they'd like to receive email updates for;
- An area highlighting SBRRB success stories, member accomplishments, press, and more.

SBRRB is an eleven-member board comprised of small business owners and officers from across the State of Hawai'i and the Director of DBEDT. Its main activities include reviewing and making recommendations to state and county agencies on any proposed new or amended administrative rules and responding to small business requests for assistance with administrative rules. The Board meets monthly and is administratively attached to DBEDT.

Visit us at <https://sbrrb.hawaii.gov>

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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SMALL BUSINESS REGULATORY REVIEW BOARD

DAVID Y. IGE
GOVERNOR

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DORI PALCOVICH
SBRRB ADMINISTRATOR

FOR IMMEDIATE RELEASE

September 20, 2019

SMALL BUSINESS REGULATORY REVIEW LAUNCHES NEW WEBSITE

HONOLULU – The Department of Business, Economic Development and Tourism’s (DBEDT) Small Business Regulatory Review Board (SBRRB) has a new website that will make the regulatory process more small business-friendly.

The SBRRB is a regulatory agency that reviews proposed new and amended Hawai‘i Administrative Rules (HAR) and advises governmental rule-drafting agencies on the impact on small businesses prior to adoption by the governor and county mayors. The SBRRB also oversees proposed rules, regulations and legislation for economic impact on small businesses, and proposes rules or statutory changes that would improve the regulated climate for Hawai‘i small businesses.

The new website is an improved, revamped and user-friendly tool to assist Hawai‘i’s business community, rule-drafting agencies, business chambers and trade organizations in providing current information on the status of state and county new and proposed HAR’s that have small businesses.

The website’s highlights include a new layout with a more unified appearance, improved navigation of the site and a new dashboard that includes an up-to-date status of the SBRRB’s review of the HARs; an improved webpage for a small business owner’s submission of a “regulation for review”; dates for monthly meetings; and an explanation in diagram-form as to how small businesses may get involved in the rule-making process.

In addition, the website will provide a mobile-friendly layout that works across all mobile devices and tablets and meets ADA requirements for an efficient, open government. Visit sbrrb.Hawai‘i.gov.

Page Two

Small Business Regulatory Review Board Launches New Website

September 19, 2019

About the Department of Business, Economic Development & Tourism (DBEDT)

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Monday, September 30, 2019

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Thursday, September 26, 2019

Small Business Regulatory Review Board Launches New Website

By News Release @ 9:04 PM :: 237 Views :: [Hawaii State Government](#), [Small Business](#)

SMALL BUSINESS REGULATORY REVIEW LAUNCHES NEW WEBSITE

News Release from [DBEDT, Sep 19, 2019](#)

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Wednesday, August 01, 2018

[20 Year Anniversary of Hawaii Small Business Regulatory Review Board](#)

By News Release @ 6:58 PM :: 427 Views :: [Small Business](#)

SMALL BUSINESS REGULATORY REVIEW BOARD COMMEMORATES 20TH ANNIVERSARY

News Release from [DBEDT, July 31, 2018](#)

HONOLULU—The Hawaii Small Business Regulatory Review Board (SBRRB) is celebrating its 20th anniversary.

The SBRRB is the “watchdog” for the more than 128,000 small businesses in that may be impacted by rules and regulations promulgated by state and county agencies. Small businesses in Hawaii employ more than 52 percent of the private workforce in the state. Their primary role is to provide recommendations to the Office of the Governor, the Hawaii State Legislature, and state agencies on proposed and existing administrative rules that may negatively impact small business.

SBRRB Chair Anthony Borge, general manager of RMA Sales, has been a board member since December 2012. Borge’s strong commitment to this board and the small business community have helped to encourage Hawaii business organizations such as the Hawaii Chamber of Commerce to become involved in the beginning stages of the rule-making process.

“The board members have worked so hard and accomplished a lot in the past several years and I am enthusiastic about the many successes to come,” Borge said.

This year, the SBRRB worked closely with state and county agencies by encouraging the agencies to engage small business stakeholders early-on in the rule-drafting/amendment process instead of at the end, where the fact-finding information would be timely.

The SBRRB is comprised of 11 volunteer members – 10 current/former owners or officers of businesses from across the state, and the DBEDT Director serves as an “ex officio” member.

Board members are appointed by the Governor, and confirmed by the Hawaii State Senate. Appointees represent a variety of businesses in the state with no more than two members from the same type of business and at least one representative from each county.

The SBRRB meets every third Wednesday of the month at No. 1 Capitol District Building, Conference Room 436, 250 South Hotel Street, Honolulu, HI.

The board currently has three open seats and is actively searching for a small business person on Oahu or any of the neighbor islands. If you are interested in knowing more about becoming a member of the SBRRB, call (808) 586-2594.

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DOT tweaking airport rules for ride-hailing operators

By Allison Schaefer
aschaefer@staradvertiser.com

The state Small Business Regulatory Review Board was slated Wednesday to review the state Department of Transportation's proposal for a new set of commercial ground transportation rules that account for ride-hailing, which didn't exist when the rules were last modified in 2002.

However, DOT Airports Division Deputy Director Ross Higashi told the board that the department planned to redraft the proposed rules to address issues raised during a Friday stakeholder meeting. The meeting was called after the board unanimously deferred action on proposed rule changes during its April meeting so that DOT could address the concerns that were raised by attendees.

Board chairman Anthony Borge said DOT needed to clarify whether ride-hailing exemptions in rules governing fees, insurance requirements, and vehicle transponders and permitting would be equally and fairly

available to all permittees that service airports. Board vice chairman Robert Cundiff said administrative rules should be equal.

Tabatha Chow, senior operations manager for Uber Hawaii, said the proposed rule changes were not "substantial" and would "modernize the current rules and allow for continued innovation of existing and emerging technologies." But several taxicab companies, including Charley's Taxi, said DOT's earlier proposal favored Uber and Lyft with "unfair, significant economic and competitive advantages."

Higashi said the department hopes to bring a new set of rules to the board for consideration in June and would cancel the public hearings that were slated for May 29 in Honolulu, May 30 in Kona, May 31 in Kahului and June 1 in Lihue.

In the meantime, Uber and Lyft will continue pickups at Daniel K. Inouye International Airport in Honolulu under a pilot program, which began Dec. 1, 2017, and is slated to run through Aug. 31.

Star Advertiser May 17, 2018

PART IV

BOARD

RESPONSIBILITIES –

RULE REVIEW

Statutory Powers, Responsibilities, and Focus

SMALL BUSINESS REGULATORY REVIEW BOARD STATUTORY POWERS, RESPONSIBILITIES AND FOCUS

Overview

The Small Business Regulatory Review Board (Board) was created on July 1, 1998, by the Small Business Regulatory Flexibility Act, Act 168, Session Laws of Hawaii 1988, codified as Chapter 201M, Hawaii Revised Statutes (HRS). The Board is comprised of eight current or former owners or officers of a business from across the State, who are appointed by the Governor, and confirmed by the Senate. In addition, the Director of the Department of Business, Economic Development, and Tourism (DBEDT), or the Director's designated representative, serves as an ex officio voting member of the Board. For administrative purposes, the Board is placed within DBEDT.

Some highlights of the Board's statutory powers, responsibilities and focus are described below.

Agency Proposals for New or Amended Rules

The administrative rulemaking process and procedures are contained in: (1) Chapter 91, HRS; (2) Chapter 201M, HRS; and (3) Governor's Administrative Directive No. 09-01 (AD 09-01). Chapter 91 includes notice and public hearing requirements for proposed rules. AD 09-01 sets forth what information on proposed rules must be submitted to the Governor when requesting the Governor's approvals during the rulemaking process. Governor's approval is required, first to conduct the public hearing on the rules, and second for adoption of the rules. AD 09-01 also requires that proposed rules are submitted to the Director of Budget and Finance and the Director of DBEDT for their review and comment.

Under Chapter 201M, if a rule proposal "affects small business," the agency submits to the Board a Small Business Impact Statement (SBIS), as described in section 201M-2, HRS, prior to the agency holding its public hearing on the rules. The Board will hold a meeting (subject to the Sunshine Law) on the rule proposal and SBIS, at which time the Board may make recommendations to the agency regarding the small business impact of the rules. After the agency's public hearing on the rules, the agency submits to the Board a Small Business Statement After Public Hearing (SBS), as described in section 201M-3, HRS. The Board will hold another meeting (also subject to the Sunshine Law) on the rules and SBS, to consider any small business concerns that may have been raised at the public hearing on the rules.

"Small business" is defined in Chapter 201M as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." Under AD 09-01, "affect small business" means "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."

Existing Rules

Direct review by the Board. The Board also considers requests received directly from small business owners for review of any rule already adopted by a state agency. For such rules, the Board may make recommendations to the agency as to the need for a rule change or to the Legislature as to the need for a statutory change. For requests regarding county ordinances, the Board may make recommendations to the county council or the mayor for appropriate action.

Small business petition to an agency. An affected small business may petition an agency objecting to a rule that affects small business on the grounds enumerated in section 201M-6(a), HRS. The agency forwards a copy of the petition to the Board, and submits its written response to the petition to the Board within 60 days. If the agency determines that the petition does not merit changing the rule, the small business may ask the Board to review the agency's determination. The Board shall conduct a meeting on the rule and make its recommendations to the agency.

Reporting between agencies and the Board. Section 201M-7, HRS, also contemplates that agencies will work with the Board to uncover impacts on small business. Section 201M-7 requires each agency having rules that affect small business submit to the Board by June 30 of each odd-numbered year, a list of existing rules that affect small business, and a report describing the specific public purpose or interest for adopting the rules, and any other reasons for their continued implementation. Agencies shall also submit to the Board by June 30 of every year, a list of rules to be amended or repealed based on statutory amendments.

This same section requires the Board, in turn, to provide each agency with a list of rules that have generated complaints or concerns as to their effect on small business. This includes any rules that may duplicate, overlap or conflict with other rules, or exceed the agency's statutory authority. The agency must respond in writing to the Board within 45 days after receiving the list.

Chapter 201M

Small Business Regulatory Flexibility Act, 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

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§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 corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii;
- (2) Is independently owned and operated; and
- (3) Employs fewer than one hundred full-time or part-time employees in Hawaii. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2; am L 2017, c 174, §2]

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§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, c 230, §3]

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§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 and 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]

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§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. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule proposed, amended, or 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 rules, 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; 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 from a list of nominees submitted by the board;

(4) Two members shall be appointed by the governor;

(5) 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;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business; and

(8) There shall be at least one representative from each county.

For the 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; am L 2017, c 174, §3; am L 2018, c 18, §5; am L 2019, c 247, §1]

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§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 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; am L 2017, c 12, §12]

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

(b) The 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 legislature each even-numbered year. 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; am L 2017, c 174, §4]

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§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 wilful 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) to (d), 200-24(4), 200-37, and 200-38; or
- (6) To violations of administrative rules promulgated pursuant to section 200-4(a)(6); except for rules pertaining to matters listed in section 200-4(a)(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; am L 2017, c 12, §13]

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[\$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]

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Governor's
Administrative
Directive
18-02



EXECUTIVE CHAMBERS
HONOLULU
January 1, 2018

DAVID IGE
GOVERNOR

ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of Hawaii 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 replaces Administrative Directive No. 09-01, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated October 29, 2009.

Legal References:

1. Hawaii Revised Statutes Chapter 91
2. 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:

1. All requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS).
<https://hawaiiomt.sharepoint.com/sites/gov/adminrules/>
Prior to all submittals, the department must obtain the Attorney General's approval "as to form".

2. **Small Business Regulatory Flexibility Act**

In accordance with Chapter 201 M, the department must complete the following

5. Final Rule

In the request for approval of Final Rule, the department will provide response to the following:

- a. Changes in Final Rule
 - i. What changes were made in the Final Rule?
 - ii. Why were these changes made?
- b. Other
 - i. Describe how the department has worked with stakeholders to gain support for the rule?
 - ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?
 - iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

6. Filing of Final Rule

Upon approval of Final Rule through HARPS, the Department will send 3 hard copies to Office of the Governor. When approved, these copies will be filed with the Office of the Lieutenant Governor. Rule will take effect 10 days after filing.

7. Department of Budget and Finance (BUF) and Department of Business, Economic Development and Tourism (BED)

BUF and BED will receive electronic notification upon submittal of public hearing request. Both departments will have the ability to submit comments and concerns through HARPS. Response will be due 10 business days after Final Rule is submitted. Comments will be optional unless the following applies:

- a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
- b. BED will be required to provide response if the proposed rule has economic impact or affects small business.

Procedure:

1. See attached PowerPoint

steps before submitting a request to conduct public hearing if the proposed rule affects small business:

- a. Complete Small Business Impact Statement
 - i. See HRS Section 201M-2
- b. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board

3. Public Hearing Approval

In the request to conduct public hearing, the department will provide response to the following:

- a. Summary of changes
 - i. Why is this section of Hawaii Administrative Rules being amended?
 - ii. What problem is the rule change meant to solve?
 - iii. List all changes that are being made.
- b. Impact of changes
 - i. How does this rule change address the problem?
 - ii. Who are the stakeholders? Positive and negative.
 - iii. What are the potential problems with the rule change?
 - iv. What is the fiscal impact?
 - v. What is the economic impact to the State?
- c. Consequences if changes are not made
 - i. What are the consequences if the rule change does not get adopted, amended or repealed?

4. Public Hearings

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

- a. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
- b. The department must accept written testimony from all parties who are unable to attend the public hearing.
- c. The department will be responsible for transcribing the testimony from the public hearing into a public hearing summary document that will be required upon submittal of Final Rule.

Standard Operating Guidelines and Procedures

Small Business Regulatory Review Board Standard Operating Guidelines and Procedures

(J/Public/SBRRB/SBRRB/OrientationManual/SBRRB/Procedures and Guidelines)

I. CORRESPONDENCE AND ADMINISTRATIVE RULES

A. Incoming Correspondence

a. Date-Stamped

1. DBEDT staff date-stamps all correspondence and administrative rule documentation to the SBRRB.

b. Distribution of Correspondence

1. Correspondence and administrative rules are submitted to the respective member(s) and Chair. Original is kept in DBEDT office.

c. Agenda Items

1. It is requested that all potential agenda material be received by the rule-making agencies at least 10 days before agenda posting or it will be posted the following month.

B. Outgoing Correspondence

a. Response Procedure

1. DBEDT staff and Chair or respective board member may jointly compose correspondence.
2. Response correspondence is approved by the Chair before being sent out and (subsequently) approved by members at a board meeting; the members' approval will depend on the time needed to submit the correspondence.

b. Stationery

1. Only "Small Business Regulatory Review Board" stationery is used for correspondence.
2. A copy of all correspondence is given to the Chair and respective board member(s).

c. Filing

1. Correspondence is kept in a separate binder at DBEDT office.

II. AGENDAS

A. Preparation

1. DBEDT staff drafts monthly agendas.
2. Preparation can begin months in advance.
3. All potential agenda material is requested to be received 10 days before agenda posting.

B. Contents

1. Input of agenda contents is derived from DBEDT staff, Chair and Members.

C. Approval

1. Chair approves the final draft agenda.
2. DBEDT staff sends draft agenda to Office of Information Practices for approval.

D. Notice and Posting of Agenda

1. DBEDT staff posts agenda six calendar days prior to the meeting, in accordance with §92.7, HRS.

III. BOARD MEETINGS – in accordance with §92.3, HRS

A. Scheduling

1. Board meetings are scheduled in advance.
2. Board meetings can be held in any location designated and agreed to by board members.
3. If a quorum is unavailable for a regular scheduled meeting, the Chair may reschedule at an unscheduled time.

B. Conducting

1. Meetings are conducted by the Chair or by anyone the Chair appoints.
2. If the Chair is unable to attend the meeting, the Vice Chair may conduct the meeting.
3. In the event both Chair and Vice Chair are unable to attend the meeting, the 2nd Vice Chair may conduct the meeting.

C. Receiving and Hearing of Public Testimony – in accordance with §92.3, HRS

1. There will be time allotted for each testifier to testify depending on length of agenda/number of testifiers; it is at the discretion of the Chair.

D. Public Requests for Board Actions

1. Requests can be received via verbally, in-person, email, correspondence, etc.
2. DBEDT staff will respond to requests.

IV. MINUTES – in accordance with §92.2, HRS

A. Preparation

1. DBEDT staff drafts minutes of the meeting.
2. Chair reviews draft minutes.
3. Minutes are reviewed/amended/approved at the next board meeting by the members.

B. Audio Tape Recording - in accordance with §92.9(c), HRS

1. The meetings are generally recorded.
2. Tapes will generally be erased upon completion of draft minutes.

C. Content of Minutes - in accordance with §92.9, HRS

1. Minutes are based on the board's agenda topics.
2. Conversation of the meetings are paraphrased to highlight important comments as well as votes.

D. Approval of Minutes

1. Minutes are approved by the board

V. **REVIEW OF ADMINISTRATIVE RULES**

A. Existing Rules/New Rules – in accordance with Chapter 201M, HRS

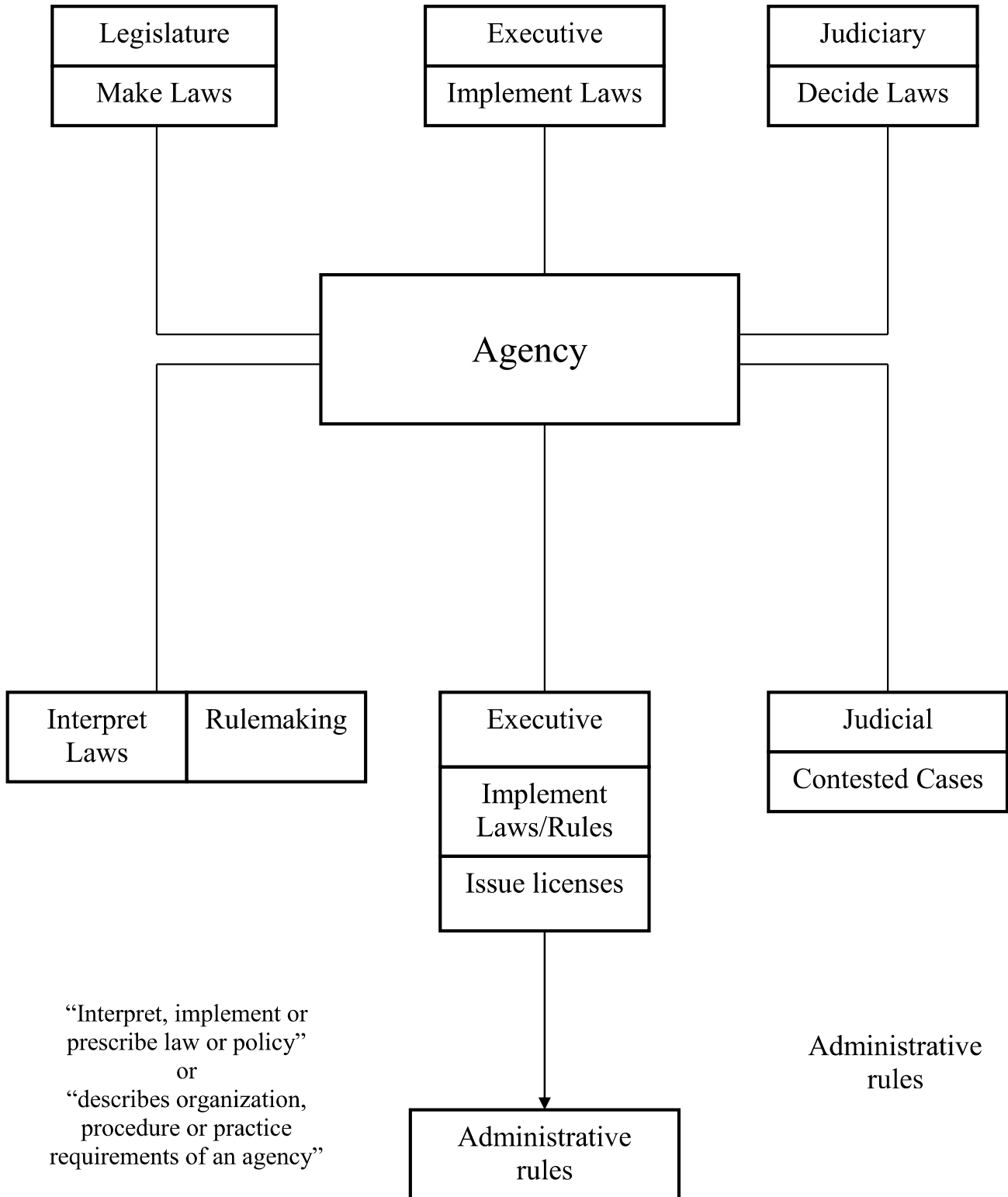
1. Board members are asked to review all administrative rules on the monthly agendas for questions and commentary at the board meeting.
2. DBEDT staff will transmit rule proposals that “affect small business” to the Board Chair and Discussion Leader(s), by email, postal mail, etc.
3. The Discussion Leader may make recommendations to the proposal during a board meeting.

