



GOV. MSG. NO. 988

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 28, 2007

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 28, 2007, the following bill was signed into law:

SB188 SD2 HD1 CD1

A BILL FOR AN ACT RELATING TO THE SMALL  
BUSINESS REGULATORY FLEXIBILITY ACT.  
(ACT 217)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor  
on JUN 28 2007

THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

**ACT 217**  
**S.B. NO.** 188  
S.D. 2  
H.D. 1  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that there is a need to  
2 clarify the timing of preparation and distribution of the small  
3 business impact statement required by chapter 201M, Hawaii  
4 Revised Statutes, to allow adequate review and comment to the  
5 agency by small businesses directly affected by a proposed rule  
6 and by the small business regulatory review board.

7           The purpose of this Act is to require that the small  
8 business impact statement be prepared and submitted to the small  
9 business regulatory review board as early as practicable in the  
10 rule drafting process. The Act also expands the duties of the  
11 board to include review of any new or proposed rule, requires  
12 the board to inform a small business that they may submit a  
13 complaint to the ombudsman when the decision is to uphold a  
14 rule, and makes housekeeping amendments to the Small Business  
15 Regulatory Flexibility Act.



1 SECTION 2. Section 201M-1, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

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

5 SECTION 3. Section 201M-2, Hawaii Revised Statutes, is  
6 amended by amending subsections (b) and (c) to read as follows:

7 "(b) If the proposed rules affect small business, the  
8 agency shall consider creative, innovative, or flexible methods  
9 of compliance for small businesses and prepare a small business  
10 impact statement to be submitted with the proposed rules to the  
11 departmental advisory committee on small business and the [small  
12 ~~business regulatory review~~] board [~~prior to providing notice for~~  
13 ~~a public hearing.~~] when the rules are essentially complete and  
14 before the rules are submitted to the governor for approval for  
15 public hearing. The statement shall provide a reasonable  
16 determination of the following:

- 17 (1) The businesses that will be directly affected by, bear  
18 the costs of, or directly benefit from the proposed  
19 rules;
- 20 (2) Description of the small businesses that will be  
21 required to comply with the proposed rules and how  
22 they may be adversely affected;



- 1 (3) In dollar amounts, the increase in the level of direct  
2 costs such as fees or fines, and indirect costs such  
3 as reporting, recordkeeping, equipment, construction,  
4 labor, professional services, revenue loss, or other  
5 costs associated with compliance;
- 6 (4) The probable monetary [~~cost~~] costs and benefits to the  
7 implementing agency and other agencies directly  
8 affected, including the estimated total amount the  
9 agency expects to collect from any additionally  
10 imposed fees and the manner in which the moneys will  
11 be used;
- 12 (5) The methods the agency considered or used to reduce  
13 the impact on small business such as consolidation,  
14 simplification, differing compliance or reporting  
15 requirements, less stringent deadlines, modification  
16 of the fines schedule, performance rather than design  
17 standards, exemption, or any other mitigating  
18 techniques;
- 19 (6) How the agency involved small business in the  
20 development of the proposed rules; and
- 21 (7) Whether the proposed rules include provisions that are  
22 more stringent than those mandated by any comparable



1 or related federal, state, or county standards, with  
2 an explanation of the reason for imposing the more  
3 stringent standard.

4 (c) This chapter shall not apply to proposed rules adopted  
5 by an agency to implement a statute or ordinance that does not  
6 require an agency to interpret or describe the requirements of  
7 the statute or ordinance, such as federally-mandated regulations  
8 [~~which affords~~] that afford the agency no discretion to consider  
9 less restrictive alternatives."

10 SECTION 4. Section 201M-5, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By amending subsection (a) to read:

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



1           2. By amending subsection (f) to read:

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

10           SECTION 5. Section 201M-6, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "~~§~~201M-6~~§~~ Petition for regulatory review. (a) In  
13 addition to the basis for filing a petition provided in section  
14 91-6, any affected small business may file a written petition  
15 with the agency that has adopted the rules objecting to all or  
16 part of any rule affecting small business on any of the  
17 following grounds:

18           (1) The actual effect on small business was not reflected  
19 in, or significantly exceeded, the small business  
20 impact statement submitted prior to the adoption of  
21 the rules;



1 (2) The small business impact statement did not consider  
2 new or significant economic information that reveals  
3 an undue impact on small business; [~~e~~]

4 (3) These impacts were not previously considered at the  
5 public hearing on the rules[-];

6 [~~(b)~~] ~~For rules adopted prior to July 1, 1998, an affected~~  
7 ~~small business may file a written petition with the agency that~~  
8 ~~adopted the rules objecting to all or part of any rules~~  
9 ~~affecting small business on any of the following grounds:~~

10 [~~(1)~~] (4) The rules [~~e~~created] create an undue barrier to  
11 the formation, operation, and expansion of small  
12 businesses in a manner that significantly outweighs  
13 its benefit to the public;

14 [~~(2)~~] (5) The rules duplicate, overlap, or conflict with  
15 rules adopted by another agency or violate the  
16 substantive authority under which the rules were  
17 adopted; or

18 [~~(3)~~] (6) The technology, economic conditions, or other  
19 relevant factors justifying the purpose for the rules  
20 have changed or no longer exist.

