

DEPT. COMM. NO. 268

DAVID Y. IGE
GOVERNOR

DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

LUIS P. SALAVERIA
DIRECTOR

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December 20, 2017

The Honorable Ronald D. Kouchi,
President and Members
of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the 2017 Small Business Regulatory Review Board Annual Report, as required by Section 201M-5(f), Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at:
<http://dbedt.hawaii.gov/overview/annual-reports-reports-to-the-legislature/>.

Sincerely,

Luis P. Salaveria

Enclosure

c: Legislative Reference Bureau



**HAWAII SMALL BUSINESS
REGULATORY REVIEW
BOARD
ANNUAL REPORT SUMMARY**

Results for Calendar Year 2017

**Recommendations and Review of 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 2017

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SECTION I



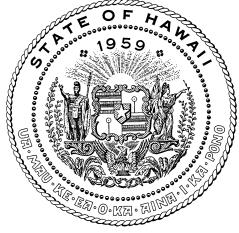
MESSAGE FROM THE DIRECTOR



On behalf of the Department of Business, Economic Development & Tourism, I continue to support each and every member of the Small Business Regulatory Review Board as I believe in this Board's mission.

Thank you, members, for your hard work and dedication to Hawaii's small business community.

Luis P. Salaveria
Director



SMALL BUSINESS REGULATORY REVIEW

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David Y. Ige
Governor

Luis P. Salaveria
Director, DBEDT

Members

Anthony Borge
Chair
Oahu

Robert Cundiff
Vice Chair
Oahu

Garth Yamanaka
2nd Vice Chair
Hawaii County

Harris Nakamoto
Oahu

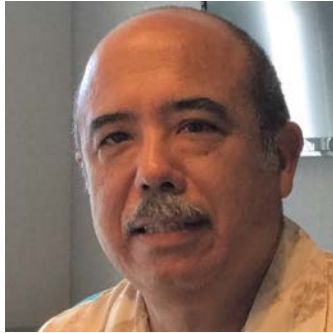
Nancy Atmospera-Walch
Oahu

Kyoko Kimura
Maui County

Reg Baker
Oahu

Director, DBEDT
Voting Ex Officio

MESSAGE FROM THE CHAIR



Anthony Borge, Chair, 2017

This year, we continue to be blessed with an outstanding team of volunteer board members who persevere toward our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii.

I would like to recognize and thank each of our dedicated board members who have continued to donate unselfish hours and time away from their families and businesses, sharing their invaluable business knowledge to improve and enhance the growth and success of small businesses throughout the State; Rob Cundiff, Garth Yamanaka, Harris Nakamoto, Kyoko Kimura, Nancy Atmospera-Walch and Reg Baker.

This year, we welcomed one new member, Mr. Reg Baker, whom we are very happy to have on our team. The Board consistently meets every month to address, collaborate, and provide timely responses to the Governor, State and County agencies, and small businesses.

On behalf of all the Small Business Regulatory Review Board members, I once again, would like to extend a big Mahalo to Governor David Ige, Director Luis Salaveria for his steadfast support, the State Legislature, and all those State and County Agencies that come before this Board to discuss proposed and amended regulations 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 2017 through December 2017.

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 has been 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 is also charged with reviewing existing rules upon the request from small business owners or at the Board's initiative. For requests regarding County ordinances, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members volunteer their time performing outreach activities to small business organizations such as the local Chambers of Commerce, and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State departments.

As an effective and efficient means of review, each member is assigned to one or more State department as a "discussion leader" and is responsible for the initial review of the administrative rules of that department prior to consideration by the full Board. As of December 2017, the Board was operating with eight members.

ADMINISTRATIVE RULE REVIEW

During 2017, the Board reviewed and made recommendations on 78 new and amended rules to State and County Agencies, both pre- and post-public hearing.