PART V

LEGISLATION

Overview of Law Making Process Diagram

OVERVIEW OF LAW MAKING PROCESS



Sample “Bill”

A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the small business regulatory review board lacks sufficient financial and administrative support from the department of business, economic development, and tourism. Without this support, the small business regulatory review board is unable to accomplish its mission.

Accordingly, the purpose of this Act is to support the small business regulatory review board by establishing a line item for the small business regulatory review board within the budget of the department of business, economic development, and tourism.

SECTION 2. Section 201M-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board [~~to~~]. The board shall 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. The board shall be entitled to a separate line item in the budget of the department of business, economic development, and tourism. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Small Business Regulatory Review Board

Description:

Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

Sample “Testimony”

TO: Chair McKelvey, Vice Chair Kitagawa and Members of the House
Committee on Economic Development & Business

FROM: Garth Yamanaka

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078, Relating to the Small Business Regulatory Flexibility Act

As an individual who has been serving as a board member on the Small Business Regulatory Review Board (SBRRB) for the past five years, I am providing support of House Bill 2078. This measure entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

Without a set budget, I am greatly aware of the challenges the SBRRB volunteers have encountered to provide sufficient outreach to the small business community to enhance the growth of small business in Hawaii. While I am proud of the successes and accomplishments this hardworking group of gratis members has had, to date, I personally believe that the SBRRB could greatly improve upon its outreach to the small business community if a budget was granted.

Thank you for hearing my testimony in support of House Bill 2078.

TESTIMONY

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House Committee on Business, Economic Development & Business

FROM: Nancy Atmospera-Walch *Nancy Walch*

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078 Relating to the Small Business Regulatory Flexibility Act

Please be advised that as a member of the Small Business Regulatory Review Board (SBRRB) for the past five years, I am providing comments in **support** of House Bill 2078 as an **individual**.

SB2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB consists of ten small business owners across the State, providing recommendations to State and County Agencies and to the Governor and Mayors on new and amended administrative rules that impact small business. As a small businessowner I am proud to be a member of this conscientious and pro-active Board that is dedicated to the regulatory success of the State's small businesses.

To continue with the board's efforts, a separate line item will provide the SBRRB with the stability to continue with to do the work of its statute that is essential to a strong regulatory environment.

Thank you for allowing me to provide testimony in support of House Bill 2078.

MEMORANDUM

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Business, Economic Development & Business

FROM: Mary Albitz

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078 Relating to the Small Business Regulatory Flexibility Act

As a board member of the Small Business Regulatory Review Board (SBRRB) for the past two years, I am providing comments as an **individual in support** of House Bill 2078.

SB2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB is comprised of eleven owners of small businesses across the State, of which I represent Maui County. We provide recommendations to State and County Agencies and to the Governor and Mayors on new and amended Hawaii Administrative Rules that directly impact small business.

To continue with the board members efforts, a separate line item will provide the SBRRB with the strength needed to do the work of its statute that is vital to a stable regulatory environment.

I thank you for hearing my testimony in support of House Bill 2078.

MEMORANDUM

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Business, Economic Development & Business

FROM: William Lydgate

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078 Relating to the Small Business Regulatory Flexibility Act

I am currently serving as a board member of the Small Business Regulatory Review Board (SBRRB) however, I am providing comments as an **individual in support** of House Bill 2078.


This measure entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB has become a very instrumental voice within Hawaii's small business community. Having a budget will help assist the SBRRB volunteers with the stability needed to efficiently carry on the work that supports the regulatory activity of Hawaii's small business community.

As a proud member of this Board, thank you for hearing my testimony in support of House Bill 2078.

Handwritten signature of William Lydgate in black ink.

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House Committee on Business, Economic Development & Business

FROM: James (Kimo) Lee 

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: Support - House Bill 2078 - Relating to the Small Business Regulatory Flexibility Act

As a member of the Small Business Regulatory Review Board (SBRRB) for the past year, I **support** House Bill 2078 as an **individual**.

SB2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB is responsible for reviewing Hawaii Administrative Rules proposed by State and County agencies to determine the impact on Hawaii small businesses. It is an essential voice in determining business impact and seeking ways to work with the rule-drafting agencies to lessen the often very damaging effect this has on those businesses least able to hand the added burden.

Please strongly consider a separate budget line item for the SBRRB so it can continue in its quest to support Hawaii's regulatory environment more effectively and efficiently.

Thank you for allowing me to provide testimony in support of House Bill 2078.

LATE

TESTIMONY

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Economic Development & Business

FROM: Robert Cundiff

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: Support - House Bill 2078 – Relating to the Small Business Regulatory
Flexibility Act

I submit this testimony in support of House Bill 2078 as an individual. I have been a member of the Small Business Regulatory Review Board (SBRRB) for the past 5 years and believe this measure will be extremely beneficial for SBRRB's outreach and operating expenses.

Specifically, House Bill 2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

Without a budget, the SBRRB volunteers have been challenged to provide sufficient outreach to the small business community to provide a valuable, needed service to enable and enhance the growth of small business in Hawaii. Curtailing, and or minimizing the negative economic impact that existing and proposed rules/regulations have on the thousands of small businesses is not an option if we are to sustain positive economic growth within the State.

I am proud of the success and accomplishments this hardworking group of gratis members has had with no specific budget, but the SBRRB could greatly improve outreach to the small business community if a sufficient budget was granted.

Thank you for hearing my comments and support of House Bill 2078.

PART VI
RESEARCH
TOOLS

How to use the Searchboxes

Bill Status/Measure Status
 e.g. SB123 or HB456

Keyword Search
 searches 2021 session

Hawaii Revised Statutes
 searches 2020 HRS

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Session Laws (Acts)
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Recent Updates

Aloha!

If you are a first-time user, you may visit the [General Information and FAQs page](#) for additional help navigating the website. You may also [see the help page](#) for assistance in creating an account.

The State Capitol building remains closed.

- Senate Special Committee on COVID-19
- House Select Committee on COVID-19 Economic and Financial Preparedness
- Joint House-Senate Conference Committee Procedures
- Conference Committee Remote Participation Procedures
- Conference Committee Room Scheduling Procedures
- Conference Committee Room Assignment Schedule
- 2021 Senate Leadership and Committee Assignments
- 2021 House Leadership and Committee Assignments
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Testimony



Hearing Notification



Measure Tracking



Legislators



Committees



Reports and Lists



Hearings



Order of the Day



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Lt. Governor of the State of Hawai'i
 Josh Green

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ADMINISTRATIVE RULES

Title 1 – Governor	Office of the Governor
Title 2 – Lt. Governor	Office of the Lieutenant Governor
Title 3 – DAGS	Department of Accounting and General Services (http://ags.hawaii.gov/administrative
Title 4 – DOA	Department of Agriculture (http://hdoa.hawaii.gov/admin-rules/)
Title 5 – ATG	Department of Attorney General (http://ag.hawaii.gov/publications/administrative-rules/)
Title 6 – DBF	Department of Budget & Finance (http://budget.hawaii.gov/about/adminrules/)
Title 7 – DOD	Department of Defense (http://dod.hawaii.gov/department-info/admin-rules/)
Title 8 – DOE	Department of Education (http://boe.hawaii.gov/policies/AdminRules/Pages/default.aspx)
	Hawaii State Library System

	http://hawaii.sdp.sirsi.net/client/default/rm\$003dADMINISTRATIVE0\$00257C\$00257
	Hawaii Teacher Standards Board (http://www.htsb.org/announcements/hawaii-teache
	Hawaii State Public Charter School Commission (http://www.chartercommission.hawa
Title 10 – DHHL	Department of Hawaiian Home Lands (http://dhhhl.hawaii.gov/dhhhlrules/)
Title 11 – DOH	Department of Health (http://health.hawaii.gov/opppd/administrative-rules/)
Title 12 – DLIR	Department of Labor and Industrial Relations (http://labor.hawaii.gov/administrative-r
Title 13 – DLNR	Department of Land and Natural Resources
Title 14 – DHRD	Department of Human Resources Development (http://dhrd.hawaii.gov/administrative
Title 15 – DBEDT	Department of Business, Economic Development & Tourism (http://dbedt.hawaii.gov/
	Hawaii Community Development Authority (http://dbedt.hawaii.gov/hcda/plans-rules/)
	Hawaii Housing Finance & Development Corporation (http://dbedt.hawaii.gov/hhfdc/a
Title 16 – DCCA	Department of Commerce and Consumer Affairs (http://cca.hawaii.gov/hawaii-admini
Title 17 – DHS	Department of Human Services (http://humanservices.hawaii.gov/admin-rules-2/)
	Hawaii Public Housing Authority (http://www.hpha.hawaii.gov/referenceinformation/ac
Title 18 – TAX	Department of Taxation (http://tax.hawaii.gov/legal/taxlawandrules/)
Title 19 – DOT	Department of Transportation
Title 20 –	University of Hawaii (http://www.hawaii.edu/offices/bor/adminrules/index.html)

UH	
Title 23 – PSD	Department of Public Safety (http://dps.hawaii.gov/administrative-rules/)

Proposed Changes to Administrative Rules

Instructions for printing proposed changes to administrative rules: hold down “Ctrl” button while hitting “P” or right click on mouse and select “print” on pop up menu. Click on “Print” on the print pop up box.

Administrative Rules Updates – Monthly Reports

Helping make Hawaii rules more small business friendly

Join us at our monthly meeting to weigh in on Hawaii government rules that affect small business.

Our next meeting is on **Thursday May 20, 10:00 am**

[Join us at our meetings](#)

For small businesses and associations

Learn how you can have an impact on rules affecting your business.

[Learn more](#)

For government agencies

If your agency has a new rule or a rule change that impacts small business, please complete and submit the appropriate forms and attend a board meeting for review and discussion.

[Get started](#)

About SBRRB

The Small Business Regulatory Review Board (SBRRB) is an eleven-member board comprised of small business owners and officers from across the State. Its main activities include reviewing and making recommendations to State and County agencies on any proposed new or amended administrative rules and responding to small business requests for assistance with administrative rules.

[Read more about SBRRB](#)

Impactful actions

The SBRRB has taken actions we are proud of on rules that affect small businesses in Hawaii.



[Read more about recent actions](#)

DLIR – HIOSH rules

The SBRRB reviewed proposed changes to Department of Labor's Occupational Safety and Health Division rules, including safety standards and requirements in the workplace, safeguarding and preventing danger on a work site, safeguarding medical records, and many other health and safety-related requirements.

During the board meetings, the SBRRB heard from several concerned testifiers (contractors, contracting lobbyists, etc.) due to confusion, concerns and questions the small business stakeholders had about the changes...

[Read more...](#)

DOT – Commercial service at public airports

A small business taxicab owner came before the SBRRB about a pilot program that the State Department of Transportation (DOT) had established allowing Uber and Lyft drivers to pick up passengers at Hawaii public airports. It was causing a financial impact on the taxi cab drivers.

Because it was a pilot program, the Uber and Lyft drivers were not regulated under the State and County rules that taxicab drivers are...

[Read more...](#)

“The real success of the Small Business Regulatory Review Board is in the quality of interaction with the people that come before our board.

- Mark Ritchie, Ex Officio Voting Board Member

Make a difference

If you are a current or former owner or officer of a business, live in Hawaii, and have an interest in helping small business in Hawaii...

[Join our board](#)

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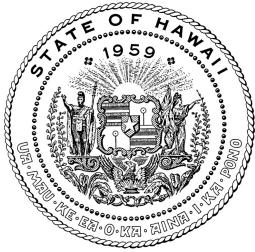
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PART VII
SAMPLE
MEETING
AGENDA &
MINUTES

Sample Agenda



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 586-2419

AGENDA

Thursday, January 21, 2021 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Taryn Rodighiero
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under the Governor's December 16, 2020, Seventeenth Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/97410567038>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2020>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be **received no later than 4:30 p.m., Wednesday, January 20, 2021.**

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

I. Call to Order

II. Approval of November 19, 2020 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 256 Section 73 **Kaneohe Bay Ocean Waters**, promulgated by Department of Land and Natural Resources – *attached and incorporated as Exhibit 1*

IV. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Section 5A-11.4 of the Kauai County Code, **Home and Related Exemption Rules**, promulgated by County of Kauai Department of Finance – *attached and incorporated as Exhibit 2*
- B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 218 **Kakaako Reserved Housing Rules**, promulgated by Hawaii Community Development Authority / Department of Business, Economic Development and Tourism – *attached and incorporated as Exhibit 3*
- C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 60.1, **Air Pollution Control**, promulgated by Department of Health – *attached and incorporated as Exhibit 4*

IV. Administrative Matters

- A. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, Hawaii Administrative Rules (HRS)

V. Next Meeting: Thursday, February 18, 2021 at 10:00 a.m.

VI. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

Sample Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

January 21, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:10 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Dr. Nancy Atmospera-Walsh
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- William Lydgate
- Jonathan Shick

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

II. **APPROVAL OF November 19, 2020 MINUTES**

Second Vice Chair Yamanaka motioned to accept the November 19, 2020 meeting minutes, as presented. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 256 Section 73 Kaneohe Bay Ocean Waters, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader Ms. Rodighiero stated that the rule changes are mostly housekeeping in nature with clarification of the regulations for the Kaneohe Bay ocean waters area, including restrictions and limitations to the educational permit requirements.

Mr. Ed Underwood, Administrator at DLNR’s DOBOR (Division of Boating and Ocean Recreation) noted that Ms. Rodighiero summarized the rule changes well. Changes also clarify the rule’s nonprofit requirements and cleans up language throughout. The public hearing was held on December 2, 2020 with one testifier from the neighborhood board that was in favor of the rule changes.

Second Vice Chair Yamanaka motioned to move the amendments to the Governor for adoption. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Kauai County Code Section 5A-11.4 of the Kauai County Code, Home and Related Exemption Rules, promulgated by County of Kauai – Department of Finance

Discussion leader Ms. Rodighiero stated that the rules were generally housekeeping measures; however, one of the biggest changes has to do with the amount of time to be physically present in a principal home or residence; this was being changed from 181 to 270 days.

Mr. Brad Cone, Real Property Tax Manager at the County of Kauai's Department of Finance, explained that an owner that currently has a home exemption was not affected by the rule changes; only new applicants would be affected. If an owner has a primary house, the owner will qualify for a home exemption. Further, if commercial or business activity is conducted from that house, instead of the homestead class tax, it would be considered to be one step above the homestead rate, or commercialized home-use.

Mr. Cone also noted that an off sight "home office" is not considered a commercial activity and will not affect the home exemption. Businesses, such as home daycare centers, would be in the "commercialized home-use" classification. Other examples of home business use include massage therapists, yoga studios, care homes, and any type of business that requires a commercial use permits. Overall, the changes made to the Kauai rules were intended to equalize with the other counties' rules.

Second Vice Chair Yamanaka motioned to move the proposed amendments to public hearing. Dr. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 218 Kakaako Reserved Housing Rules, promulgated by Hawaii Community Development Corporation (HCDA) / Department of Business, Economic Development and Tourism

Mr. Deepak Neupane, Director of Planning & Development at HCDA, explained that the proposed amendments will allow for the payment of equity sharing without the sale or transfer of the Reserved Housing unit. The shared equity concept was first incorporated into the rules in 1985 and its purpose was to allow HCDA to collect its share of the equity in the reserved housing unit with the owner when the unit is sold.

Because the current rules do not include a provision for payment of shared equity without sale or transfer of reserved housing unit, amendments add language to allow for the payment of equity sharing without sale or transfer of the reserved housing unit. Amendments are applicable to all reserved housing units in the Kakaako community development.

Second Vice Chair Yamanaka made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 60.1, Air Pollution Control, promulgated by Department of Health (DOH)

Mr. Barry Ching, Program Specialist at DOH's Clean Air Branch, explained that most of the amendments are expected to clarify, update, and bring the rules in alignment with federal requirements and regulations. While a number of the rule changes may not have a negative impact on small business, some may actually benefit small business.

Clean Air Branch Manager, Ms. Marianne Rossio, explained the five proposed changes to the rules outside of the changes in alignment with the federal rules. The first category amends the status of non-major Covered Source Permits (CSP) to Noncovered Source Permits (NSP). This change will allow Hawaii to be consistent with the rest of the nation's states and will benefit small business because NSP's are simpler and have less annual and application permitting fees.

The second category will exempt nonroad engines from air permitting. The rationale for this is that nonroad engines are not stationary sources and DOH will no longer be regulating them in the stationary source permitting process. This would also benefit small business as they would no longer be required to go through the permitting process and pay the permitting fees but would be required to maintain a location log to verify that they are nonroad engines.

The third category adds test methods and removes the director's discretion in the determination of air violations; these changes are being proposed in order to address EPA's concerns and recommendations. The fourth category improves the existing regulations and adds new ones for open burning and agricultural burning. Although open burning is viewed as a tough issue, these rule changes attempt to balance acceptable uses of open burning while also minimizing the potential smoke impacts; it is anticipated that the changes will result in less fees. The fifth amendment will add several new categories of field citations.

In terms of outreach to the small business community, Mr. Ching explained that cooking and barbecuing in backyards are very big issues and concerns of DOH. As such, businesses that might be impacted by this rule are businesses that may, as an example, cook Huli-Huli chicken on the side of the road, of which, the rules narrow what can and cannot be done. In regard to how the on-road logs are being monitored, Ms. Rossio stated that there is an enforcement section in the branch that may ask to review the logs to verify non-road engines; inspectors monitor regularly.

