

Small Business Regulatory Review Board “Working Group”

MINUTES OF REGULAR MEETING

October 1, 2008

Conference Room 436 - No. 1 Capitol Building, Honolulu, HI

I. **CALL TO ORDER:** Mr. Dymond called the meeting to order at 1:36 p.m., with a quorum present.

MEMBERS PRESENT:

- Donald Dymond
- David De Luz, Jr.
- Tim Lyons
- Dale Evans
- Paul Yuen
- Melissa Pavlicek
- Kyle Yamashita
- Dori Palcovich

ABSENT MEMBERS:

- Lynne Woods
- Sharon L. Pang

Office of the Attorney General
Margaret Ahn

II. **APPROVAL OF SEPTEMBER 3, 2008 MINUTES**

Minutes of the September 3, 2008 meeting were approved as presented. Ms. Ahn suggested that going forward if the group was going to break into two groups that the minutes should reflect the separated group's discussions.

III. **OVERVIEW AND DISCUSSION OF THE SEPTEMBER 3, 2008 MEETING**

Ms. Pavlicek introduced herself as she was not present at the last meeting. She indicated that she has a consulting company and that part of her job is to serve as the Executive Director of the National Federation of Independent Business (NFIB). The membership consists of 1,200 businesses with ten or fewer employees. Ms. Evans explained that NFIB is considered the most influential and biggest business groups which is very much recognized in Washington D.C.

As a recap to the September 3, 2008 meeting, Mr. Dymond stated that the working group had disseminated into two groups, one reviewing the small business impact statement and the bill of rights, and the other group reviewing the remaining sections in Chapter 201M. He explained that he was in the latter group, and expressed having a difficult time in attempting to re-write the statute as he believes the statute is very well written. Ms. Evans stated that she believed there should be a clear statement of purpose for regulations; as a result of her comment, much discussion ensued regarding the incorporation of the bill of rights into the statute.

IV. **DISCUSSION AND RECOMMENDATION FROM MEMBERS OF SUB-WORKING GROUPS**

Ms. Ahn reminded the members that this group is required to submit to the legislature, along with any proposed changes to the statute the following information: 1) whether the current statutes are adequate to meet the concerns of small business; 2) what concerns have been raised by small businesses, and 2) the level of difficulty in adequately meeting the requirements of the statutes.

Mr. Dymond stated that due to timing requirements to submit to the legislature a report based on this group's findings and recommendations by November, he recommended that rather than break into two separate sub-groups that it would be more efficient if the group as a whole worked together. As a result, the members reviewed each section of the statute and made the following suggested changes. (The underlined words depict proposed additions and the bolded and bracketed words depict proposed deletions.)

201M-1 Definitions

“Agency” means each state or county board, commission, department, or officer under the jurisdiction of the state of Hawaii and the counties therein authorized by law to make rules, except those in the legislative or judicial branches.

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]** declare whether the proposed rules affect small business, **[and if so,]** subject to determination of the small business regulatory review board. If it is determined to affect small business, the agency shall also recommend the availability and practicability of less restrictive alternatives that could be implemented.
- (b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods **[of compliance]** that are less burdensome and restrictive 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.
- (c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, Hawaii state, or Hawaii 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 under the comparable or related federal, state, or county law. The agency shall also include an expiration of its decision to impose the higher standard. Etc.

201M-3 Small business statement after public hearing

Prior to the board’s determination and adoption, [F] for any proposed rules that affect small business, the agency shall also submit a small business statement to the small business regulatory business after the public hearing is held.

Note - Much discussion ensued regarding the process of the rules being adopted after public hearing and prior to the review board’s final review. It was suggested that when the review board hears from an agency prior to public hearing, the board as a courtesy, might want to make a comment to the agency at that time with instructions that if no testimonies or feedback was provided and no changes had been made to the rules that it would not be necessary to come back to the board in person but to simply notify the board via small business impact statement.

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

- (a) There may be established within and administratively attached to every department or the State or county whose rules affect small business activities, an advisory committee on small business. If an agency or the board determines a rule has impact on small business, then an advisory committee shall be established. 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, etc.
- (c) **[If necessary, any group or members of affected small businesses may also]** The small business advisory committee will 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.

201M-5 Small business regulatory review board; powers

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

Note - Mr. Yuen indicated that with the increase in the Board's responsibilities due to the proposed changes in the statute that this working group may want to consider increasing the number of board members. This will be discussed at the next working group meeting.

Mr. Yamashita also indicated that in the next few years, the legislature will likely propose adding back the business defender into the statute.

201M-6 Petition for regulatory review

- (a) (5) The rules are obsolete, duplicate, overlap, [or] conflict, or are more burdensome with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or – etc.

201M-7 Periodic review; evaluation report

No changes were proposed at the meeting.

201M-8 Waiver or reduction of penalties

No changes were proposed at the meeting.

201M-9 Executive order

No changes were proposed at the meeting.

201M-10 Small Business Bill of Rights

- (a) The rights of small business in the State of Hawaii include but are not limited to:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) The right to be treated equally and fairly, with reasonable access to state services;
- (5) 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;
- (6) 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;
- (7) 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;

- (8) 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 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;
- (9) 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, **subject to Chapter 92F, HRS;**
- (10) The right to all of the protections afforded in the Taxpayer Bill of Rights, P.L. 104-168;
- (11) 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;
- (12) 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;
- (13) 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;
- (14) 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;
- (15) 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
- (16) 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

V. **ANNOUNCEMENTS:** Nothing was discussed.

VI. **NEXT MEETING:** Wednesday, October 15, 2008 at 2:00 p.m., 250 South Hotel Street, Honolulu, HI, Conference Room 410

VII. **ADJOURNMENT:** Mr. Dymond adjourned the meeting at 3:16 p.m.