Since its inception, the Board reviewed a total of 791 sets of proposed new and amended administrative rules. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
<i>Department of Accounting & General Services – Title 3</i>	181.1	International Energy Conservation Code, 2015 Edition		X	
	182.1	State Electrical Code		X	
	44.1	Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems		X	
<i>Department of Agriculture – Title 4</i>	143	Standards of Coffee	X		
	161	Hawaii-Grown Industrial Hemp	X	X	
<i>Department of Business, Economic Development & Tourism – Title 15</i>	210	Rules, Regulations, Charges and Fees for Public Parks		X	
	37	Solar Water Heater Variance	X		
	218	Kakaako Reserved & Workforce Housing Rules		X	
<i>Department of Health – Title 11</i>	50	Food Safety Code		X	
	103	Licensure and Certification Fees for Health Care Facilities and Agencies	X		
	55	Water Pollution Control	X		The SBRRB commended DOH's Clean Water Branch for its pro-

	157	Examination and Immunization	X		active streamlining of the rule amendments.
Department of Labor & Industrial Relations – Title 12	Subtitle 7, Chapter 41	Hawaii Labor Relations Board – Rules of Practice and Procedure		NA (Twice heard after public hearing)	1) After the public hearing, the Board sent a memo to the Governor with a copy to the rule-drafting agency requesting that the adoption of the proposed amendments be delayed until the next Board’s meeting scheduled for March 15, 2017, for the following reasons: 1) the amendments may have a significant, negative impact on small businesses; 2) copies of the testimonies from the stakeholders at the public hearing were not received by this Board; and 3) stakeholders were not available for questioning at the Board’s meeting.
	Chapter 15 Section 90	Workers’ Compensation Medical Fee Schedule and Exhibit A	X	X	2) After reviewing the amendments at a second meeting, the Board opposed the amendments due to the proposal’s significant, negative impact on small business and because the reasoning for the amendments is unclear to the Board.
	Subtitle 8, Hawaii Occupational Safety and Health Division	Part 1, General Legal and Administrative Provisions for Occupational Safety and Health Chapter 50, General Provisions and Definitions Chapter 52.1, Recording and Reporting Occupational Injuries and Illnesses Chapter 56, Program Fees and Library Policies, General Safety and Health Requirements Part 2, General Legal and Administrative Provisions for Occupational Safety and Health Chapter 60, General Safety and Health Requirements Part 3, Construction Standards Chapter 110, General Safety and Health Requirements			Pending/Deferred until DLIR has more time to conduct outreach with affected businesses.

		Part 5, Occupational Safety and Health Standards for Shipyard Employment Chapter 170, Shipyards Part 6, Marine Terminals Chapter 180, Marine Terminals Part 7, Safety and Health Regulations for Longshoring Chapter 190, Longshoring Part 8, Other Safety and Health Standards Chapter 208, Other Safety and Health Standards			
Department of Land & Natural Resources – Title 13	Sub-Title, 167	Rules of Practice and Procedure for the Commission on Water Resource Management	X		
	Subtitle 168	Water Use, Wells, and Stream Diversion Works	X		
	Subtitle 169	Protection of Instream Uses of Water	X		
	Chapter 16	Relating to Conveyances			
	Subtitle 11, Ocean Recreation and Coastal areas, Part I, Small Boat Harbors and Other Boating Facilities	Chapter 230, 231, 232, 233, 235	X	X	
	Subtitle 11, Part II, Boating	Chapter 240, 242, 243, 244, 245	X	X	
	Subtitle 11, Part III, Ocean Waters, Navigable Streams & Beaches	Chapter 250, 251, 253, 254, 255, 256	X	X	
	74	License & Permit Provisions and Fees for Fishing, Fish, and Fish Products	X		
Department of Public Safety – Title 23	Chapter 200	Regulations of Controlled Substances		X	
	Chapter 201	Regulated Chemicals for the Manufacture of Controlled Substances		X	