Dr. Atmospera-Walsh motioned to forward the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

Chair Cundiff noted that there was nothing to report under administrative matters.

Hawaii's 2021 legislative session began January 20th. Members, James (Kimo) Lee and Harris Nakamoto's nominations to this Board are expected to be on the slate this year. There is also one vacancy on the Board. If any of the existing board members know of anyone that may be a good fit for this Board, please recommend him or her. It would be great to have a "full board" during this legislative session.

VI. NEXT MEETING - Thursday, February 18, 2021 at 10:00 a.m.

VII. ADJOURNMENT – Chair Cundiff made a motion to adjourn the meeting and Ms. Rodighiero seconded the motion; the meeting adjourned at 11:13 a.m.

PART VIII

REPORTS

Annual Report Summary



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

Results for Calendar Year 2023

**Recommendations and Review of
Hawaii Administrative Rules, Legislation
and**

**Requests from Small Business Owners for Review
of Any Rule Adopted by a State Agency**

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

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY 2023

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SECTION I



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.SBRRB.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: (808) 798-0737

MESSAGE FROM THE CHAIR

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane Tokioka
DBEDT Director

Dane K. Wicker
DBEDT Deputy Director

Members

Mary Albitz
Chairperson
Maui



Mary Albitz, Chair, 2023

Robert Cundiff
Vice Chairperson
O'ahu

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy
Atmospera-Walch
O'ahu

Garth Yamanaka
Hawai'i

William Lydgate
Hawai'i

James (Kimo) Lee
Hawai'i

Sanford Morioka
O'ahu

Mark Ritchie
Director, DBEDT
Voting Ex Officio

I am delighted to be the SBRRB's Chair this year. The year started out very hopeful with the pandemic somewhat behind us. We have reviewed more Hawaii Administrative Rules each month compared to the past few years when the pandemic was at its peak.

In June, the SBRRB bid a fond farewell to Kauai-representative board member Ms. Taryn Rodighero. I want to personally thank her for her participation and hard work over the past three years particularly in the areas of land and natural resources and the County of Kauai.

In August, Hawaii hit another stumbling block with the devastating Maui fires. It is clear that there is a lot of work that needs to be done to make sure our islands can prevent and be more prepared for emergencies. Navigating the various government agencies at various levels, Federal, State, County, and City is very difficult for our small businesses. During my time on this board, I have been so very much inspired when we all work together on the rules, that we can almost always get to a place where everyone agrees. My hope is that this will happen often in the rebuilding of Lahaina and Upcountry Maui.

On behalf of all the board members, I extend a big Aloha to the State's new Governor, Josh Green, M.D., and Deputy Director, Sylvia Luke. Aloha also goes out to DBEDT Director Jimmie Tokioka and Deputy Director Dane Wicker for their support of our Board. In addition, Mahalo to the State Legislators for their continued support, and to the State and County agencies that come before us discussing both proposed and amended regulations, before and after public hearing, that have a potential to negatively impact small business.

OVERVIEW

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January through December 2023. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, 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 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 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 was codified in Chapter 201M, Hawaii Revised Statutes (HRS), as amended.

(Appendix 1)

Statutorily, the Board is comprised of eleven members, ten 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 who serves 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 may also consider any request from small business owners for review of any rule proposed, amended, or 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 rules, the board may make recommendations to the county council or the mayor for appropriate action.

Members volunteer their time performing outreach activities to small business organizations, such as the local Chambers of Commerce, and testifying on legislation. Statutorily, the Board may also solicit testimony from the public regarding any reports submitted to the Board by State departments.

As an effective means of administrative rule review, each board member is assigned to one or more State departments as a "discussion leader" and each neighbor island member is assigned to his or her own respective island. Members are responsible for the initial review of the

		Restricted Animals (Part A)			
	Chapter 72	Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules	X		
	Chapter 71A	Plant and Non-Domestic Animal Quarantine, Microorganism Import Rules	X		
	Chapter 71	Plant and Non-Domestic Animal Quarantine Non- Domestic Animal Import Rules	X		
<i>Department of Business, Economic Development and Tourism</i>	Chapter 23	Makai Area Rules	X	X	
	Chapter 217	Mauka Area Rules	X		
	Chapter 215	Kalaeloa Community Development District Rules	X		
<i>Department of Commerce and Consumer Affairs – Title 16</i>	Chapter 115	Professional Engineers, Architects, Surveyors and Landscape Architects		X	
	Chapter 39	Securities	X	X	
	Chapter 89	Nurses	X		
<i>Department of Health – Title 11</i>	Chapter 55	Water Pollution Control a. Appendix A – Standard General Permit Conditions		X	
		b. Appendix D – NPDES General Permit Authorizing		X	

		<p>Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities</p> <p>c. Appendix H – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals</p> <p>d. Appendix I – NPDES General Permit Authorizing Discharges of Treated Process Water Associated with Well Drilling Activities</p> <p>e. Appendix M – NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides</p>		<p>X</p> <p>X</p> <p>X</p>	
	Chapter 55	<p>Air Pollution Control</p> <p>a. Appendix C – Discharges of Storm Water Associated with</p>	X	X	

		<p>Construction Activities</p> <p>b. Appendix J – Occasional or Unintentional Discharges from Decorative Ponds or Tanks</p> <p>c. Appendix L – Discharges of Circulation Water from Decorative Ponds or Tanks</p>	X	X	
<i>Department of Labor & Industrial Relations – Title 12</i>	Chapter 46	Civil Rights Commission	X		
	Subtitle 8, Part 10	Chapter 22 General Administrative and Legal Provisions	X		
		Chapter 222.1 Power Boilers	X		
		Chapter 223.1 Heating Boilers – Steam Heating Boilers, Hot Water Heating Boilers, Hot Water Supply Boilers, and Potable Water Heaters	X		
		Chapter 224.1 Pressure Vessels	X		
<i>Department of Land & Natural Resources – Title 13</i>	Chapter 95	Rules Regulating the Taking and Selling of Certain Marine Resources	X	X	The Board unanimously agreed to move the proposal onto the Governor for adoption with two concerns: 1) there may be potential impact to small businesses that go

					beyond commercial fisheries where more data may be required and collected to fully understand these impacts, and 2) the Board of Land and Natural Resources has not made a post public hearing decision yet and may still alter the rules, in which case the SBRRB would like to review the amendments.
	Chapter 74	License and Permit Provisions and Fees for Fishing, Fish, and Fish Products	X		
	Chapter 60.11	Kipahulu Community-Based Subsistence Fishing Area, Maui	X		
	Chapter 31	Molokini Shoal Marine Life Conservation District, Maui	X	X	
	Chapter 230	General Provisions	X	X	
	Chapter 257	Day-Use Mooring Rules	X	X	

	Chapter 109	Rules for Establishing Forest Stewardship	X		
<i>Department of Human Services – Title 17</i>	Chapter 799	Preschool Open Doors Program	X		
<i>Department of Transportation – Title 19</i>	Subtitle 5 Chapter 152	State Highway Enforcement Program	X		
<i>City and County of Honolulu</i>	Title 19 Chapter 25	Rules and Regulations Governing Shore Water Events	X	X	
	Chapter I – V, Section 54 - 26	BWS Rules and Regulations – Adoption of New Water Rates and Charges	X		

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. During 2023, the Governor’s Legislative team approved the Board’s proposal to amend its statute during the 2024 legislative session to clarify that, in addition to considering any request from small business owners for review of any rule, proposed, amended, or adopted by a state agency, the Small Business Regulatory Review Board has the authority to review legislation affecting small businesses in response to requests from small business owners.

See “Legislative Review” at the end of this report for legislation the Board followed in 2023.

**SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S ADMINISTRATIVE
DIRECTIVE (AD) NO. 18-02**

AD 18-02 was issued in 2018 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. (Appendix 3).

Under Section 201M-2, HRS, State agencies wanting to adopt new or modified administrative rules that have an impact on small business are required to submit to the Board a small business impact statement showing the economic impact on those businesses.

CHAIRPERSON / BOARD MEMBERS

Under 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.” The following elections were held at the June 2023 meeting:

- Chair – Mary Albitz
- Vice Chair – Robert Cundiff
- Second Vice Chair – Jonathan Shick

The Board member nomination process, under Section 201M-5, HRS, states, “the Board shall consist of eleven 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 from a list of nominees submitted by the board;

(4) Two members shall be appointed by the governor;

(5) 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;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business; and

(8) 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 and trade organizations. Except for the ex officio member, all members are 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.”

In June 2023, the Board said “Aloha” to board member Ms. Taryn Rodighiero. At the end of December 2023, the Board was comprised of the following ten members:

- 1) Mary Albitz, Island Art Party, County of Maui
- 2) Dr. Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, City and County of Honolulu
- 3) Robert Cundiff, Business/Management Consultant with Lokama Group, City and County of Honolulu
- 4) James (Kimo) Lee, W. H. Shipman, Ltd., Hawaii County
- 5) William Lydgate, Steelgrass Farm, County of Kauai

- 6) Jonathan Shick, Pono Consulting Group, LLD., City and County of Honolulu
- 7) Garth Yamanaka, Yamanaka Enterprises, Inc., Hawaii County
- 8) Sanford Morioka, Edward Enterprises, Inc., City and County of Honolulu
- 9) Tessa Gomes, Fred and Kate Events, City and County of Honolulu
- 10) Mark Ritchie, Business Support Program Manager, Business Development & Support Division, DBEDT, Voting Ex Officio Member

ACTIVITIES AND PROJECTS

The following activities and projects were accomplished in 2023:

- **Hawaii Small Business Fair** – On September 16th, DBEDT staff attended Hawaii Small Business Fair at Leeward Community College for outreach purposes.
- **Newsletter** – The Board continues to send out monthly e-Newsletters to small business organizations, chambers of commerce, trade organizations and State legislators;
- **Social Media** – In 2023, the Board regularly sent out notices on Facebook, Twitter, and Instagram to enhance its outreach efforts. As of the end of 2023, the Board can proudly boast 39 Friends on Facebook, has 116 followers on Twitter, and 60 followers on Instagram. In September 2023, Becker Communications, Inc., began to assist the Board with its social media messages. In November 2023, representatives from Becker Communications attended a board meeting and provided a short presentation on suggestions for assisting the Board with future outreach efforts, including creating a short YouTube video as well as revamping its monthly newsletter to include the Board’s Zoom meeting minutes among other well-received ideas.
- **Articles, Press Releases**

- 1) In June 2023, DBEDT submitted a press release announcing the recent election of new board officers, Mary Albitz, Chair; Robert Cundiff, Vice Chair; and Jonathan Shick, Second Vice Chair.
- 2) In June 2023, *Hawaii Free Press* published DBEDT's press release announcing the election of new board officers.

REQUESTS FROM SMALL BUSINESS FOR REVIEW
OF ANY RULE ADOPTED BY A STATE AGENCY

Under Section 201M-5, HRS, in 2023, the following requests from business owners were received.

- 1) After the 2023 Legislative session, several small businesses approached the Board posing concerns over House Bill 1090 HD1 SD1 CD1, Relating to Ocean Recreation Commercial Permits. The Board did not review these concerns at a monthly meeting because this measure was placed on the Governor's Veto list. Effective July 7, 2023, House Bill 1090 HD1 SD1 CD1 was vetoed.

SECTION II

LEGISLATIVE REVIEW

The following measures were introduced during the 2023 legislative session.

1. HB 511 – Related to the Small Business Regulatory Review Board

Background: This measure appropriates funds for staffing, commissioner inter-island travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism.

Recommendation: The Board did not have an opportunity to hear this bill, so no recommendation was made.

Result: The bill was introduced and passed first reading but was not scheduled for a hearing.

2. GM 654 – Submitting for consideration and confirmation to the Small Business

Regulatory Review Board Gubernatorial Nominee, Sanford Morioka, for a term to expire 6-30-2027

Background: This measure was submitted for consideration of Mr. Sanford Morioka to the Small Business Regulatory Review Board for a term to expire June 30, 2027.

Recommendation: The Board supported the measure.

Result: On April 21, 2023, the Senate’s “advise and consent” was confirmed.

Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 18-02

1. Chapter 201M, Hawaii Revised Statutes

CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

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

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

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

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

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

"Board" means the small business regulatory review board.

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

"Small business" means a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii;
- (2) Is independently owned and operated; and
- (3) Employs fewer than one hundred full-time or part-time employees in Hawaii. [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. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule proposed, amended or 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 rules, 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; 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 from a list of nominees submitted by the board;
- (4) Two members shall be appointed by the governor;
- (5) 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;
- (6) 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
- (8) 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 to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continue implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

(b) The 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 legislature each even-numbered year. 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]

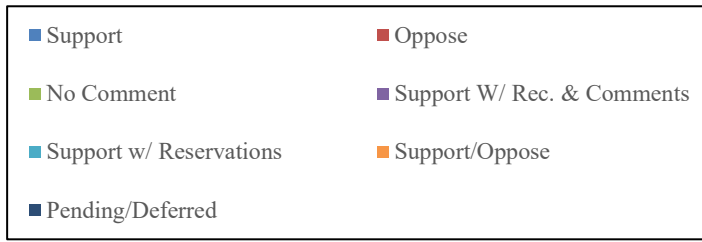
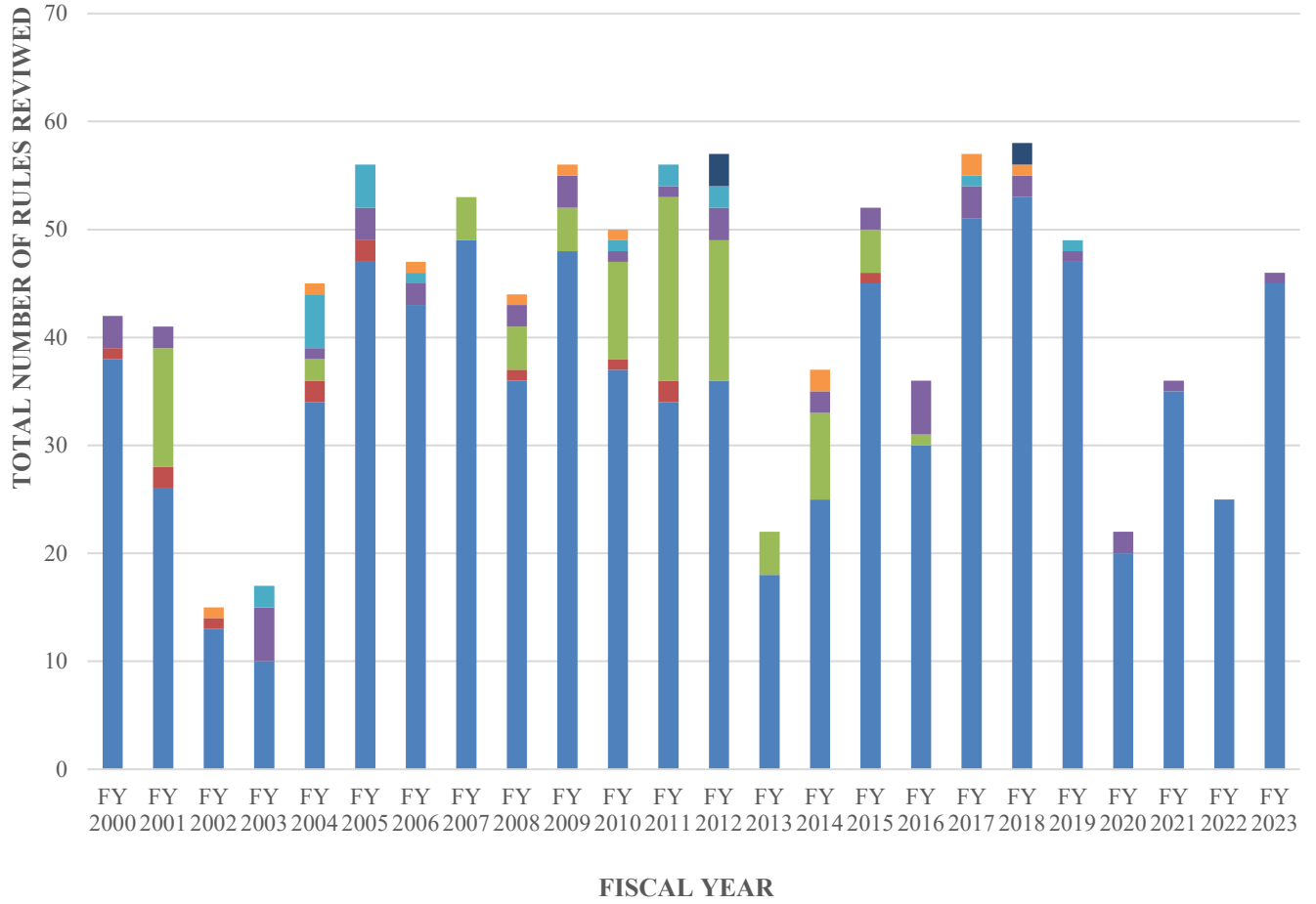
2. Administrative Rule Review

Administrative Rule Review – Annual Report 2023

Calendar Year 2023	Month/Year	Supported (1)	Opposed (2)	No Comment/ No Action (3)	Supported W/ Rec. & Comments (4)	Supported w/ Reservations (5)	Supported/ Opposed (6)	Pending/ Deferred (7)
	Jan-23	5						
	Feb-23	NA						
	Mar-23	3						
	Apr-23	0						
	May-23	6						
	Jun-23	2						
	Jul-23	7						
	Aug-23	4						
	Sep-23	4						
	Oct-23	6						
	Nov-23	5						
	Dec-23	3			1			
	Total Calendar Year 2023	45	0	0	1	0	0	0
	Total Past Years	833	13	81	47	21	12	0
	Total	878	13	81	48	21	12	0
	Total HAR Reviewed Since Inception	1053						

- 1) Unanimous support of HAR
- 2) Opposed HAR
- 3) Either no comment or no action taken on HAR
- 4) Supported HAR with recommendations and/or comments
- 5) Supported HAR with Reservations
- 6) Partially opposed but supported HAR
- 7) Deferred action

Administrative Rule Review Matrix



3. Administrative Directive No. 18-02



EXECUTIVE CHAMBERS
HONOLULU

DAVID IGE
GOVERNOR

January 1, 2018

ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of
Hawaii 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 replaces Administrative Directive No. 09-01, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated October 29, 2009.

Legal References:

1. Hawaii Revised Statutes Chapter 91
2. 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:

1. All requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS).

<https://hawaiioint.sharepoint.com/sites/gov/adminrules/>

Prior to all submittals, the department must obtain the Attorney General's approval "as to form".

2. Small Business Regulatory Flexibility Act

In accordance with Chapter 201M, the department must complete the following steps before submitting a request to conduct public hearing if the proposed rule affects small

business:

- a. Complete Small Business Impact Statement
 - i. See HRS Section 201M-2
- b. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board

3. Public Hearing Approval

In the request to conduct public hearing, the department will provide response to the following:

- a. Summary of changes
 - i. Why is this section of Hawaii Administrative Rules being amended?
 - ii. What problem is the rule change meant to solve?
 - iii. List all changes that are being made.
- b. Impact of changes
 - i. How does this rule change address the problem?
 - ii. Who are the stakeholders? Positive and negative.
 - iii. What are the potential problems with the rule change?
 - iv. What is the fiscal impact?
 - v. What is the economic impact to the State?
- c. Consequences if changes are not made
 - i. What are the consequences if the rule change does not get adopted, amended or repealed?

4. Public Hearings

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

- a. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
- b. The department must accept written testimony from all parties who are unable to attend the public hearing.
- c. The department will be responsible for transcribing the testimony from the public hearing into a public hearing summary document that will be required upon submittal of Final Rule.

5. Final Rule

In the request for approval of Final Rule, the department will provide response to the following:

- a. Changes in Final Rule
 - i. What changes were made in the Final Rule?
 - ii. Why were these changes made?
- b. Other
 - i. Describe how the department has worked with stakeholders to gain support for the rule?
 - ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?
 - iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

6. Filing of Final Rule

Upon approval of Final Rule through HARPS, the Department will send 3 hard copies to Office of the Governor. When approved, these copies will be filed with the Office of the Lieutenant Governor. Rule will take effect 10 days after filing.

7. Department of Budget and Finance (BUF) and Department of Business, Economic Development and Tourism (BED)

BUF and BED will receive electronic notification upon submittal of public hearing request. Both departments will have the ability to submit comments and concerns through HARPS. Response will be due 10 business days after Final Rule is submitted. Comments will be optional unless the following applies:

- a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
- b. BED will be required to provide response if the proposed rule has economic impact or affects small business.



Department of Business, Economic Development & Tourism
Small Business Regulatory Review Board

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Chapter 201M-7 (HRS) REPORT



STATE OF HAWAII • DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

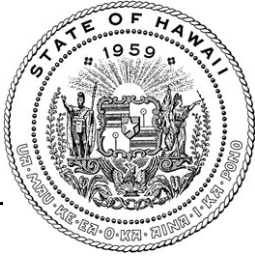
Periodic Review; Evaluation Report

**In Compliance with
Regulatory Flexibility Act
Section 201M –7,
Hawaii Revised Statutes**

2024

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**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI
A HO'OMĀKA'IKA'I

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MESSAGE FROM DIRECTOR



On behalf of the Department of Business, Economic Development and Tourism (DBEDT), I am pleased to extend my deep appreciation to the members of the Small Business Regulatory Review Board for their continued hard work, dedication, and commitment to improve the regulated climate for Hawai'i's small business community.

At DBEDT, it is our goal to make continuous improvements to ensure that Hawai'i is a state that is welcoming to businesses – that means making Hawai'i administrative rules friendlier for small business, an important part of having a robust entrepreneurial and innovation ecosystem. Small businesses are essential to our local economy and benefit our communities by driving economic growth, diversifying the local marketplace with a range of products and services, and creating careers and opportunities.

We encourage small business owners and associations to get involved and learn how actions taken on rules can have positive impacts on Hawai'i's small business landscape. Our collaborative efforts will make a difference and help to fulfill our mission of accomplishing a regulatory environment that encourages and supports the vitality of small business in Hawai'i.

Mahalo,

James Kunane Tokioka
DBEDT Director



SMALL BUSINESS REGULATORY REVIEW BOARD

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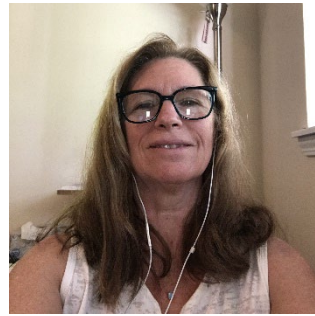
Garth Yamanaka
Hawai'i

Sanford Morioka
O'ahu

Tessa Gomes
O'ahu

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

MESSAGE FROM CHAIR



This Report consists of existing Hawaii Administrative Rules that both the State and County departments have determined to impact small business and the reasons for the rules' continued implementation. It is in accordance with the Board's statutory effort to reduce negative small business impact and to improve rule-making procedures.

The Board began a state-wide rule-review process in 2003 with 14 departments submitting 345 rules that impact small business and the purpose for their continuation. Since then, the 345 rules have been updated and whittled down to 13 rules that the Board believes warrants a full review and modification; pages 18 through 25 of this Report provide the Board's recommendations on these final rules. In addition, the Board has included 3 Public Utility Commission rules that it believes warrants review and modification: pages 25-28.

Board members continue to donate numerous hours of their valuable time, business acumen, and remain committed to the cause of improving the economic climate for small businesses in Hawaii. I am continuously impressed with the thoughtfulness and the thoroughness that the members put forth. I commend each member for their tireless effort, teamwork and for keeping the Board's mission front and center.

We extend a special Mahalo to Governor Green, Director Tokioka, Deputy Wicker and extend a Mahalo to all the State and County departments that submitted the requested information to this Board.

Mary Albitz, Chair, SBRRB, 2024

OVERVIEW

Section 201M-7 Periodic review; evaluation, Hawaii Revised Statutes (HRS)

(a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continued implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

Action Taken: In accordance with Section 201M-7(a), HRS, the SBRRB requested and received from State and County agencies the following:

- 1) A list of any rules to be amended or repealed, based upon any new, amended, or repealed statute; and
- 2) A list of rules adopted during the prior year that affect small business, and 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.

Result: The information in this report is a compilation of the responses and justifications received.

(b) The 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.

Action Taken: In accordance with Section 201M-7(b), HRS, the SBRRB requested and received from State and County agencies the following:

- 1) A list of rules adopted during the prior year that affect small business, and
- 2) 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.

Result: The information in this report is a compilation of the responses to these two requests.

(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 legislature each even-numbered year. 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.

Action Taken: In accordance with Section 201M-7(c), HRS, the SBRRB encourages testimony on new and proposed amendments to Hawaii Administrative Rules but did not specifically solicit testimony from the public regarding any report submitted by the Agencies at a public meeting held pursuant to Chapter 92.

Result: The SBRRB receives and reviews testimonies from the public on proposed new and amended Hawaii Administrative Rules submitted by State and County Agencies during monthly board meetings with each testimony handled accordingly.

ADMINISTRATIVE RULE REVIEW MATRIX

State and Counties Departments	Hawaii Administrative Rules Submitted
STATE DEPARTMENTS	
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	0
DEPARTMENT OF AGRICULTURE	1
DEPARTMENT OF THE ATTORNEY GENERAL	0
DEPARTMENT OF BUDGET AND FINANCE	0
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	3
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS	29
PUBLIC UTILITIES COMMISSION	0
DEPARTMENT OF HAWAIIAN HOME LANDS	0
DEPARTMENT OF HEALTH	12
DEPARTMENT OF HUMAN SERVICES	1
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	2
DEPARTMENT OF LAND AND NATURAL RESOURCES	4
DEPARTMENT OF PUBLIC SAFETY	0
DEPARTMENT OF TAXATION	2
DEPARTMENT OF TRANSPORTATION	0
UNIVERSITY OF HAWAII	0
COUNTIES	
HAWAII COUNTY	8
MAUI COUNTY	3
KAUAI COUNTY	0
CITY AND COUNTY OF HONOLULU	13

STATE DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Department of Accounting and General Services (DAGS)

DAGS reported that no departmental administrative rules were adopted during the prior year that affect small business.

Department of Agriculture (HDOA)

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed based upon any new, amended or repealed statute:

- 1. HAR Title 4 Chapter 157 – Rules Governing Irrigation Water Service to Consumers of Hawaii State Department of Agriculture Irrigation Systems**
Justification – Irrigation water rates will be amended. Rule change in progress.

Department of the Attorney General

The Department of the Attorney General has no plans to amend or repeal any rule based upon any new, amended, or repealed statute.

It has not adopted any rules during the prior year that affect small business and, consequently, there is no report describing the specific public purpose or interest for the adoption of rules last year.

Department of Budget and Finance (B & F)

B & F reported that no departmental administrative rules were adopted during the prior year that affect small business.

Department of Business, Economic Development, and Tourism

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Hawaii Housing Finance and Development Corporation (HHFDC)

- 1. HAR Title 15 Chapter 311 – Rental Housing Revolving Fund Program**
Justification – Amendments were made so that affordable housing developers utilizing Rental Housing Revolving Fund (RHRF) loans to finance the construction of affordable rental housing projects pay higher fees for:
 - Application (increased from \$500 to \$5000);
 - New fees for loan origination (0.5% of the loan amount, for example, \$5000 for a \$1 million loan); and

- New fees for extensions or modifications (\$5000 per occurrence).

RHRF is a revolving fund pursuant to section 37-52.4, HRS, and therefore must demonstrate the capacity to be financially self-sustaining. Increased program fees were necessary to cover program administrative costs, including personnel, legal counsel, and overhead. Other state housing finance agencies with similar programs have higher fees and charges. On average, it costs the agency \$3,000 to review each application and each request for extension or modification of a previous award. The application fee had not increased since 2010.

2. HAR Title 15 Chapter 312 – Hula Mae Multi-Family Rental Housing Program

Justification – Amendments were made so that affordable housing developers utilizing the Hula Mae Multi-Family program revenue bonds to finance the construction of affordable rental housing projects pay higher fees for:

- Application (increased from \$500 to \$5000);
- Bond administration fee (increased from \$50,000 to 0.5% of bond amount, or \$1000,000, whichever is less, provided that the minimum fee shall be \$50,000); and
- New fee for extensions or modifications (\$5000 per occurrence).

HHFDC endeavors to ensure that its programs are self-sustaining. Increased program fees were necessary to cover program administrative costs, including personnel, legal counsel, and overhead. Other state housing finance agencies with similar programs have higher fees and charges. On average, it costs the agency \$3,000 to review each application and each request for extension or modification of a previous award. The application and bond administration fees had not increased since 2010.

3. HAR Title 15 Chapter 313 – Low Income Housing Tax Credit Program

Justification – Amendments were made so that affordable housing developers applying for federal and state Low Income Housing Tax Credits to build affordable rental housing projects pay higher fees for:

- Application (increased from \$1500 to \$5000); and
- New fee for extensions or modifications (\$5000 per occurrence).

HHFDC endeavors to ensure that its programs are self-sustaining. Increased program fees were necessary to cover program administrative costs, including personnel, legal counsel, and overhead. Other state housing finance agencies with similar programs have higher fees and charges. On average, it costs the agency \$3,000 to review each application and each request for extension or modification of a previous award. The application fee had not increased since 2010.

HHFDC met with fourteen affordable housing developers in 2021 to discuss the proposed fee. Most of them met the statutory definition of a small business. The above three amended and compiled rules were signed by the Governor of Hawaii on January 15, 2022.

Department of Commerce and Consumer Affairs (DCCA)

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Business Registration Division (BREG)

1. HAR Title 16 Chapter 39 – Securities

Justification – BREG is currently working on a draft to adopt a NASAA model rule that requires investment adviser representatives to complete annual continuing education courses on compliance, regulation, ethics and products and practice subject matters. The draft has been reviewed by the Attorney General's office and LRB. BREG is currently reviewing LRB suggested revisions.

Cable Television Division (CATV)

2. HAR Title 16 Chapter 131 – Hawaii Cable Communications Systems

Justification – Rules under review to update chapter. Expect to amend and draft new language for HAR §16-131-70 to conform to HRS §440G-8.3, which allows DCCA Director to designate public, educational, and governmental access organizations exempt from HRS Chapter 103D. And add a new rule to expressly allow DCCA Director discretion regarding the application of the rules regarding cable television providers for consistency with HRS §440G-12(a).

Division of Financial Institutions (DFI)

3. HAR Title 16 Chapter 24 – Money Transmitters

Rules are being reviewed for updates needed to conform to HRS Chapter 489D and DFI's current processes. Anticipated areas of amendment include bond and security device requirements, hourly exam fee, and application processes.

4. HAR Title 16 NEW Chapter – Mortgage Servicers

Rules under review to update licensing requirements.

Professional and Vocational Licensing Division

5. HAR Title 16 Chapter 71 - Certified Public Accountants and Public Accountants

The Board will begin to draft to clarify and update language pertaining to exam credit extensions.

6. HAR Title 16 Chapter 72 – Acupuncture Practitioners

The Board is finalizing a draft. The proposed draft would address much of the outdated language and provide conformity with national standards and practices.

7. HAR Title 16 Chapter 73 - Barbers

The Board will begin drafting amendments to correct inconsistencies between Chapter 73 and Chapter 78, update training curriculum, sanitation requirements, and remove conflicting requirements that no longer apply with the passage of ACT 79 (6/17/2022). Amendments to repeal the medical clearance subchapter was effective 3/17/2022.

8. HAR Title 16 Chapter 75 – Cemetery and Funeral Trusts

The Program recognizes that Hawaii Administrative Rules Chapter 16-75 should be amended to align it with current practices; however, we must acknowledge that the statutory amendments referenced below address some of the past concerns. After review of the rules, there does not appear to be inconsistencies with the rules and amendments to the statutes as required by Act 188, SLH 2007, that are impeding the licensing and enforcement of the cemetery and funeral trust laws. In addition, Act 193, SLH 2018, regarding limited liability for maintaining or repairing cemetery grounds was enacted by the Legislature in response to concerns raised by the community. Act 22, SLH 2020, incorporates the Cemetery Program's current practices pertaining to

cemeteries that are exempt from the provisions of Hawaii Revised Statutes (HRS) Chapter 441.

9. HAR Title 16 Chapter 76 – Chiropractors

The Board is working on a draft to streamline the continuing education review process.

10. HAR Title 16 Chapter 77 – Contractors

The Board is currently working on a draft to update the specialty contractor classifications.

11. HAR Title 16 Chapter 78 – Cosmetology

The Board will begin drafting amendments to correct inconsistencies between chapter 73 and 78, update training curriculum, sanitation requirements, and remove conflicting requirements that no longer apply with the passage of Act 73 (6/17/22). Amendments to repeal the medical clearance subchapter was effective 3/17/2022.

12. HAR Title 16 Chapter 79 – Dentists and Dental Hygienists

The Board is currently working on draft rules.

13. HAR Title 16 Chapter 81 – Elevator Mechanics

The Board is working on finalizing a draft that all parties agreed to.

14. HAR Title 16 Chapter 83 – Hearing Aid Dealers and Fitters

Rules are being updated to reflect statutory provision pursuant to Act 88, SLH 1997; working to incorporate LRB comments.

15. HAR Title 16 Chapter 84 – Massage Therapy

The Board has finalized a draft including sanitation rules for massage establishments and continuing education requirements for massage therapists.

16. HAR Title 16 Chapter 85 – Medical Examiners

The Board is currently working on a draft, which will repeal Title 16 Chapter 93, to incorporate requirements for osteopathic licensure into Title 16 Chapter 85, and amend relevant sections based on enacted legislation.

17. HAR Title 16 Chapter 89 – Nurses

The Board will begin a draft to amend the exclusionary formulary for APRNs and to clarify APRN renewal requirements, including for prescriptive authority and amend the temporary permit section.

18. HAR Title 16 Chapter 90 – Nursing Home Administrators

The Board is currently working on updating to delete reference to “Board of Examiners of Nursing Home Administrators” as the Board was repealed in HRS Chapter 457B and is currently a program and not a Board. Last updated in 1988.

19. HAR Title 16 Chapter 92 – Optometrists

Rules are being updated; working to incorporate LRB comments.

20. HAR Title 16 Chapter 94 – Pest Control Operators

Rules were adopted 2/7/2022.

21. HAR Title 16 Chapter 95 – Pharmacy

The Board of Pharmacy will begin a draft to rules related to the requiring of pharmacies to provide accessible prescription drug label information to individuals who have difficulty seeing or reading standard printed labels on prescription drug containers.

22. HAR Title 16 Chapter 97 – Private Detectives and Guards

The Board is currently working on a draft.

23. HAR Title 16 Chapter 98 – Psychologists

The Board is in the early stages of drafting amendments for HAR 16-98, to bring the training requirements up to date and reflect current trends in doctoral psychology degree programs. The Board does not anticipate that these rules would impact small business.

24. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons

The Commission is working to repeal this chapter, and replace it with three separate chapters 99.1, 99.2, and 99.3. This will facilitate the expeditious review of future rule revisions.

25. HAR Title 16 Chapter 101 – Veterinarians

Rules have been updated to reflect statutory provisions pursuant to Act 071, SLH 2022 currently with DAG for review.

26. HAR Title 16 Chapter 106 – Timesharing

The Program is currently working on a draft, which should include amendments to align with 2023 legislation.

27. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects

On April 24, 2023, after holding a public hearing, the Board voted to approve proposed rules to add branches of Fire Protection and Environmental engineering for licensure, clarify the CE requirements for architects, allow for the acceptance of digital signatures, address misconduct, change lawful experience conditions for engineers and land surveyors, and update various outdated exam logistic and language references. The final draft has been transmitted to the Governor’s Office for signature.

28. HAR Title 16 Chapter NEW – Mixed Martial Arts

The Program will proceed with statutory changes during the 2024 legislative session and will draft rules following the possible enactment of the bill.

29. HAR Title 16 Chapter NEW – Midwives

The Board is currently working on a draft.

Public Utilities Commission (PUC)

The Public Utilities Commission hereby reports that there are no administrative rules to be amended or repealed at this time; and there were no administrative rules adopted by the PUC during the prior calendar year (2022) or fiscal year (July 1, 2021 to June 30, 2023).

Department of Hawaiian Home Lands (DHHL)

DHHL reported that no rule amendments were necessitated by any new, amended, or repealed statute and did not adopt any rules affecting small business during the period of July 1, 2021 through June 30, 2023.

Department of Health (DOH)

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Solid and Hazardous Waste Branch

1. HAR Title 11 Chapter 260.1 to 279.1 – Relating to Hazardous Waste

Justification – Hawaii is an authorized state for the U.S. Environmental Protection Agency (EPA)'s national hazardous waste program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle C. To maintain authorization and EPA funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 271 (40 CFR 271) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are found in 40 CFR parts 124 and 260 to 279. This rulemaking updates the State's incorporation of the federal rules from the July 1, 2020 version of the CFR to the July 1, 2022 version, effectively adopting two new EPA rules (described in "Request for governor's preliminary approval of proposed amendments to Hawaii Administrative Rules, Title 11, Chapters 260.1 to 279.1" memorandum dated September 7, 2022). Minimal effect on small business as approved by SBRRB.

2. HAR Title 11 Chapter 273.1 – Hazardous Waste Management

Justification – Data security standards and media sanitization standards at the state and federal levels may sometimes require the physical destruction of electronic storage media (i.e., computer hard drives or solid-state drives). When these storage media are wastes generated by non-household entities, they are regulated as hazardous waste and physical destruction currently requires a hazardous waste permit. Changes are proposed to allow universal waste handlers, including generators and collectors of universal waste electronic items, to drill holes in or crush electronic storage media without a hazardous waste permit. This will ensure that regulated entities such as private businesses and government agencies can comply with both the state hazardous waste regulations and other standards governing data security and electronic storage media. Conditions are included to ensure continued protection of human health and the environment. Minimal effect on small business as these rules are regulatory.

Clean Air Branch

3. HAR Title 11 Chapters 60.1 – Air Pollution Control

Justification – The changes to §11-60.1-172 bring rules into alignment with the regulations of the U.S. Environmental Protection Agency.

No effect on small business as approved by the SBRRB.

Clean Water Branch

- 4. HAR Title 11 Chapter 55 – Water Pollution Control Appendices A,D,H,I and M**
Justification – National Pollutant Discharge Elimination System (NPDES) standard general permit conditions in appendix A as well as the NPDES general permits contained in appendices A, D, H, I, and M. The changes to the NPDES were made to be in line with the Environmental Protection Agency to regulate water quality and pollution control programs in the state of Hawaii.
- A** - Standard General Permit Conditions
 - D** - NPDES General Permit Authorizing Discharges of Treated Effluent from Leading Underground Storage Tank Remedial Activities
 - H** - NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
 - I** - NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
 - M** - NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Minimal effect on small business as these rules are regulatory.

- 5. HAR Title 11 Chapter 55 – Water Pollution Control Appendices C,J and L**
Justification – Readoption of the National Pollutant Discharge Elimination System (NPDES) general permits in HAR 11-55, Appendices C, J and L.
Reissuance of the NPDES general permits:
- C** - Authorizing discharges of storm water associated with construction activities
 - J** - Authorizing unintentional discharges from recycled water systems
 - L** - Authorizing discharges of circulation water from decorative ponds or tanks

Minimal effect on small business as these rules are regulatory.

Indoor and Radiology Health Branch

- 6. HAR Title 11 Chapter 41 – Lead-Based Paint Activities**
Justification – EPA has made changes to the federal lead-based paint activities rules, including to the dust-lead hazard standards and dust-lead post abatement clearance levels. To remain an authorized program, the DOH must adopt amendments to Chapter 11-41, HAR, to remain no less stringent than the federal program. Additional changes are made to improve clarity and readability. Changes are explained in detail in the memorandum requesting preliminary approval. DOH must report to EPA that the new rules have been adopted by March 8, 2023

Minimal effect on small business.

Office of Health Care Assurance

- 7. HAR Title 11 Chapter 94.2 – Nursing Facilities;
HAR Title 11 Chapter 97.1 – Home Health Agencies;
HAR Title 11 Chapter 103.1 – Licensure and Certification Fees for Health Care
Facilities and Agencies**
Justification – Allow the DOH to accept accreditation or certification of Hawaii’s nursing facilities by other nationally recognized accreditation or certification organizations for purposes of renewing Hawaii’s nursing facilities licenses. Improve consistency with the current federal requirements as set forth in 42 CFR Part 483 Requirements for Long Term Care Facilities which contains the requirements that an Institution must meet to

qualify to participate as a Skilled Nursing Facility in the Medicare program and as a nursing facility in the Medicaid program. The federal requirements serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements of participation in Medicare and Medicaid;

Update requirements for emergency preparedness for all hazards, including but not limited to natural disasters, pandemic events, or terrorist threats due to recent experiences nationally and locally, to be consistent with current federal requirements and guidance;

Require facilities to: (1) develop, implement, and maintain an effective, comprehensive, data-driven quality assurance and performance improvement program that focuses on indicators of the outcomes of care and quality of life for the full range of care and services provided by the facility; and (2) notify the resident, resident's representative, and the state long term care ombudsman of transfer or discharge initiated by the facility.

Minimal effect to small business.

Office of Medical Cannabis Control and Regulation

8. HAR Title 11 Chapter 850 – Medical Cannabis Dispensaries

Justification – Pursuant to Act 230, Session Laws of Hawaii (SLH) 2016 and Act 159 SLH 2018, the DOH requests approval of amendments to interim HAR Title 11, Chapter 850, entitled "Medical Cannabis Dispensaries". These interim rules set forth requirements for medical cannabis dispensaries and laboratories certified to analyze cannabis and manufactured cannabis products to provide for the protection of the health and safety of qualifying patients, qualifying out-of-state patients, and the public.

A recent major update to Chapter 11-850 (effective February 24, 2022), included the addition of many new laboratory analytical requirements. The purpose of the current amendments is to roll back certain changes that were mistakenly made without a phase-in period. The certified testing laboratories are unable to immediately comply with these regulations based on the need to obtain new equipment and chemical standards before they will be able to demonstrate competency to perform the new analyses. A new effective date for the requirements currently being removed will be sought in another rulemaking soon.

Minimal effect on small businesses, as dispensaries would need further certification as the cost of doing business.

Food and Drug Branch

9. HAR Title 11 Chapter 37 – Hemp Processing and Hemp Products

Justification – A recent update to Chapter 11-37 (effective February 24, 2022), included the addition of many new laboratory analytical requirements, which were aligned with the requirements in Chapter 11-850, HAR. The purpose of the current amendments is to roll back certain changes that were mistakenly made without a phase-in period. The testing laboratories certified under chapter 11-850 subchapter 9 are unable to immediately comply with recent changes to chapter 11-850 based on the need to obtain new equipment and chemical standards before they will be able to demonstrate competency to perform the new analyses. The current rollback changes are being made to Chapter 11-37, HAR, to keep testing requirements in both chapters aligned. A new

effective date for the requirements currently being removed will be sought in another rulemaking soon.

Minimal effect to small business.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

Clean Water Branch

10. HAR Title 11 Chapter 55 – Water Pollution Control and Permits Appendices C, J, L

Justification – Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges as well as some storm water discharges to surface waters such as streams, lakes, or oceans. The Environmental Protection Agency authorized the State of Hawaii, DOH to administer the NPDES permit system in Hawaii.

Adoption of rules will be in line with federal mandates. Specifically, Appendix C, J, L:

Appendix C: Discharges of Storm Water Associated with construction Activities

Appendix J: Occasional or Unintentional Discharges from Recycled Water systems

Appendix L: Discharges of Circulation Water from Decorative Ponds or Tanks

Alcohol and Drug Abuse Division

11. HAR Title 11 Chapter 177.2 – Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Peer Recovery Specialists

Justification – The proposed revised Title 11 Chapter 177.2, “Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Peer Recovery Specialists”, removes certification standards for an obsolete credential called Co-Occurring Disorders Professional Diplomate, establishes new standards for the certification of Peer Recovery Specialists to help clients who are in treatment and recovery, and updates ethical standards to include Peer Recovery Specialists. HRS §321-196 established the authority of DOH to adopt rules to implement HRS Chapter 321, Part XVI, “Substance Abuse” which includes the revision of rules on certification standards implemented by the DOH.

In the current administrative rules, there are no standards to include credentials with individuals who have lived experiences in recovery from substance use disorders.

Peer Recovery Specialists have been adopted by many states according to standards adopted by the International Certification & Reciprocity Consortium (ICRC).

The Alcohol and Drug Abuse Division is working with SBRRB to determine if it has any effect to small businesses. Tentatively no effect.

Office of Language Access

12. HAR Title 11 Chapter 220 – Office of Language Access Rules of Practice and Procedures

Justification – The purpose and scope of these rules is to establish the practice and procedures for the administration of Chapter 321 C, HRS and to affirmatively address,

on account of national origin, the language access needs of limited English proficient persons.

Tentative minimal effect on small business as these rules will address language access to public activities and functions.

Department of Human Services

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Temporary Assistance for Needy Families Program (TANF)

1. **HAR Title 17 Chapter 794.1 – First to Work Program**

Justification – Will be amended to implement section 346-261(b), HRS, as amended by Act 237, SLH 2022. The proposed rules are being written. The date to submit and begin formal rule making process had not been set but are targeting July or August 2023.

Department of Land and Natural Resources

The following rules, which may affect small businesses, were repealed during the prior year.

1. **HAR Title 13 Chapter 251 – Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches, Subchapter 1 Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits, Subchapter 2 Suspension or Revocation of Operator Permits, Subchapter 3 Violation of Operator Permit Provisions, and Subchapter 7 Special Operating Restrictions**

To remove all certification requirements regarding catamaran captain, surfboard instructor, sailboard instructor and commercial motorboat operator permits.

Effect of Small Business – Allows employees to set their own employee qualification standards.

Justification – Avoids unwanted liability on the state and taxpayers for accidents or injuries occurring from the permittee or their employee actions.

2. **HAR Title 13 Chapter 75 – Rules Regulating the Possession and Use of Certain Fishing Gear and Title 13 Chapter 60.4 – West Hawaii Regional Fishery Management Area, Hawaii**

Effect of Small Business – Various or not at all.

Justification – Needed for healthy management of fisheries.

3. **HAR Title 13 Chapter 256-152 – Kahaluu Bay Ocean Waters** - Regarding commercial surfing instruction, including a map exhibit and technical amendments.

Effect on Small Business – Limits number of students per instructor but allows for all day access to the bay. NOTE: Limit of 4 surf schools were in the 2016 rules and not changed.

Justification – Fewer surf schools and students at any one time allows local surfers access to the water.

4. HAR Title 13 Chapter 60.41 – West Hawai'i Pāku'iku'i Replenishment

Effect on Small Business – Short term loss of Pahu'iku'i fishing in West Hawaii. Permanent rules in 2 years.

Justification – Better for long-term management of fishery.

Department of Labor and Industrial Relations

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Hawai'i Occupational Safety & Health Division (HIOSH)

1. HAR Title 12 Subtitle 8 Part 10 – Boiler and Pressure Vessel

Justification - To reflect the passage of Act 102 (SLH, 2022). Act 102 authorizes owner-user inspectors in the exclusive employment of owner-user inspection organizations to perform inspections on pressure retaining items.

The National Board of Boiler and Pressure Vessel Inspectors permits an Owner-User Inspection Organization (OUIO) to establish and maintain an inspection program if the OUIO's inspection procedures meet the requirements of NB-371, Accreditation of OUIO, NB-381, Quality Program for Inspection Organizations, NB-263, National Board Rules for Commissioned Inspectors, and the jurisdiction's approval.

2. HAR Title 12 Subtitle 8 Chapter 43 – Boards

Justification – Rules of Practice and Procedure before the Hawaii Labor Relations Board (HLRB) was adopted on October 21, 2022. The adoption of Chapter 43 replaced Chapters 41 and 42 and streamlined the procedure for contested case hearings before HLRB. Chapter 43 also includes rules of practice and procedure for contested case hearings pursuant to Chapter 396, Hawaii's Occupational Safety and Health Law.

The adoption of HAR Chapter 43 positively impacts small businesses by providing a streamlined procedure for contested case hearings, procedures for the free use of the HLRB's electronic filing system and cost savings for small businesses via electronic filing.

Department of Public Safety (DPS)

DPS does not have any information to provide as requested by the SBRRB. DPS follows statutes and rules administered by the DAGS and the State Procurement Office in dealing with small businesses.

Department of Taxation (DoTax)

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

1. HAR Title 18 Chapter 237.1 – Administration of Taxes

Justification - The proposed rules amend section 18-237-1 of the HAR to add a new section to define the term “employee” for purposes of Hawaii’s general excise tax law.

2. HAR Title 18 Chapter 251 – Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax

Justification - The proposed rules amend sections 18-251-1-01 and 18-251-1-02 of the HAR to include peer-to-peer car sharing marketplaces in the definition of “lessors” under the Rental Motor Vehicle Surcharge Tax (RVST).

Please note these proposed rules are nearly identical to the Temporary Administrative Rules (the "Temporary Rules") currently in effect. Affected taxpayers were required to register for a license prior to March 1, 2021, and DoTax has been enforcing the rules since that date.

Department of Transportation (DOT)

DOT does not have any administrative rule that needs to be amended, or repealed to align with any new amended, or repealed statute; additionally, there are no rules adopted in FY 23 that affect small business.

University of Hawaii (UH)

UH confirms that it currently has no administrative rules affecting small business, and that it has not amended or repealed any rules in the past year based upon any new, amended, or repealed statute impacting small business.

Follow-up on Prior SBRRB Administrative Rule Reviews

The following Hawaii Administrative Rules were previously reviewed by the SBRRB. Current updates are noted.

Department of Agriculture

Division of Measurement Standards

1. HAR Title 4 Chapter 93 – Packaging and Labeling

Justification - This rule ensures that consumer commodities offered for sale in the State are correctly labeled as to their content identification and unit amount. The rule also defines specific identification regarding the Department of Agriculture's logo, "Island Fresh." The rules were established in 1981 and amended in 1995.

2006 Recommendation - Many products that are represented as Hawaiian-made and Hawaiian-grown are not. Rules need re-analysis and updating.

Response from Agency - A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008 noted that the Review Board's comments that products represented as Hawaiian-made and Hawaiian-grown does not apply. Packaging and labeling requirements are implemented through the National Institute of Standards and Technology Handbook 130, 1993 edition, which are current. Further, the logo "Island Fresh" is completely different than "Hawaiian-made" and "Hawaiian-grown" therefore; no future to amend the rules are expected.

The SBRRB was not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary - A discussion with DOA in 2018 revealed that the rules are in process of being reviewed and will be updated accordingly; no date for completion was determined.

As of the printing of this 2024 report, there have been no changes or updates to the rules.

Division of Plant Industry

2. HAR Title 4 Chapter 73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules

Justification - This rule provides for export plant and plant products inspectional and disinfestation treatment services that meet the requirements of the state or country of destination. Agriculture is an important economic industry to the State of Hawaii.

From the inception of large-scale mono-crop production such as pineapple and sugarcane to the diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, now include the culture of various aquatic ornamental and food species. This is a far cry from the traditional plant crops grown historically in soil.

Because of this expansion, there has been an increased need to ship plants or plant products out of the State. Presently, this administrative rule provides for export plant and plant products' inspectional and disinfestations treatment services, which is provided by the Plant Quarantine Branch, which meets the requirements of the State or Country of destination; each State or Country has their own requirements that must be met before plants can enter their state or country.

To implement the requirements, the Branch has the authority to impose nursery inspection fees as well as burrowing nematode testing fees, which may seem to impact small business. The necessary fee helps to defray the operational and travel costs borne to the Branch, which may be hampered by general budgetary constraints.

Without this administrative rule in place, the services provided by the Branch to certify plants going out of the state to other states or countries would not be possible. Programs such as the nursery certification program and the origin inspection program for cut flowers are administered through this rule.

Although the rule imposes many restrictions on nurseries and the flower businesses, these requirements must be met, or the destination state or country will not accept the plants or flowers being shipped or taken to the respective state or country. The rule was established in 1981.

2006 Recommendation - Rule amendments were submitted to the SBRRB in 2006; however, the Branch has subsequently pulled the rules for further analysis. The Branch is in the process of updating this rule; the SBRRB agrees the rule should be reviewed and revised.

Response from Agency - This rule provides an amendment to modify the nursery certification program and establish a compliance agreement program for exporting nurseries. The amendments will update rules based on new science and changing industry needs as well as stricter requirements for certifying nurseries.

The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing has a projected date of June 2009. The SBRRB was in concurrence and will follow-up with the Agency.

Final Commentary - A discussion with DOA in 2018 revealed that the rules are currently "frozen" in terms of modification however because the statute governing these rules reflect a change in fees, proposed amendments regarding the fees may be brought forth in front of this Board within the next few years.

As of the printing of this 2024 report, there have been no changes or updates to the rules.

Division of Animal Industry

3. HAR Title 4 Chapter 17 – Swine

Justification - This rule authorizes DoAg to undertake disease control measures intended to control and eradicate certain diseases of local and national economic significance or that may affect public health adversely. Preventing the introduction of diseases reduces the potential for animal losses due to death or poor growth and maintains the general health and welfare of domestic pigs.

The rule is justified due to the importance of disease surveillance, diagnosis, and eradication on the economic viability of the swine industry and in protecting public health from infectious disease transmitted from animals to man. General health and welfare of livestock is enhanced through disease control and eradication activities, resulting in a more wholesome product for the Hawaii market and enhanced consumer confidence in Hawaii products. The rules were established in 1981.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated the rules are in process of being amended.

2006 Recommendation - The rules are 25 years old; the rules are in process of being updated.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

Final Commentary - A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

As of the printing of this 2024 report, there have been no changes or updates to the rules.

4. HAR Title 4 Chapter 23 – Horses

Justification - This rule controls the importation of diseases and pests that affect horses. Preventing the introduction of certain horse diseases and pests into Hawaii is essential to maintain a healthy horse population. In addition, freedom from certain diseases reduces the economic burden for horse owners resulting from illness and death. As most horses in Hawaii are pets, there is little impact on small business by these import requirements.

The rules were established in 1949 and last amended in 1981. On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2006 Recommendation - The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Final Commentary - A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; completion of the updates is expected in 2020.

As of the printing of this 2024 report, there have been no changes or updates to the rules.

Department of Commerce and Consumer Affairs

5. HAR Title 16 Chapter 75 - Cemeteries and Funeral Trusts

Justification - The purpose of the rules is to implement licensing and regulation of the cemetery and funeral trust industry under the department's regulatory authority. The rules are still needed as they facilitate licensing and enforcement. The rules were established in 1969 and amended in 1991.

2006 Recommendation - This industry has had its share of publicity. Full analysis and update should be performed.

Response from Agency - The SBRRB recommended that a full analysis and update be performed. DCCA plans to amend the rules to: (1) make them consistent with Act 188, SLH 2007; (2) incorporate current practices; and (3) update references to corporations to include limited liability companies. DCCA's targeted date for transmitting the draft rules to the Department of the Attorney General for review is August 2008. The SBRRB is in concurrence with the Agency.

Final Commentary - A discussion with DCCA in 2018 indicated that these rules are, by nature, quite sensitive to change, although changes have been discussed. No date has been determined for final updates.

As of the printing of this 2024 report, there have been no changes or updates to the rules.

6. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks

Justification - The rules implement licensing and regulate the activity providers and activity desks under the department's regulatory authority. They are necessary as they facilitate licensing and enforcement; the rules were established in 1995.

2006 Recommendation - There is substantial small business impact largely due to fraud in the industry. Full analysis and update should be performed.

Response from Agency - The SBRRB expressed concerns that there is substantial small business impact largely due to fraud in the industry. Consequently, the SBRRB recommended that a full analysis and update be carried out. DCCA has reviewed the rules and determined that no substantive amendments are necessary at this time. DCCA has received an average of 18 complaints a year - there have been approximately 325 registered activity desks over the past four years. Note: in 2007, of the current 54 complaints, six are against licensed activity desks and 48 are for unlicensed activity, mostly against one company.

The SBRRB is in concurrence with DCCA. Although DCCA determined there to be no substantive changes in 2008, due to the noted substantial fraud in the industry, it will again, be approached by the SBRRB.

Final Commentary - A discussion with DCCA in 2018 indicated that these rules are not in the process of being amended. They will be reviewed soon; at that time, a determination will be made if modifications are warranted.

As of the printing of this 2024 report, there are no changes or updates to the rules.

Department of Health

Medical Division

7. Chapter 11-89 – Services for Developmental Disabilities Domiciliary Homes

Justification - The rules establish minimum requirements for the certification and licensure of developmental disabilities domiciliary homes for adult individuals with developmental disabilities. §333 F-2(c) (4), HRS, requires that developmental disabilities domiciliary establish a continuum of residential alternatives in the community which includes the provision of domiciliary homes for adult individuals with developmental disabilities.

These rules set standards and provides for the regulation of such homes through certification and licensure. This is needed to ensure the health and safety of this vulnerable population. The rules were established in 1992.

2006 Recommendation - Standards have changed, and enforcement of the rules has been different since the rules were established in 1992. Therefore, some provisions should be deleted. Reanalysis and update of rules should be performed.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

As the population regarding developmental disabilities domiciliary homes is growing and identified in the community, it is recommended that the Agency address the needs of the population and bring these rules and regulations regarding services to this population current. The SBRRB strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary - As of 2024, DOH's website continues to show the rules are "pending amendment & compilation."

8. Chapter 11-95 – Freestanding Surgical Outpatient Facilities

Justification - The rules establish minimum requirements for the protection of the health, welfare and safety of patients, personnel, and the public in freestanding surgical outpatient facilities; in all instances where other agencies of government have similar regulations, the stricter rules shall apply.

These rules contain state licensure requirements. Such licensure ensures that the federal and medical standards for health facilities are being met. Thus, licensure is a pre-requisite for federal reimbursement. Without licensure, the health and safety of patients, employees and the public will be compromised, and federal reimbursement will not be realized. The rules were established in 1986.

2006 Recommendation - Better defined guidelines and standards are needed, especially with safety standards. The rules are too vague and are 20 years old. Re-analysis and update of rules should be performed.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

The SBRRB will monitor these rules for updates from the Agency.

Final Commentary - As of 2024, DOH's website continues show the rules are "pending repeal and replacement by Chapter 92."

9. Chapter 11-96 – Freestanding Adult Day Health Centers

Justification - The rules establish minimum requirements for the protection of health, welfare, and safety of clients and the public in adult day care centers. These rules contain state licensure requirements. Licensures of these settings are critical to ensure provision of care is within current federal and medical standards to ensure the health and safety of patients, employees, and the public. The rules were established in 1991.

2006 Recommendation - The Agency has indicated that the rules need revision; rules are 15 years old. The SBRRB agrees with the Agency that these rules should be reviewed and revised.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

These are essential rules and must be clear and separate as well as distinguished from other adult programs because the centers are freestanding; the SBRRB concurs.

Final Commentary - As of 2024, there were no changes or updates to the rules.

10. Chapter 11-99 – Intermediate Care Facilities for the Mentally Retarded

Justification - The rules establish minimum requirements for the protection of the health, welfare, and safety of patients, personnel, and the public in small intermediate care facilities for the mentally retarded. In all instances where other agencies of government have similar regulations, the stricter rules shall apply.

The Intermediate Care Facility/Mentally Retarded population is the most vulnerable of the disabled population. These regulations provide for assurance of their safety and welfare. The state licensure regulations are mandatory to provide at least minimal assurance for safety and oversight of such individuals who otherwise are not able to care for themselves. The rules were established in 1985.

2006 Recommendation - Agency has indicated that the rules need revisions; rules are over 20 years old. The SBRRB agrees with DOH that these rules should be reviewed and revised.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

It is very important that these rules are updated because there is a greater population within the community, so the resources are limited to them. The SBRRB strongly recommends that these rules be reviewed and amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary - As of 2024, there were no changes or updates to the rules.

Environmental Division

Noise, Radiation and Indoor Air Quality Branch

11. Chapter 11-39 – Air Conditioning & Ventilation System

Justification - The rules are required for core public health. The rules implement §321-11 (13), HRS for the public health and safety respecting any place or building where noisome, noxious trades and manufacturing are carried on, or intended to be carried on by seeking to assure adequate and healthful design, construction, installation and operation of comfort air conditioning and ventilating systems; and provide minimum ventilating requirements.

Public health and safety are adversely impacted in the absence of regulating mechanical ventilation systems providing outside air, supply air, return air, and exhaust air. Inappropriate and inadequate ventilation can lead to carbon monoxide poisoning in parking garages, indoor air problems, and other detrimental health effects. The rules were established in 1983.

2006 Recommendation - The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - HAR Chapter 11-48, the replacement for HAR Chapter 11-39, has been completed and reviewed by the program's assigned deputy attorney general. An informational meeting on the proposed rule was held on February 8, 2008. Over fifty individuals representing mechanical engineering, architecture, state and county government, property managers, were in attendance. The agency is in the process of implementing a small business review committee for the new rule and expected to complete the small business impact statement by the end of October 2008.

Final Commentary - As of 2024, DOH's website continues to show rules are "pending repeal/replacement by Chapter 48."

12. Chapter 11-44 – Radiologic Technology Board and Radiologic Technology Rules

Justification - The purpose of the rules is required for public health and safety. The rules establish minimum state standards of education, training and experience for persons who apply x-rays to human beings for diagnostic purposes or ionizing radiation to human beings for therapeutic purposes, or radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

Unlicensed and untrained personnel can cause unnecessary exposure of ionizing radiation to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. This rule is necessary to ensure only properly trained and qualified individuals practice radiologic technology. The rules were established in 1989.

2006 Recommendation - These rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - A small business committee was created to review proposed revisions for this rule. The SBRRB reviewed these amended rules in June 2008 and recommended that they proceed to a public hearing.

Final Commentary - As of 2024, there were no changes or updates to the rules.

13. Chapter 11-45 – “Radiation Control”

Justification - The rules are required for core public health. The rules set minimum standards for all persons and facilities that receive, possess, use, transfer, own or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services.

Controlling the use of ionizing radiation from x-ray systems and non-NRC radioactive materials is essential in minimizing unnecessary exposure to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. Following the stochastic theory, any amount of ionizing radiation exposure may cause long term effects. The rules were established in 1999.

2006 Recommendation - The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - This rule is currently being revised to reflect current national standards and the Suggested State Regulations for the Control of Radiation developed by the Conference of Radiation Control Program Directors, Inc. Due to the volume of technical changes, a draft revision is not expected before January 2009.

The SBRRB is in concurrence of the proposed modifications to the rules and will follow-up with the agency.

Final Commentary - As of 2024, DOH’s website continues to show the rules are “pending amendment & compilation.”

Public Utility Commission (PUC)

Act 108, Session Laws of Hawaii 2014, transferred the Public Utilities Commission (PUC) from Department of Budget and Finance (B&F – Title 6) to Department of Commerce and Consumer Affairs (DCCA – Title 16).

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules’ continued implementation:

1. HAR Title 16 Chapter 603 – Motor Carrier Tariffs and Schedules Agency’s Justification

As required by HRS Chapter 271, the rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicles;

specifically, those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. They were established in 1994.

2006 Recommendation

Rules are twelve years old; full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers" and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules," from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marketing.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation currently. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

As of 2020, this rule moved from B&F Title 6 to DCCA Title 16. This transfer required the simultaneous repeal of the existing B&F chapters and adoption of new chapters in the DCCA title.

These rules were transferred with an effective date of 1/01/2019, however, no other modifications or changes were made at the time.

2. HAR Title 16 Chapter 605 – Water Carriers

Agency's Justification

As required by HRS Chapter 271G, the rules are necessary to govern the following: (1) Form and content of tariffs of water carriers of property and passengers, and the information and data to be submitted for the establishment of new or revised rates,

fares, or charge; and (2) Filing of financial and statistical information by water carriers of property and passengers. The rules have not been amended since first promulgated in 1976.

2006 Recommendation

Rules are over 30 years old; full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

The Commission has determined that HAR Chapter 6-65, "Water Carriers" does not require revisions at this time, as they were last revised in 1999. Thus, the assumption noted as a concern that the "rules are over 30 years old" is an incorrect assumption. The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

As of 2020, this rule moved from B&F Title 6 to DCCA Title 16. This transfer required the simultaneous repeal of the existing B&F chapters and adoption of new chapters in the DCCA title.

These rules were transferred with an effective date of 1/01/2019, however, no other modifications or changes were made at the time.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

3. HAR Title 6 Chapter 62 – Motor Carrier Rules and Classification of Property and Passenger Carriers Agency's Justification

Pursuant to HRS Chapter 271, the rules are necessary to administer, execute, and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS Section 271-1. The rules were established in 1992.

2006 Recommendation

Since the rules have been established, there have been many changes to the industry. Full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers," and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules" from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marking.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Thus, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

As of 2020, contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014, however, as of the date of this 2024 Report, the chapter remains as 62 and no changes or modifications have been made to the rules.

COUNTY DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Hawaii County

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Department of Environmental Management

- 1. Administrative Rule No. 5-3 – Article II (Solid Waste Division) Rule 5 (General Provisions), Section 5-3 (Definitions)**
Justification – Public health and safety. Supports a clean environment. Provides an enforceable definition of an “Unsecured load” to reduce litter.
- 2. Administrative Rule No. 12-3 – Article II (Solid Waste Division), Rule 12 (Solid Waste Fees), Section 12-3 (Fee Schedule), Subsection 1 (Sanitary landfill disposal fees), Paragraph D (Residential credit)**
Justification – Public health and safety. Supports a clean environment. Grants tipping credit to commercial haulers of household generated waste.

Hawai'i Fire Department

- 3. Hawaii Revised Statutes Chapter 132 Fire Protection**
Justification – State government regulation regarding the powers of the Fire Chief, Investigation rights, entry, duties of owners, penalties, submission of building plans. Establishes the powers and duties of Fire Chief's in the State of Hawaii in the furtherance of safety from fire for the public.
- 4. Hawaii County Code Chapter 26, Article 1. Hawaii County Fire Code**
Justification – Establishes the minimum life safety standards in Hawaii County in relation to fire for the built environment.
*Will be updated in FY2022-23 due to changes to state fire code as established in HRS 107-24(c) and decided by HRS107-25, and mandated to be update by code cycle in HRS107-28
- 5. Hawaii County Code Chapter 26, Article 2. Hawaii County Fire Code**
Justification – Adopts the language of HRS 132D on fireworks within the County of Hawaii for the safe regulation and usage of explosives pyrotechnic within the jurisdiction.
*No changes, but will be moved from Chapter 26, Article 2, to Chapter 17, Article 2 as part of the FY2022-23 updates to fire code and county code.

Department of Water Supply

- 6. Hawaii Revised Statutes Chapter 54 – Water Systems**
Justification – Management, control, and operation of the water systems of the County and property thereof.

18. Hawaii County Charter, Article VIII Section 8-1 through 8-5

Justification – Management, control, and operation of the water systems of the County and property thereof.

19. Department of Water Supply Rules and Regulations

Justification – Management, control, and operation of the water systems of the County and property thereof.

City and County of Honolulu

Pursuant to Section 201M-7, HRS, we have surveyed all our City departments and agencies and hereby affirm that except for the items listed below by department/agency, there were no rules adopted during the prior year that affect small business:

Department of Planning and Permitting (DPP)

DPP reported that there were no new, amended, or repealed Administrative Rules and that no rules were adopted affecting small business during the period of July 1, 2021 through June 30, 2023

Department of Transportation Services (DTS)

DTS may amend or repeal Chapter 23-3, Bus Advertising on City Transportation Vehicles (TheBus), within the next year because of enactment of Ord. 23-21.

DTS has not adopted any rules within the past calendar year.

Honolulu Board of Water Supply (BWS)

Although no new rules were adopted, BWS presented proposed water rates to the SBRRB on August 17, 2023 and received support to proceed to public hearing. The rates were subsequently adopted by the BWS Board on November 28, 2023 for rates and charges for the furnishing of water and water service for Fiscal Years 2024 to 2029. The rate changes go into effect as of February 1, 2024 and will have an impact on small business.

Department of Facility Maintenance

For future awareness, Storm Water Quality has existing Administrative Rules in place under Title 14, Chapter 6 that will be revised and updated in accordance with the Revised Ordinances of Honolulu (ROH), placing storm water enforcement authority under Chapter 43, ROH, versus Chapter 14 (ROH). The revised rules are scheduled for adoption in CY2024 and the SBRRB will be advised accordingly.

Honolulu Liquor Commission

On June 17, 2022, Act 076 (HB137 HD1 SD2, CD1) was signed into law, with an effective date of January 1, 2023. Act 076 made broad revisions to Hawaii Revised Statutes (HRS) Chapter 281, with a particular focus on the license application process and the investigative scope and discretion accorded an investigator in this process. Because the license application process is a core function of the Liquor Commission, the impact of Act 076 is expected to be extensive. Below is a list of existing Rules that may be amended in response to requirements found in Act 076, reserving the right to add to or delete from the list following additional review:

1. Rule §3-80-1.1. Definitions
2. Rule §3-81-19.11 Powers of the Commission in Conducting Hearings
3. Rule §3-81-20. General Right of Inspection

4. Rule §3-82-38.25. Restrictions of Conditions on Licensing
5. Rule §3-82-41.4. Management of Operating Agreements
6. Rule §3-82-45.1. Requirement for Criminal History and Fingerprint Card
7. Rule §3-83-53.1. License Applications; Notice of Hearing; Affidavits
8. Rule §3-83-56. Report by Investigator
9. Rule §3-83-57.1. Affidavits; Forms
10. Rule §3-83-61.1. Renewal of Existing License
11. Rule §3-84-79.1 Obstructing Commission Operations

Although the Honolulu Liquor Commission conducted public hearings on the adoption of proposed new rules on February 10, 2022, due to changes in the Commission and Commission administration, the process was not completed. For awareness, completion of the adoption process is anticipated in CY2024.

Department of Parks and Recreation (DPR)

The Department of Parks and Recreation amended the "Rules and Regulations Governing Shore Water Events" in CY2023. The proposed rules went before the SBRRB on July 20, 2023, a public hearing was held on October 23, 2023 and the proposed rules went back before the SBRRB on November 16, 2023. The rules were approved by Mayor Blangiardi and filed with the City Clerk on December 5, 2023.

See; [2023-12-11 fully executed Admin Rules Title 19 DPR Chap 25 Rules and Regulations Governing Shore Water Events.PDF \(honolulu.gov\)](#)

Honolulu Fire Department (HFD)

The HFD had no administrative rules or rule changes that would affect small businesses at this time. The public facing rules the HFD has jurisdiction over is the Fire Code of the City and County of Honolulu, of which only clarification changes were made in its recent adoption. Amendments to the Fire Code are under review and have not been adopted.

Adopted amendments affecting small businesses will be included in the next annual report.

Mayor's Office of Culture and the Arts (MOCA)

MOCA does not have Administrative Rules and thus this request is not applicable to the department.

City and County of Honolulu Office of the Managing Director

The following departments have reported no changes:

- Department of Environmental Services (ENV)
- Department of Human Services (DHR)
- Office of Economic Revitalization (OER)
- Department of the Corporation Counsel (COR)
- Department of Information Technology (DIT),
- Medical Examiner Department (MED)
- Department of Emergency Management (DEM)
- Office of Climate Change, Sustainability and Resiliency (CCSR)
- Honolulu Authority for Rapid Transportation (HART)
- Department of Customer Services (DCS)
- Department of Design and Construction (DDC)
- Office of Housing (HOU)
- Managing Director's Office (MDO)

County of Maui

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Department of Environmental Management

1. Maui County Code Chapter 20.42, Prohibit the Sale, Use, or Distribution of Non-Mineral Sunscreens

Justification – Ordinance No. 5306 established December 6, 2021 and made effective October 1, 2022.

2. Maui County Code Chapter 20.18, 20.18.040 Plastic Bag and Disposable Bodyboard Restrictions

Justification – Amended by Ordinance No. 5236 on August 9, 2021 to include bodyboards effective August 9, 2022. Businesses are prohibited from selling, renting, or distributing disposable bodyboards.

3. Maui County Code Chapter 20.26, Relating to the Sale and Use of Plastic Disposable Foodware

Justification – Amended by Ordinance No. 5084 March 1, 2022. Includes a restriction on plastic disposable food ware and disposable polystyrene foam coolers.

County of Kaua'i

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Department of Finance – Real Property Division

1. Section 5A-11.4 of the Kauai County Code – Home and Related Exemption Rules

Justification – The rules relate to a new ordinance passed in the fall of 2020 that tightened up the restrictions to qualify for a homeowner's exemption. The intent was to make it more difficult to qualify for the home exemption to be more uniform with the other Hawaii counties.

Department of Parks and Recreation

2. Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Part IV, Sections 30 to 36

Justification – The rule amendments moderately extend the allowable hours of operation, amend compliance and enforcement of provisions to allow for incremental fines rather than automatic permit revocation, and clarify the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp.



Department of Business, Economic Development & Tourism
Small Business Regulatory Review Board

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SBRRB
Quantitative
Report
July 2007

Small Business Regulatory Review Board

Quantitative Report

July 2007



WARD RESEARCH
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WARD RESEARCH
INCORPORATED

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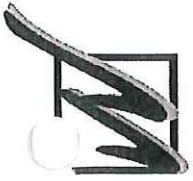
Objectives and Methodology

The overall objective of this research was:

TO MEASURE THE AWARENESS OF THE SMALL BUSINESS REGULATORY REVIEW BOARD (SBRRB) AMONG SMALL BUSINESSES AND TO UNDERSTAND THEIR FUTURE PARTICIPATION.

Specifically, the research will seek to answer these marketing questions:

- ✓ *What is the level of awareness among small business of SBRRB?*
- ✓ *How are businesses affected by rules and regulations set by the State and other agencies*
- ✓ *What is the best way to communicate with small businesses about the SBRRB?*
- ✓ *What is the likelihood that small businesses will seek assistance from SBRRB? What are the motivators, and what are the barriers?*
- ✓ *How confident are they that SBRRB will be able to assist them?*



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Objectives and Methodology

- A total of n=305 small businesses in Hawaii were included in this study. The maximum margin of error +/-5.6%
- Business records were purchased from Hawaii Business Directory based on the number of employees.
- Businesses were sent an introductory letter two days prior to fielding alerting them of the possible phone call to the study topic.
- The survey length was 10 minutes, on average.
- Interviews were conducted between June 4 through June 14, 2007.
- All interviews were conducted from the Ward Research Calling Center located in Downtown Honolulu between 8 am and 4 pm Monday through Friday.

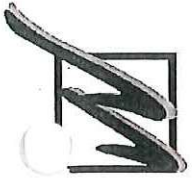
Executive Summary



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Executive Summary

- Taxes is the most common issue reported by small businesses in terms of rules and regulations, 25% stated it was a critical issue.
- A third of businesses reported being negatively affected by state or county rules and regulations in the past few years, with the most common issue being taxes (25%) and complex processes (15%).
- When respondents were asked to name an agency or organization that serves as a watchdog for small businesses in terms of rules and regulations, 16% stated Small Business Hawaii and 15% said the Better Business Bureau – the two most common responses.
- While 21% did recall hearing of the Small Business Regulatory Review Board (SBRRB), only 16% of those who were aware had correct knowledge about what the board does. After explaining what the board is and does, another 4% of small businesses recalled hearing something about them.
- Although awareness of the board is generally low (however, higher than expected), 46% of small businesses stated that they definitely or probably would contact SBRRB about rules and regulations after they were told of the process and capabilities of the board were.
- Confidence in a small business agency being able to impact government rules and regulations, however, is generally low (22% reported some level of confidence). However, 75% would be interested in receiving timely information and 43% would be likely to attend an SBRRB meeting.
 - Those who weren't likely to attend a meeting were most likely to state they were too busy (46%). However, there is a portion of these unlikely attendees that may change their minds if they learned that the meetings were beneficial.
- Currently, small businesses are receiving information about government rules and regulations through the newspaper (34%) and direct mail (33%). However, 52% prefer to learn about rules and regulations through direct mail and email (28%).
- The majority of businesses (71%) do not know or know very little about the State Department of Business,



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Executive Summary

- When asked what DBEDT should do to enhance the business environment in Hawaii, other than reduce taxes, 8 stated they should reduce bureaucracy and 7% stated they should support small businesses more, the two most common responses.

Conclusions

- There is a great opportunity for SBRRB to educate the business community about its services and its success stories. There is great interest among the business community to stay informed about rules and regulations, and a fair amount of interest in participating in the process through meetings.
- Educate businesses in the process and capabilities of the board to increase interest and participation.
- While 34% of businesses currently learn about rules and regulations in the newspaper, they would prefer to learn about them via direct mail (or email), likely before it hits the newspapers.
- Small businesses do not have much stated confidence in a small business agency influencing government rules and regulations but there is interest in trying out the process, with 43% stating they would attend meetings. A not small proportion of small businesses may decide to attend meetings after learning that they are beneficial.
 - It is important to talk about success stories and show the business community how the board has influence government agencies in the past.
- Contact businesses through organizations and/or associations for educational purposes since 74% of businesses are involved in one or more groups. Only 10% or less actually prefer this method of contact on a regular basis, however, to learn about rules and regulations. Additionally, small businesses with five or less employees are less likely than others to belong to any organizations or associations so other methods of educating are necessary.

Firmographics



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Firmographics

ISLAND	%
Oahu	67
Maui	9
Big Island	14
Kaua'i	10
TITLE	%
Owner of the company	34
President/CEO	38
Administrative Officer	1
Vice President/Director	9
Office Manager	11
General/Operations Manager	6
Partner/Principal	1
Other	<1
Base	(302)



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Firmographics

PRIMARY INDUSTRY	%
Retail	19
Professional services	16
Real Estate	11
Manufacturing/Distribution	9
Travel and Entertainment	7
Construction/building	7
Accommodation/Food service	6
Healthcare/social assistance	4
Wholesale	3
Forestry, fishing, agriculture, mining	3
Finance/Insurance	3
Transportation	2
Media/Television/Internet	2
Education	1
Other	9
Base	(302)



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Firmographics

OFFICE LOCATION BY ISLAND	%
Oahu	68
Maui	15
Kaua'i	16
Big Island	18
YEARS IN BUSINESS	%
<16 years	24
16-24 years	25
25-30 years	25
>30 years	26
# OF EMPLOYEES	%
1-3 employees	33
4-10 employees	41
11+ employees	25
Base	(302)



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Firmographics

ANNUAL GROSS REVENUE	%
Less than \$250,000	24
\$250,000 to \$499,999	19
\$500,000 to \$999,999	18
\$1 million to \$1,999,999	10
\$2 million to \$4,999,999	10
\$5 million to \$10 million	4
Over \$10 million	3
Refused	12
GENDER	%
Male	67
Female	33
Base	(302)

Detailed Findings



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Issues with Rules and Regulations

Reducing taxes was the most common issue reported by small businesses in terms of rules and regulations.

Top 5 Most Critical Issues Regarding State/County Rules & Regulations (n=302)
Reduce tax burden (25%)
Simplify and make consistent government regulations (7%)
Enact meaningful workers compensation reform (5%)
Health insurance (5%)
Institute meaningful and effective state & county one-stop permitting processes (5%)
Complexities of the G.E. tax reporting with different rates (5%)

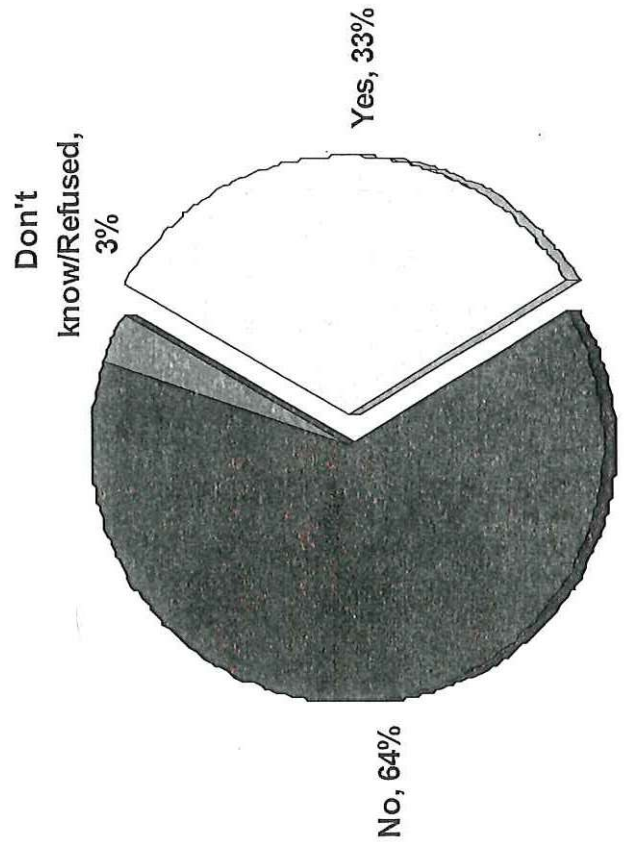


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Issues with Rules and Regulations

One-third of small businesses in Hawaii reported that they have been negatively affected by state or county rules and regulations within the past few years. Once again, taxes was the most common response given in terms of rules and regulations.

Business Negatively Affected by State/County Government Rules & Regulations (n=302)



When Business Most Negatively Impacted by Government Rules & Regulations and What Do About It (n=98)*

- Tax (25%)
- Process too complex (15%)
- Insurance (i.e., workers' comp/med/unemp/hurricane) (7%)
- Contacted congressman/legislator/mayor/council (7%)
- Permits take too long (7%)
- Zoning issues (5%)
- Labor Issues (4%)
- No smoking ban (3%)
- Other (34%)
- Don't know (4%)



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Awareness of Watchdog Organizations

While three out of ten small businesses could not name an agency or organization that serves as a watchdog in terms of rules and regulations, the top three mentions were Small Business Hawaii, BBB, and the Chamber.

Top 10 Agencies or Organizations that Serve as a Watchdog in terms of Rules and Regulations (n=302)

- Small Business Hawaii (16%)
- Better Business Bureau (15%)
- Chamber of Commerce (12%)
- Trade Association (10%)
- Small Business Administration (6%)
- National Federation of Independent Business (6%)
- Miscellaneous government agencies (4%)
 - DCCA (2%)
- Community Action Groups/Activist organizations (2%)
- Legislative Information Services of Hawaii (1%)
- Tax Foundation of Hawaii (1%)

Don't know (30%)

* One person mentioned SBRRB unaided



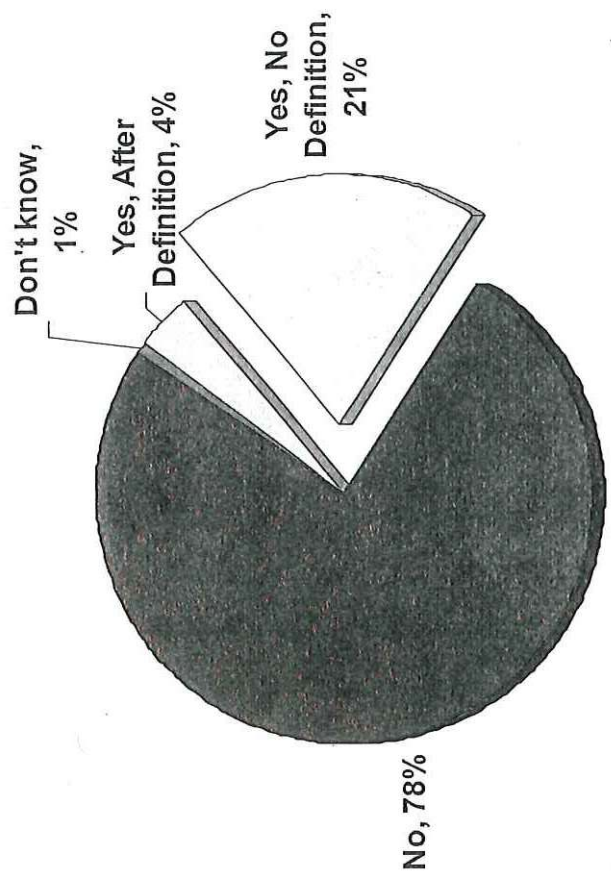
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Awareness of SBRRB

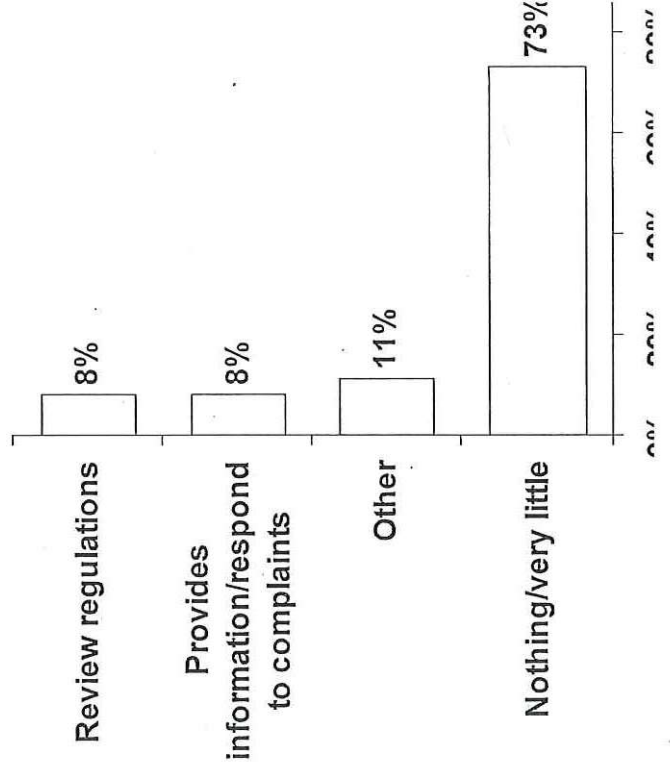
When respondents were simply asked if they had heard of the Small Business Regulatory Review Board (SBRRB) 21% said "yes," although 73% knew very little or nothing specific about the agency.

Another 4% recognized SBRRB only after being told that it is "an all-volunteer board of business owners that is part of the state DBED&T."

Heard of Small Business Regulatory Review Board
(n=301)



Knowledge of Small Business Regulatory Review Board
(n=64)*





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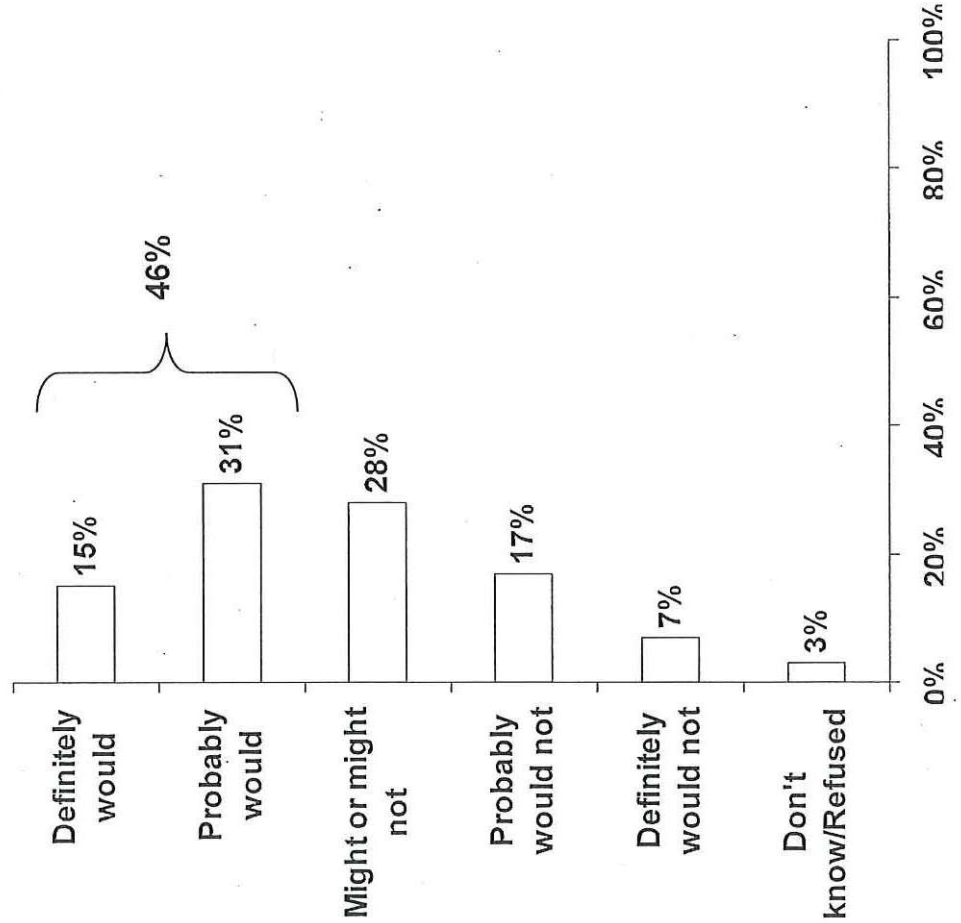
Contacting SBRRB

Respondents were read the following description:
 SBRRB reviews all proposed changes to government rules and regulations, both state and county for their negative impact on small businesses. All proposed changes must come to this Board.

- They offer a place and opportunity for business owner's views or complaints to be heard.
- They may act as arbiter of issues between two parties.
- They make recommendations to the government agencies on changes to rules and regulations.
- They have no authority beyond the ability to recommend.

They were then asked how likely they would be to contact SBRRB about rules and regulations. About half (46%) said they definitely or probably would.

Likelihood of Contacting the Small Business Regulatory Review Board (n=302)



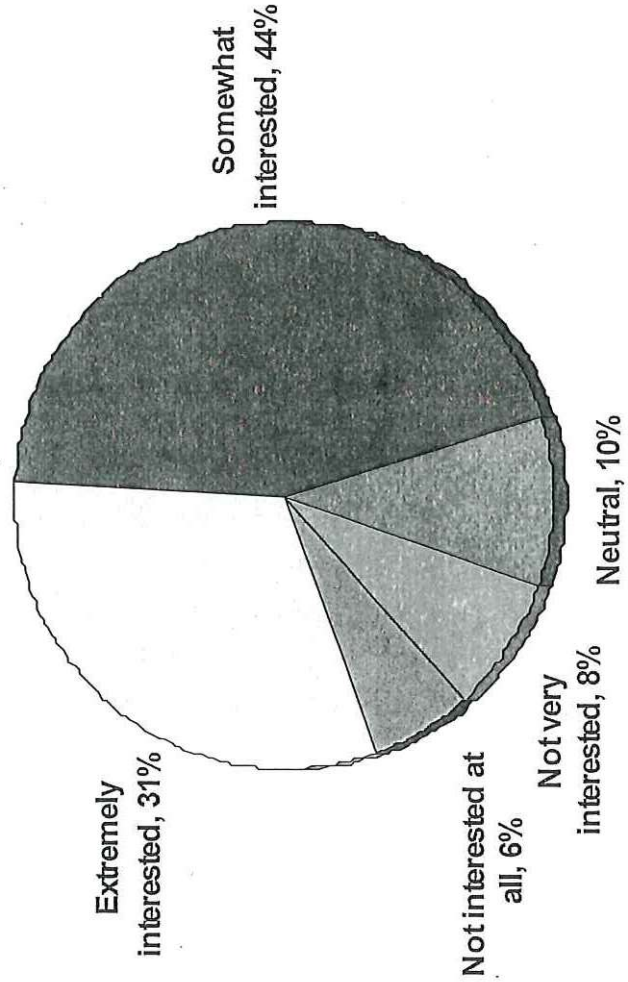


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Information on Rules and Regulations

The majority (75%) of small businesses are interested in receiving timely information about regulation changes that could impact small businesses. Only 6% stated that they are not at all interested.

Interest in Receiving Timely Information on Regulation Changes Impacting Small Businesses
(n=302)





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Information on Rules and Regulations

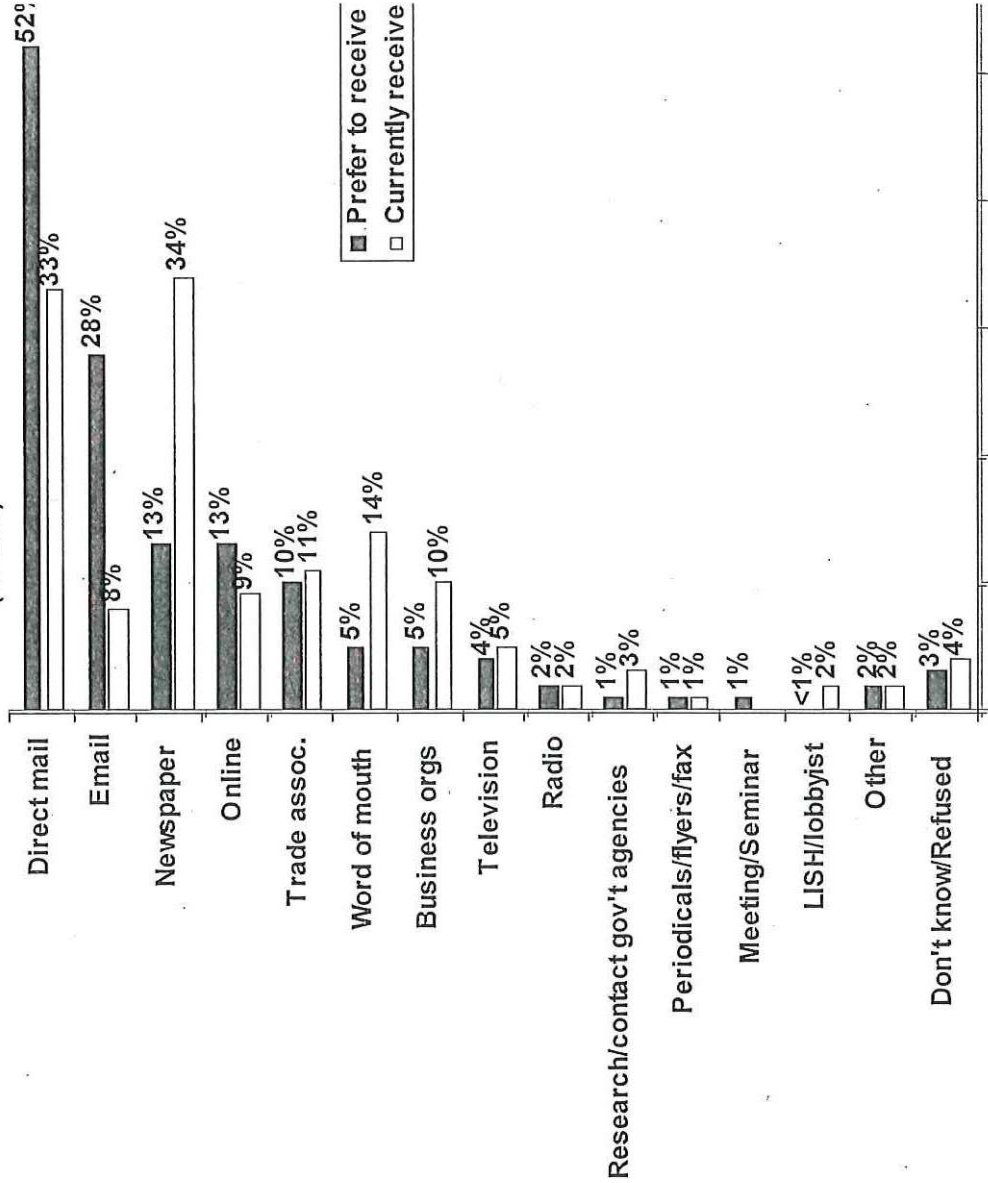
The methods of contact that are most preferred by small businesses are direct mail (52%) and Email (28%).

Currently, only 33% receive information through direct mail and only 8% receive information via email.

While 34% learn about rules and regulations that impact their businesses through the newspaper, only 13% actually prefer this method.

Receiving Information about Government Rules & Regulations

(n=302)



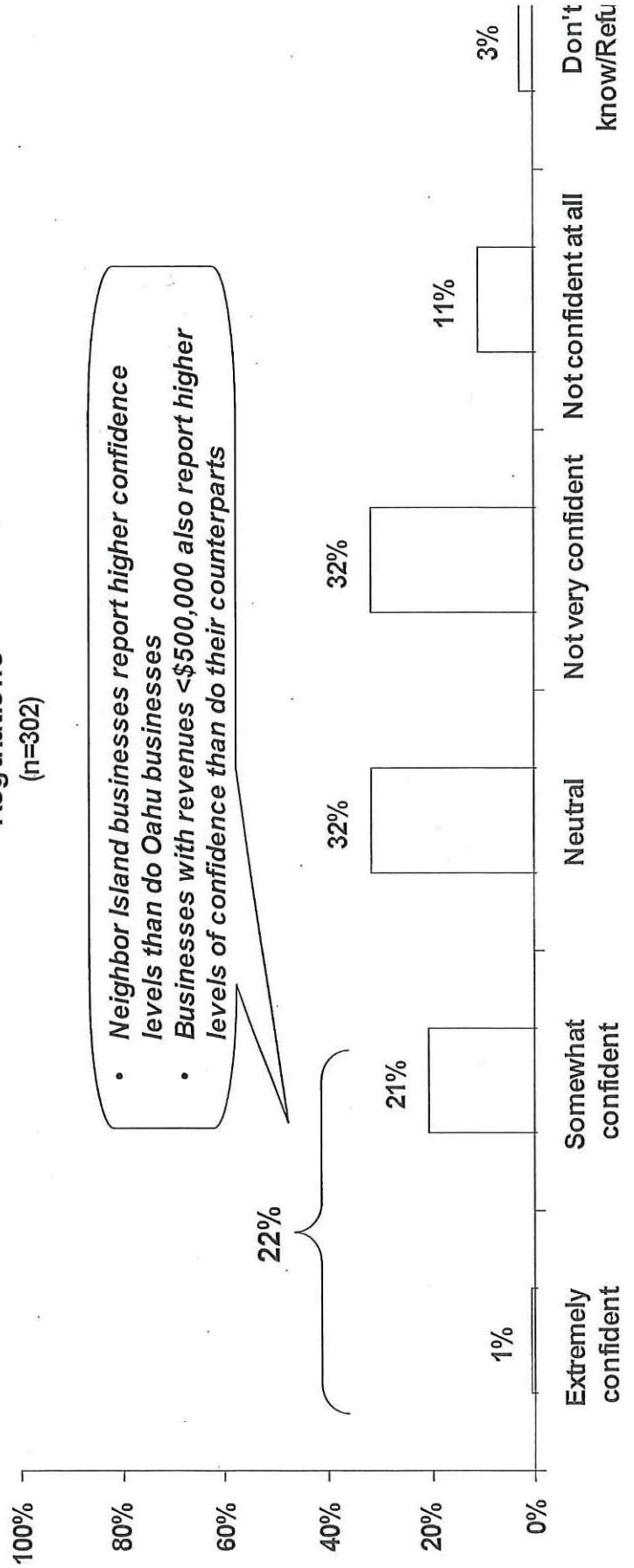


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Confidence in Process

However, when respondents were asked how confident they would be in a small business agency's ability to impact the government's rules and regulations, only 22% said they were extremely or somewhat confident. About four in ten (44%) said they were not very or not at all confident.

Confidence in Impact of a Small Business Agency on Government Rules and Regulations
(n=302)



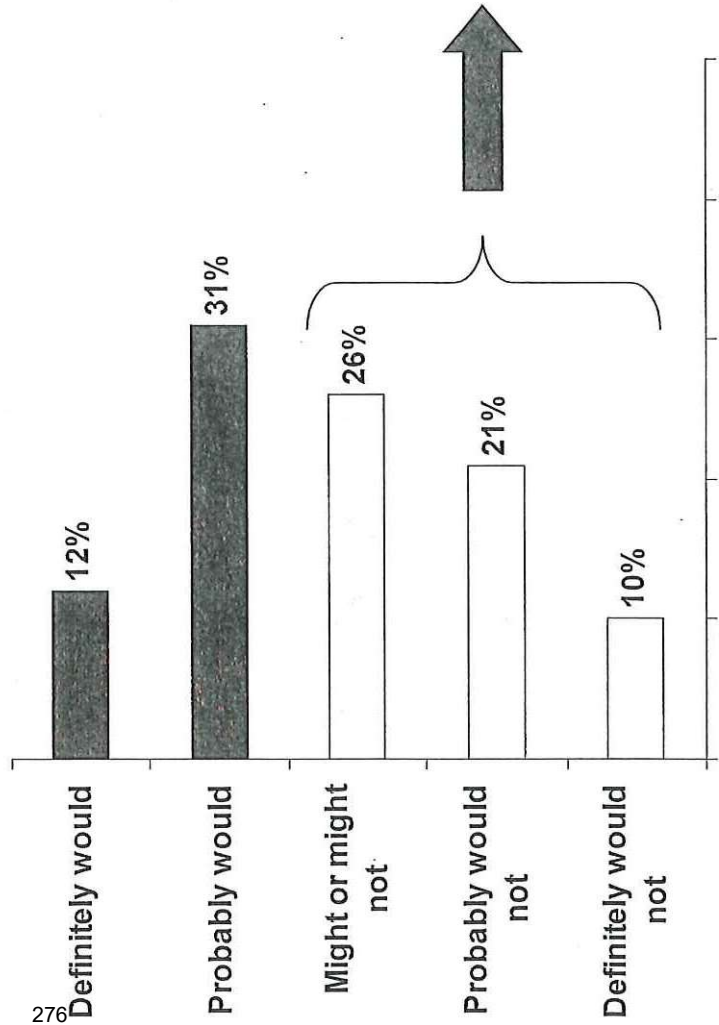


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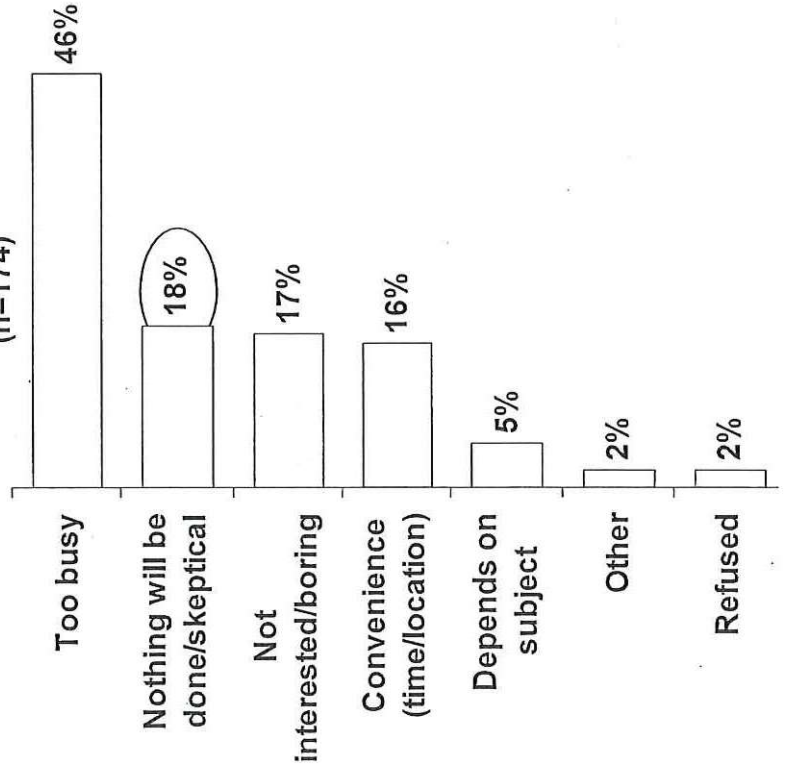
Perceptions of SBRRB

Almost half (43%) of small businesses definitely or probably would attend meetings regarding regulation changes that would impact their business. A portion (18%) of those who were not likely to attend meetings could be convinced if they knew that the meetings were productive. However, the biggest barrier to attendance is being too busy.

Likelihood of Attending Meetings Regarding Business Regulation Changes
(n=302)



Reasons Not Likely to Attend Meeting Regarding Business Regulation Changes
(n=174)



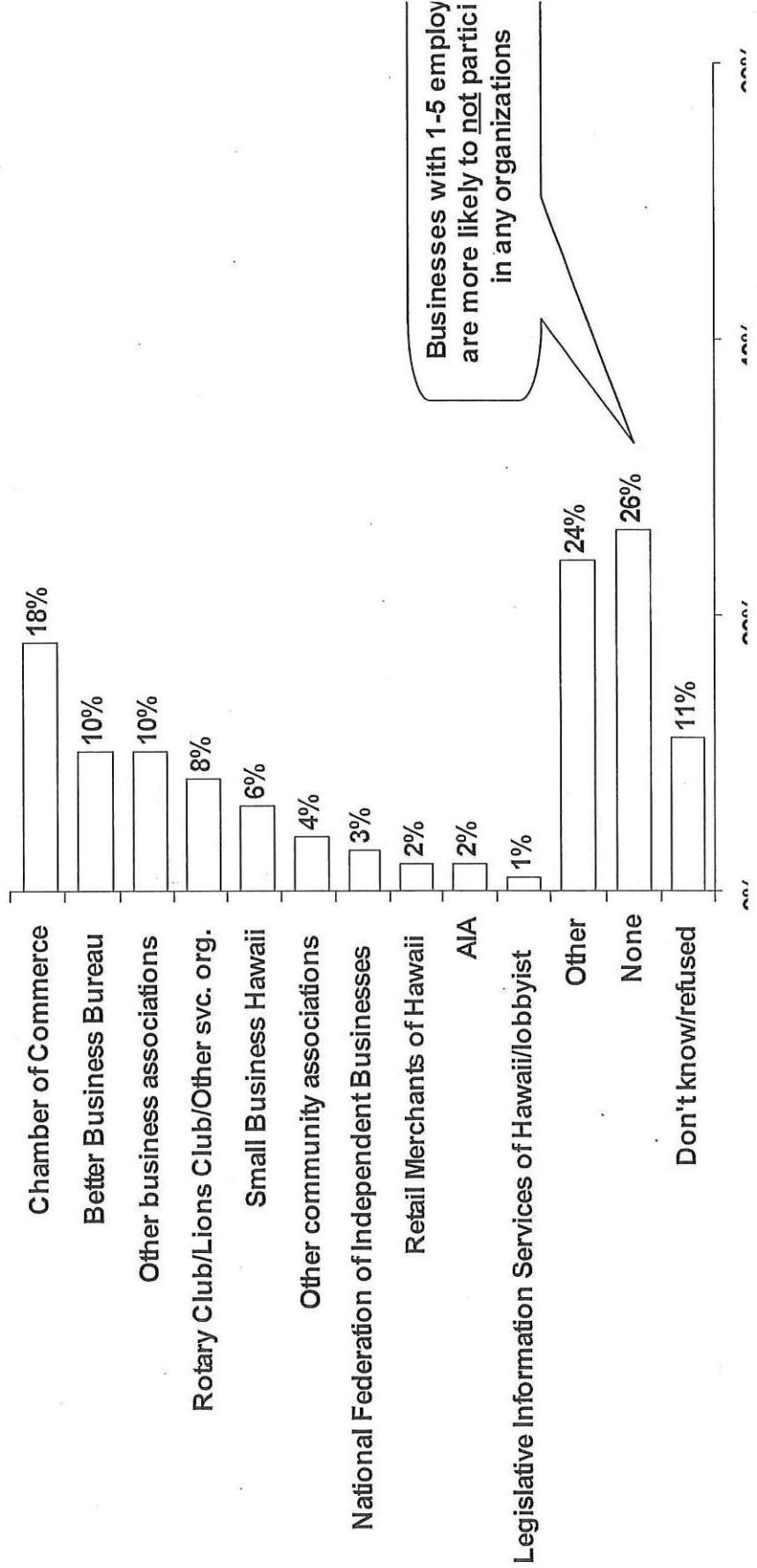


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Community/Business Organizations

Three-quarters (74%) of the small business community is a member of or participates in a community and/or business organization.

Membership or Participation in Community and/or Business Organizations (n=302)



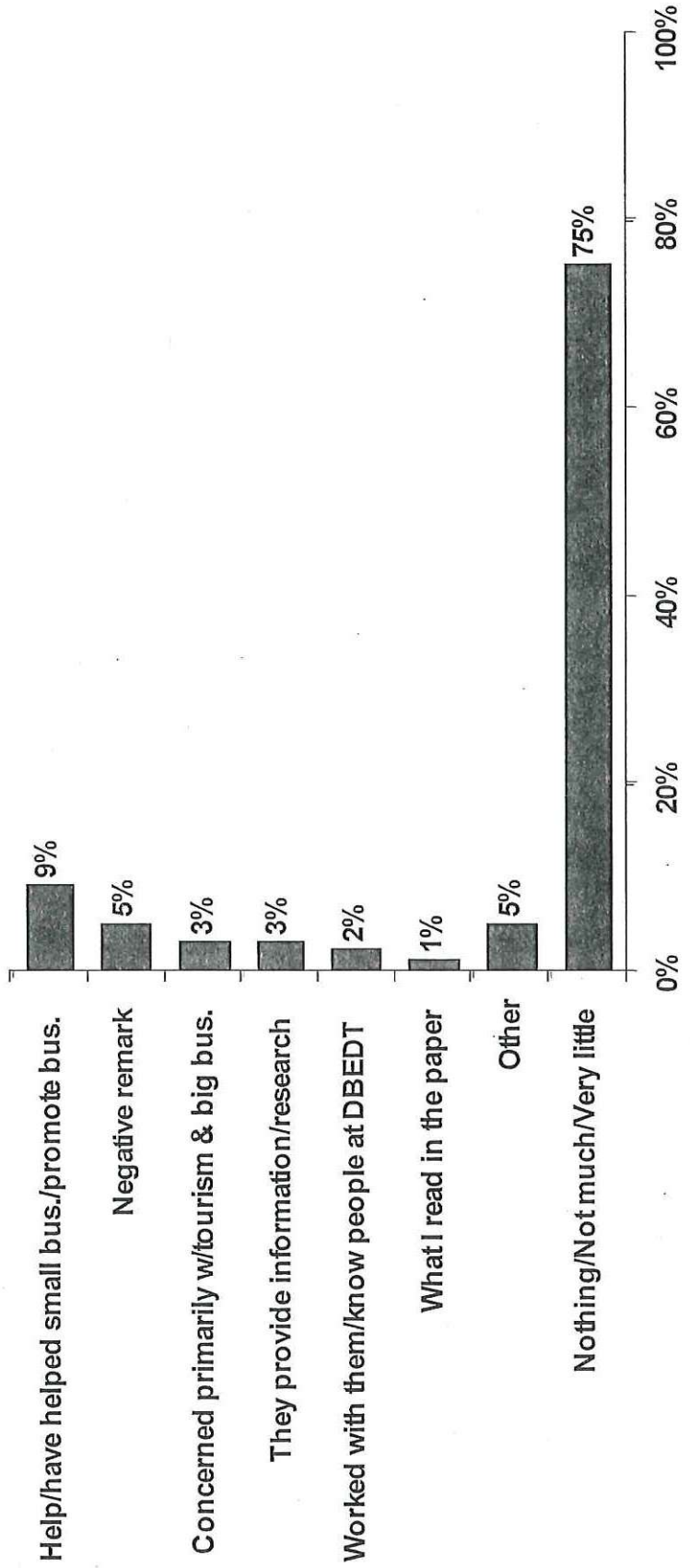


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DBEDT

The majority of respondents know very little or nothing about the state Department of Business Economic Development & Tourism as it relates to small businesses.

Knowledge of the State Department of Business, Economic Development & Tourism
(n=302)





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DBEDT

Respondents were asked what DBEDT could do, apart from lower taxes and fees for businesses, to enhance the business environment in Hawaii.

What State Department of Business, Economic Development & Tourism Should Do to Enhance the Business Environment in Hawaii (n=302)	
<p>Reduce bureaucracy/red tape (8%)</p> <p>Support small business/focus more on small business (7%)</p> <p>Work on tax issues (6%)</p> <p>Do more to promote non-tourist businesses (4%)</p> <p>Promote tourism (4%)</p> <p>Provide education/workshops (3%)</p> <p>Promote Hawaii/Hawaii products (3%)</p> <p>Promote more business (3%)</p> <p>Work on health insurance/workman's' comp (3%)</p>	<p>Provide incentives/grants (2%)</p> <p>Work on the cost of doing business (2%)</p> <p>Work on permitting (2%)</p> <p>Help with hiring/retaining workers (1%)</p> <p>Do a better job of explaining what they do (1%)</p> <p>Leave us alone (1%)</p> <p>Need to change attitude/how they do things (2%)</p> <p>Other (15%)</p> <p>Nothing/None (4%)</p> <p>Don't know/Not sure/No comment (40%)</p>



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Conclusions

- There is a great opportunity for SBRRB to educate the business community about its services and its success stories. There is great interest among the business community to stay informed about rules and regulations, and a fair amount of interest in participating in the process through meetings.
- Educate businesses in the process and capabilities of the board to increase interest and participation.
- While 34% of businesses currently learn about rules and regulations in the newspaper, they would prefer to learn about them via direct mail (or email), likely before it hits the newspapers.
- Small businesses do not have much stated confidence in a small business agency influencing government rules and regulations but there is interest in trying out the process, with 43% stating they would attend meetings. Another small proportion of small businesses may decide to attend meetings after learning that they are beneficial.
- — It is important to talk about success stories and show the business community how the board has influenced government agencies in the past.
- Contact businesses through organizations and/or associations for educational purposes since 74% of businesses are involved in one or more groups. Only 10% or less actually prefer this method of contact on a regular basis, however, to learn about rules and regulations. Additionally, small businesses with five or less employees are less likely than others to belong to any organizations or associations so other methods of educating are necessary.

Appendix