21 [~~(e)~~] (b) Upon submission of the petition, the agency  
22 shall forward a copy of the petition to the board, as



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

13 ~~[(d)]~~ (c) If the agency determines that the petition does  
14 not merit the adoption, amendment, or repeal of any rule, any  
15 affected small business may seek a review of the decision by the  
16 ~~[small business regulatory review]~~ board. The board shall  
17 promptly convene a meeting pursuant to chapter 92 for the  
18 purpose of soliciting testimony that will assist in its  
19 determination whether to recommend that the agency initiate  
20 proceedings in accordance with section 91-3. ~~[For rules adopted~~  
21 ~~after July 1, 1998, the]~~ The board may base its recommendation  
22 on any of the following reasons:



1 (1) The actual effect on small business was not reflected  
2 in, or significantly exceeded, the impact statement  
3 submitted prior to the adoption of the rules;

4 (2) The impact statement did not consider new or  
5 significant economic information that reveals an undue  
6 impact on small business; [ex]

7 (3) These impacts were not previously considered at the  
8 public hearing on the rules[-];

9 [~~e~~] ~~For rules adopted prior to July 1, 1998, the~~  
10 ~~regulatory review board may base its recommendation to the~~  
11 ~~agency on any of the following reasons:~~

12 [~~1~~] (4) The rules [~~created~~] create an undue barrier to  
13 the formation, operation, and expansion of small  
14 businesses in the State in a manner that significantly  
15 outweighs its benefit to the public;

16 [~~2~~] (5) The rules duplicate, overlap, or conflict with  
17 rules adopted by another agency or violate the  
18 substantive authority under which the rules were  
19 adopted; or

20 [~~3~~] (6) The technology, economic conditions, or other  
21 relevant factors justifying the purpose for the rules  
22 have changed or no longer exist.



1       ~~[(f)]~~ (d) If the ~~[small business regulatory review]~~ board  
2 recommends that an agency initiate rulemaking proceedings for  
3 any reason provided in subsection ~~[(d) or (e)]~~ (c), it shall  
4 submit to the legislature an evaluation report and the agency's  
5 response as provided in subsection ~~[(e)]~~ (b). The legislature  
6 may subsequently take ~~[such]~~ any action in response to the  
7 evaluation report and the agency's response as it finds  
8 appropriate.

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

15       ~~[(g)]~~ (f) Nothing in this section shall entitle an  
16 affected small business to a contested case hearing under  
17 chapter 91."

18       SECTION 6. Section 201M-7, Hawaii Revised Statutes, is  
19 amended as follows:

20       1. By amending subsection (a) to read:

21       "(a) Each agency having rules that affect small business  
22 ~~[in effect on July 1, 1998]~~ shall submit by June 30 of each odd-



1 numbered year, a list of those rules to the small business  
2 regulatory review board. The agency shall also submit a report  
3 describing the specific public purpose or interest for adopting  
4 the respective rules and any other reasons to justify its  
5 continued implementation."

6 2. By amending subsection (c) to read:

7 "(c) The board may solicit testimony from the public  
8 regarding any report submitted by the agency under this section  
9 at a public meeting held pursuant to chapter 92. Upon  
10 consideration of any report submitted by an agency under this  
11 section and any public testimony, the [~~small-business regulatory~~  
12 ~~review~~] board shall submit an evaluation report to [~~each~~] the  
13 next regular session of the legislature [~~in even-numbered~~  
14 ~~years~~]. The evaluation report shall include an assessment as to  
15 whether the public interest significantly outweighs a rule's  
16 effect on small business and any legislative proposal to  
17 eliminate or reduce the effect on small business. The  
18 legislature may take [~~such~~] any action in response to the report  
19 as it finds appropriate."

20 SECTION 7. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22 SECTION 8. This Act shall take effect upon approval.



S.B. NO. 188  
S.D. 2  
H.D. 1  
C.D. 1



GOVERNOR OF THE STATE OF HAWAII

Approved this day: JUN 28 2007