Department of Taxation – Title 18	Chapter 231, Administration of Taxes Section 3-14.17	Amendments to Revocation of Licenses Because of Abandonment	X	X	The Board recommended that in order for DoTax to obtain more feedback, commentary, and participation from small business taxpayers that it consider sending out email broadcasts to those licensed businesses in DoTax's database and also to involve Hawaii chambers of commerce and trade associations so these organizations can disseminate the solicited commentary to their members.
	New Section 3-14.26	Registration of Representatives	X	X	
	Section 9.9-03	Amendments to Taxpayers Subject to EFT Program	X	X	
	Section 8.6	Amendments to County Surcharge	X		
	New Section 29.53	Exported Services	X		
	Chapter 231, Administration of Taxes, Section 25.5-02(f)	Cost Recovery Fees for Collection Actions	X		
	Chapter 237, General Excise Tax Law, Section 34-13	Persons with a Material Interest in a Tax Return	X		
	Chapter 237D, Transient Accommodations Tax, Section 4-01	Certificate of Registration	X		
	Section 4-02	Display of the Registration Certificate	X		
	Repeal of Sections 4-03 to 4-07		X		
	Proposed New Sections 4-08 to 4-34		X		
Department of Transportation – Title 19	Chapter 44	Rules Relating to Service Procedures, Charges, Tools and Fees	X		The Board recommended that DOT-Harbors Division make an effort to engage Hawaii small businesses that will be impacted by the proposed fee increases through the outreach of business organizations and trade associates, such as the Chamber of Commerce of Hawaii.
City and County of Honolulu / Liquor Commission	Chapter 81, Liquor Commissions, Section 17.51	License Fees	X	X	After the public hearing, the SBRRB recommended to send the proposed amended rules to the City Council and the Mayor for adoption; it was also recommended that the Liquor Commission review the projected cost of the new computer system in order to minimize and lower the
	Chapter 81, Section 17.58	Trade Name; Change; Fee	X	X	

	Chapter 82, Licenses and Permits, General Provisions, Section 33.1	Applications for Individual Permits to Receive Shipments of Liquor	X	X	projected license fees as soon as it may be deemed necessary.
	Chapter 82, Section 33.6	Direct Shipment of Wine by Wineries	X	X	
	Chapter 83, Procedure for Obtaining License, Section 54.1	Filing Fees	X	X	
County of Kauai		Rules of Practice and Procedure of the Kauai Historic Preservation Review Commission:			
	I.	General Provisions	X		
	II.	Organization & Parliamentary Rules	X		
	III.	Public Records, Inspection and Availability	X		
		Rule Adoption, Amendment, or Repeal Procedures	X		
Planning Commission	Chapter 8, 9, 10 Interpretive Administrative Zoning Rules and Regulations (2014) of the Kauai Planning Commission, Relating to Chapter 8, 9, and 10 of the Kauai County Code (1987)	Kauai County Code (1987) Enforcement of KPAR 8-19, Chapter 8, Article 17, Relating to Transient Vacation Rentals of the Kauai County Code	X		
	Title 1, Rules of Practice and Procedure of the Kauai County Planning Commission (Modified 2014)	Chapter 9, Appeals from Actions of the Planning Director	X		
		Chapter 6, Agency Hearing Procedures	X		
County of Maui					
Liquor Commission	Title 8, Subtitle 1, Chapter 101	Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui	X		The Board sent a letter to the Mayor to proceed to public hearing with reservations due to concerns about possible interstate trade

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of this report for specific legislation the Board followed during the 2017 session.

SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S ADMINISTRATIVE DIRECTIVE NO. 09-01

Under Section 201M-2, HRS, State agencies that want 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. As a result, the Board reviews the small business impact statements and the Governor’s Administrative Directive (AD), while working with the rule-drafting agencies on behalf of the small business community.

In 2009, AD 09-01 was issued 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).

This year, the Board has requested the Governor’s assistance in amending AD 09-01 to reflect and include changes to Chapter 201-M, HRS, as follows:

1. Definition of “small business” in accordance with Act 174, SLH 2017, to show:
 - “For purposes of this Directive, a proposal will affect small business if the proposal will impact 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 100 full-time or part-time employees in Hawaii 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.”

2. Include how small business was involved in the development of the administrative rules pursuant to §201M-2(b), HRS, as follows:

- c. Whether it has prepared a “Small Business Impact Statement” that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M. “If yes, how it has involved small business in the development of the rules.”

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.” At the May 2017 board meeting, Mr. Anthony Borge was re-elected Chair, Mr. Robert Cundiff elected Vice Chair, and Mr. Garth Yamanaka was elected Second Vice Chair.

Effective July 1, 2017, pursuant to Act 174, SLH 2017, the board member nomination process, under Section 201M-5, HRS, provides “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 organizations. 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."

At the end of December 2017, the Board was comprised of the following eight members:

- 1) Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, representing the City and County of Honolulu
- 2) Reg Baker, Reg Baker, CPA, representing the City and County of Honolulu
- 3) Anthony Borge, RMA Sales, representing the City and County of Honolulu
- 4) Robert Cundiff, representing the City and County of Honolulu
- 5) Harris Nakamoto, Kaiser Permanente, representing the City and County of Honolulu
- 6) Kyoko Y. Kimura, Aqua-Aston Hospitality, representing Maui County
- 7) Garth Yamanaka, Yamanaka Enterprises, Inc., representing Hawaii County
- 8) DBEDT Director, Voting Ex Officio Member

ACTIVITIES AND PROJECTS

The following activities and projects were performed in 2017:

▪ **Wisconsin Small Business Regulatory Review Board** – At the April board meeting, Ms. Nancy Mistele, Director of Wisconsin's Office of Business was inter-conferenced to discuss

the power point presentation she presents to Wisconsin businesses to help with outreach efforts in spreading the word about the Wisconsin Small Business Regulatory Review Board. The board members thanked her for her insightful information, comments and suggestions, and it was hoped that a connection of the Hawaii and Wisconsin Small Business Regulatory Review Boards will continue.

▪ **Hawaii Business with Reg Baker** – In June, Anthony Borge and Kyoko Kimura participated in a 30-minute live-stream taping on Thinktechhawaii.com show, “Hawaii Business with Reg Baker.” In addition to recently becoming a member of this board, Mr. Baker is also a member of the Small Business Administration’s National Board for Fairness, which reviews federal regulations impacting small business. The link to the show can be found at:

https://www.youtube.com/watch?v=0ohwKW_ku5Y&feature=youtu.be&t=30

▪ **Collaborative Effort with U.S. Small Business Administration (SBA) Regulatory Fairness Board** – In collaboration with the United States Small Business Administration (SBA) Regulatory Fairness Board for Region 9, and as a result of Mr. Reg Baker attending this Board’s meeting while reviewing proposed amendments of the City and County of Honolulu’s Liquor Commission, the Federal Fairness Board addressed IRS tax clearances and the bottleneck of liquor license renewal and applications in Hawaii.

▪ **Regulation Review Card** – Since 2016, the Board launched and created the “Regulation Review Card,” a template form connected to the Board’s website for small business owners to alert the Board of rules and regulations that impact their small businesses. Go to:

<http://dbedt.hawaii.gov/sbrrb/regulation-review-card>.

▪ **e-Newsletter** – The Board continues to send out a monthly e-Newsletter to small business organizations, chambers of commerce and State Legislators.

▪ **Facebook and Twitter** – The Board regularly sends out notices on Facebook and Twitter to enhance its outreach efforts.

▪ **Hawaii Small Business Conference** – In May, the SBRRB was an Exhibitor at the Maui Arts & Cultural Center’s first small business conference. The theme of the conference was “Design, Protest, Engage: Small Business Strategies for Success.”

▪ **Press Releases and Articles** – During 2017, the following articles and press announcements were released:

- On January 20, 2017, *Pacific Business News* publicized the Chamber of Commerce Hawaii – Voice of Business, which included the article, “Chamber Introduces 2017 Legislative Package.” Under this article, this Board was mentioned, as follows, “Small Business Regulatory Review Board that allows for input by small business into rules and regulations.”
- In February, Hawaii Small Business Development Center sent out its newest eNewsletter, highlighting “The Small Business Regulatory Review Board.”
- In April, Retail Merchants of Hawaii e-Newsletter, the Board and the newly created Regulatory Review Card was highlighted.
- In May, DBEDT released a press announcement naming the newly elected Board officers, Anthony Borge as Chair, Robert Cundiff as Vice Chair and Garth Yamanaka as Second Vice Chair.
- On May 25, 2017, *Pacific Business News* (bizjournals.com) announced the election of Anthony Borge’s chairmanship to the Board, under “People on the Move.”
- On May 25, 2017, *Pacific Business News* (bizjournals.com) announced the confirmation of Robert Cundiff as a member of the Board with a term to June 30,

- 2020, and the election of Mr. Cundiff as Vice Chair to the Board, under “People on the Move.”
- On May 25, 2017, *Pacific Business News* (bizjournals.com) announced the election of Garth Yamanaka as Second Vice Chair to the Board, under “People on the Move.”
 - On July 26, 2017, the Hawaii Chamber of Commerce had the following post on Facebook – “the Small Business Regulatory Review Board is in need of 4 new Board members; one specifically from the County of Kauai. If you or anyone you know may be interested in becoming a board member, the #SBRRB would like to hear from you! Or, you can simply register on the Governor's Boards and Commissions website. #hawaiiibusiness State of Hawaii Department of Business, Economic Development, and Tourism.
 - On September 24, 2017, *Civil Beat*, published an article by Mr. Tom Yamachika, President of Tax Foundation Hawaii, entitled, *Harbors Soak Taxpayers – Again and Again.*” The article referenced minutes from the Board’s August 16, 2017 meeting that discussed harbor fees in regards to the DOT’s HAR Title 19, Chapter 44, “Rules Relating to Service and Procedures, Charges, Tools and Fees.”
 - On October 30, 2017, the afternoon edition of *e-Pacific Business News* published “Regulatory Review Board Member Wants More Engagement from Hawaii’s Small Business Community.”
 - On October 30, 2017, e-Pacific Business News reported “Regulatory review board member wants more engagement from Hawaii’s small business community.” In this article, Mr. Baker stated that his big mission as a member of this board is to be able to

create a higher level of awareness the Board as there are opportunities for small business owners to get engaged in the process and have their voices heard.

- Mr. Reg Baker announced his new role as a member of this Board on his weekly show “Hawaii Business with Reg Baker,” and encouraged small businesses to attend the monthly SBRRB meetings and to contact him with any regulatory issues. See:

<https://youtu.be/2u1MZqLc0XU?t=24>

- On November 3, 2017, A. Kam Napier, Editor-in-Chief of *Pacific Business News*, wrote “A Way to Speak Up,” and announced Reg Baker’s recent appointment to the Hawaii Small Business Regulatory Review Board.

▪ **eGovernment Services** – On July 19, 2017, Ms. Rosemary Warfield, eGovernment Services & Customer Services Manager, met with the members and discussed how to improve the Board’s website by creating a more meaningful and user-friendly site for the end-users, small business owners and the State and County Agencies. During 2017, the Board has created an investigative committee/taskforce consisting of two board members and DBEDT staff to assist in crafting the development and redesign of the Board’s existing website.

- **Website** – The Board’s current website is regularly updated throughout the year. See:

<http://dbedt.hawaii.gov/sbrrb>

▪ **Investigative Taskforce** – In November, the Board created an investigative taskforce, consisting of Mr. Cundiff and DBEDT staff, to assist in crafting the development and redesign of the Board’s existing website; in order to accomplish this, the Board submitted a request of \$18,000 from the State Legislature for 2018. In accordance with Section 92-2.5(b) (1), Hawaii Revised Statutes, the taskforce approached the Board with its findings and recommendations in December.

REQUESTS FROM SMALL BUSINESS FOR REVIEW OF ANY

RULE ADOPTED BY A STATE AGENCY

During 2017, while there were no requests from small business for review of any rule adopted by a state agency, the following outlines requests from small businesses for review of proposed new and amended Hawaii Administrative Rules.

1. Ms. Mahina Martin asked the Board to provide support in the reconsideration and repeal of proposed amendments to the Rules of the Liquor Commission, County of Maui, Title 8, Chapter 101, “Governing the Manufacture and Sale of Intoxicating Liquor in the County of Maui.” Ms. Martin stated that the Maui Liquor Commission “failed to demonstrate a good faith effort to engage the community in substantial changes that could predictably impact the community’s safety and quality of life.”

Action: A letter was sent to the Maui Department of Liquor Control explaining that the Board would not be opposed to the proposed amendments going back to the public hearing review of the general public and the small business community in order to vet and voice any concerns.

Subsequently, Ms. Martin petitioned the Liquor Commission to amend the following sections of Chapter 101, pursuant to Section 91-6, HRS.

- a. Section 08-101-22(f)(2)(D) – to restrict the issuance of a Class 5, Category D liquor license to twelve (12);
- b. Section 08-101-25(a) – to decrease the ours during which licensed premises may be open for the transaction of business for various classes of liquor license;
- c. Section 08-101-28(d) – delete the delivery of liquor to residences and businesses by Class 4, Retail dealer licensee.

Result: The Board re-reviewed amendments prior to the second public hearing. A letter was sent to the Maui Liquor Commission recommending the amendments proceed to public hearing in order to thoroughly address and vet the concerned issues brought forth by the small business stakeholders and the community. The Board also recommended that Maui Liquor Commission change some of the rules that were previously approved, particularly the requirement of non-profit board members disclosing information of past fines.

2. Representatives from CORA (Commercial Ocean Recreational Activities) approached the Board for assistance in opposing Maui County's Parks & Recreation Department's proposed 400% plus increase in permit fees.

Action: A letter was sent to the Honorable Alan M. Arakawa, Mayor of Maui; Maui County Chair, Mike White, Council Members and Director Kaala Buenconsejo, Maui Parks & Recreation Department requesting they engage in conversation with CORA stakeholders to provide input regarding the negative financial/economic impact of the proposed fees in a collaboration that is both beneficial and acceptable to the County and the respective small businesses.

Result: Maui County Council voted 6 to 3 to reset the amount of the permit fee to \$1,000 for the first two permits and \$500 for any additional permits.

3. Mr. Rick Gaffney, President of Hawaii Fishing & Boating Association, provided testimony on concerns with the proposed amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, Parts I, II, III, Hawaii Administrative Rules, Sections: 230, 231, 232, 233, 240, 242, 243, 244, 245, 250, 251, 253, 255, 256.

Action: Correspondence was sent to Mr. Gaffney indicating that DOBOR was requested by this Board to continue in its due diligence with regards to amending the Hawaii Administrative Rules and that DOBOR review Mr. Gaffney's testimony so that the proposed rule definitions are reasonable and in compliance with international law and federal standards. In addition, the Board requested that DOBOR create an avenue of accessibility and open communication with all those businesses affected by the rule amendments.

Result: In October, DOBOR presented "final" proposed rules to the Board; the Board recommended the proposal, as presented, be forwarded to the Governor for adoption.

4. Mr. Bryan Marks from Advanced Fire Protection, LLC provided the Board with testimony on DLIR's Hawaii State Fire Council's Proposed New HAR Title 12, Chapter 44.1, "Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems. Among other reasons, Mr. Marks stated that the proposed changes would not benefit individuals who perform the maintenance and testing, will increase the certification process to four or five licenses plus the secondary certifications by an outside private party, and force neighbor island residents to fly to Oahu or wait for a class or test to be available - ultimately hurting small business by costing jobs and/or forcing small business to close its doors.

Action: In December, the Board discussed these concerns with representatives from the Hawaii State Fire Council. A communication was sent to Mr. Marks, prepared by the Hawaii State Fire Council, answering each of Mr. Marks' concerns.

5. Ms. