

Small Business Regulatory Review Board “Working Group”

MINUTES OF MEETING

October 15, 2008

Conference Room 410 - No. 1 Capitol Building, Honolulu, HI

I. CALL TO ORDER: Chair Woods called the meeting to order at 2:05 p.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Sharon L. Pang
- David S. De Luz, Jr.
- Tim Lyons
- Dale Evans
- Paul Yuen
- Dori Palcovich

ABSENT MEMBERS:

- Donald Dymond
- Kyle Yamashita
- Melissa Pavlicek

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF OCTOBER 1, 2008 MINUTES

Vice Chair Pang recommended that the minutes of the October 1, 2008 meeting be approved as amended; the members unanimously agreed.

III. OVERVIEW AND DISCUSSION OF THE OCTOBER 1, 2008 MEETING, INCLUDING ADDITIONAL COMMENTS TO SECTION 201M-5, “SMALL BUSINESS REGULATORY REVIEW BOARD; POWERS” – TO INCREASE SIZE OF BOARD –

Ms. Palcovich explained that at the last meeting, it was briefly discussed that because of the number of changes being proposed to 201M-7, which would result in a tremendous amount of work for the SBRRB, this working group wanted to consider proposing to increase the total number of SBRRB members. Mr. Lyons mentioned potential quorum issues and Chair Woods noted that the SBRRB is made up of two members from each of the major islands with the remaining members from Oahu.

IV. DISCUSSION AND RECOMMENDATION OF PROPOSED CHANGES TO CHAPTER 201M, HRS, TO INCORPORATE:

- 1. Whether the current statutes are adequate to meet the concerns of small business;**
It was clarified that “current statutes” refers to Chapter 201M, HRS, and does not include the “bill of rights;” but reflects the changes that will be proposed by this working group.
- 2. What concerns have been raised by small businesses, and**
It was noted that the concerns raised by small businesses also reflect the changes that have been proposed by this working group to the legislature.
- 3. The level of difficulty in adequately meeting the requirements of the statute**
Mr. De Luz indicated that this working group has addressed the difficulty in adequately meeting the statute’s requirement because when making proposals to the statute, the members considered how the particular changes would be managed and implemented.

After much discussion, Mr. De Luz, Jr., recommended that the working group concur with the proposed changes to 201M, HRS, made by this working group, which will be presented at the next Small Business Regulatory Review Board meeting and that any additional language, wording or spelling will be consistent with the working group's definitions; the members unanimously agreed. Mr. Yuen posed some reservations; one in particular was to the proposed amendment to the definition of "affected small business."

201M-1 Definitions

"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~~ has caused 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 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 [county] counties therein 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.

201M-3 Small business statement after public hearing

No changes were proposed at the meeting.

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 shall 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

- (b) The board shall consist of ~~eleven~~ thirteen members, who shall be appointed by the governor pursuant to section 26-34. Nominations to fill vacancies shall be made from names submitted by the review board. The appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.
- (c) All members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. ~~[The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.]~~

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 **agencies** ~~[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]~~ **agencies'** 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. **Subject to Chapter 92F, HRS, [N]** 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;
- (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 an [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, November 5, 2008 at 2:00 p.m., 250 South Hotel Street, Honolulu, HI, Conference Room 436.

VII. **ADJOURNMENT:** Chair Woods adjourned the meeting at 4:07 p.m.

