

JAN 19 2007

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 Legislature further finds that when the Small Business
8 Regulatory Flexibility Act was enacted on July 1, 1998, it was
9 necessary to review administrative rules that were in place
10 before the small business regulatory review board began its
11 review of new or modified rules. Each rule-making agency has
12 submitted to the small business regulatory review board a list
13 of rules adopted before July 1, 1998 affecting small business
14 and described the public purpose for the rule and any other
15 reasons to justify continued implementation. A report of this
16 review has been made to the Legislature as required by the
17 statute. The need to periodically review adopted rules for



1 their small business impact remains valid as technology and
2 public policy develop. Accordingly a periodic review process
3 will ensure that agencies thoughtfully consider if the original
4 public purpose for rule adoption remains.

5 The purpose of this Act is to clarify the Small Business
6 Regulatory Flexibility Act, chapter 201M, Hawaii Revised
7 Statutes. Specifically, this Act provides that a small business
8 impact statement will be prepared and submitted to the small
9 business regulatory review board as early as practicable in the
10 rule drafting process. It also provides that adopted rules
11 affecting small business will be reviewed to determine if they
12 are still appropriate within five years after adoption. The Act
13 further provides for other non-substantive changes to chapter
14 201M to clarify the definition of a rule and to remove outdated
15 sections of the chapter.

16 SECTION 2. Section 201M-1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[+]§201M-1[+] **Definitions.** As used in this chapter,
19 unless the context clearly requires otherwise:

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



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

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

10 "Board" means the small business regulatory review board.

11 "Rule" means each state or county agency statement of
12 general or particular applicability and future effect that
13 implements, interprets, or prescribes law or policy or describes
14 the organization, procedure, or practice requirements of any
15 agency as fully defined in section 91-1.

16 "Small business" means a for-profit enterprise consisting
17 of fewer than one hundred full-time or part-time employees."

18 SECTION 3. Section 201M-2, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§201M-2[+] **Determination of small business impact;**
21 **small business impact statement.** (a) Prior to submitting
22 proposed rules for adoption, amendment, or repeal under section



1 91-3, the agency shall determine whether the proposed rules
2 affect small business, and if so, the availability and
3 practicability of less restrictive alternatives that could be
4 implemented. This section shall not apply to emergency
5 rulemaking.

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

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

12 " ~~[+] §201M-5 [.]~~ **Small business regulatory review board;**
13 **powers.** (a) There shall be established within the department
14 of business, economic development, and tourism, for
15 administrative purposes, a small business regulatory review
16 board to review any proposed new or amended rule or to consider
17 any request from small business owners for review of any rule
18 adopted by a state agency and to make recommendations to the
19 agency or the legislature regarding the need for a rule change
20 or legislation. For requests regarding county ordinances, the
21 board may make recommendations to the county council or the
22 mayor for appropriate action.



1 (b) The board shall consist of eleven members, who shall
2 be appointed by the governor pursuant to section 26-34.
3 Nominations to fill vacancies shall be made from names submitted
4 by the review board. The appointments shall reflect
5 representation of a variety of businesses in the State; provided
6 that no more than two members shall be representatives from the
7 same type of business, and that there shall be at least two
8 representatives from each county.

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

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

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



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

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

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

16 "[+]§201M-6[+] **Petition for regulatory review.** (a) In
17 addition to the basis for filing a petition provided in section
18 91-6, any affected small business may file a written petition
19 with the agency that has adopted the rules objecting to all or
20 part of any rule affecting small business on any of the
21 following grounds:



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

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

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

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

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

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



1 ~~(3)~~ (6) The technology, economic conditions, or other
2 relevant factors justifying the purpose for the rules
3 have changed or no longer exist.

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

18 ~~(d)~~ (c) If the agency determines that the petition does
19 not merit the adoption, amendment, or repeal of any rule, any
20 affected small business may seek a review of the decision by the
21 small business regulatory review board. The board shall
22 promptly convene a meeting pursuant to chapter 92 for the



1 purpose of soliciting testimony that will assist in its
2 determination whether to recommend that the agency initiate
3 proceedings in accordance with section 91-3. [~~For rules adopted~~
4 ~~after July 1, 1998, the~~] The board may base its recommendation
5 on any of the following reasons:

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

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

12 (3) These impacts were not previously considered at the
13 public hearing on the rules[~~or~~];

14 [~~(c) For rules adopted prior to July 1, 1998, the~~
15 ~~regulatory review board may base its recommendation to the~~
16 ~~agency on any of the following reasons:~~]

17 [~~(1)~~] (4) The rules [~~created~~] create an undue barrier to the
18 formation, operation, and expansion of small
19 businesses in the State in a manner that significantly
20 outweighs its benefit to the public;

21 [~~(2)~~] (5) The rules duplicate, overlap, or conflict with
22 rules adopted by another agency or violate the



1 substantive authority under which the rules were
2 adopted; or
3 ~~[(3)]~~ (6) The technology, economic conditions, or other
4 relevant factors justifying the purpose for the rules
5 have changed or no longer exist.

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

13 ~~[(5)]~~ (e) Nothing in this section shall entitle an
14 affected small business to a contested case hearing under
15 chapter 91."

16 SECTION 6. Section 201M-7, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[~~4~~]§201M-7[~~1~~] **Periodic review; evaluation report.** (a)
19 Each agency having rules that affect small business [~~in effect~~
20 ~~on July 1, 1998~~] shall submit by June 30, 2007 [~~of each odd-~~
21 ~~numbered year~~], and every five (5) years thereafter, a list of
22 those rules adopted in the previous five (5) years to the small



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

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

18 (c) The board may solicit testimony from the public
19 regarding any report submitted by the agency under this section
20 at a public meeting held pursuant to chapter 92. Upon
21 consideration of any report submitted by an agency under this
22 section and any public testimony, the small business regulatory



1 review board shall submit an evaluation report to ~~each~~ the
2 next regular session of the legislature [~~in even numbered~~
3 ~~years~~]. The evaluation report shall include an assessment as to
4 whether the public interest significantly outweighs a rule's
5 effect on small business and any legislative proposal to
6 eliminate or reduce the effect on small business. The
7 legislature may take such action in response to the report as it
8 finds appropriate."

9 SECTION 7. Section 201M-8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§ ~~[+]~~201M-8 ~~[+]~~ **Waiver or reduction of penalties.** (a)
12 Except where a penalty or fine is assessed pursuant to a program
13 approved, authorized, or delegated under a federal law, any
14 agency authorized to assess civil penalties or fines upon a
15 small business shall waive or reduce any penalty or fine as
16 allowed by federal or state law for a violation of any statute,
17 ordinance, or rules by a small business under the following
18 conditions:

19 (1) The small business corrects the violation within a
20 minimum of thirty days after receipt of a notice of
21 violation or citation; and



- 1 (2) The violation was unintentional or the result of
2 excusable neglect; or
- 3 (3) The violation was the result of an excusable
4 misunderstanding of an agency's interpretation of a
5 rule.
- 6 (b) Subsection (a) shall not apply:
- 7 (1) When a small business fails to exercise good faith in
8 complying with the statute or rules;
- 9 (2) When a violation involves wilful or criminal conduct;
10 or
- 11 (3) When a violation results in serious health, safety, or
12 environmental impact [~~and safety impacts~~];
- 13 (4) To violations of chapters 6E, 180, 180C, 181, 182,
14 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D,
15 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B,
16 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L,
17 and 342P;
- 18 (5) To violations of sections 200-9(b) and (c), 200-24(4),
19 200-37, and 200-38; or
- 20 (6) To violations of administrative rules promulgated
21 pursuant to section 200-4(6); except for rules



1 pertaining to matters listed in section 200-4(6)(A),
2 (B), (C), and (D).

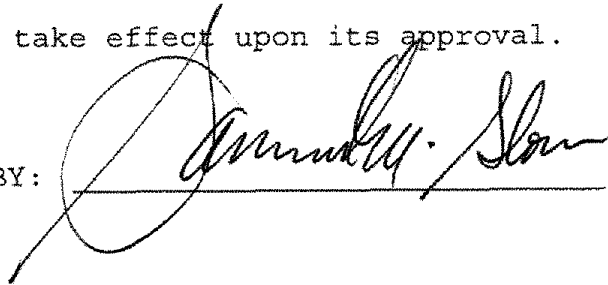
3 (c) An agency may adopt rules to implement the
4 requirements of this section."

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect upon its approval.

8

INTRODUCED BY:





Report Title:

Small Business; Regulatory Flexibility Act

Description:

Clarifies the Small Business Regulatory Flexibility Act.

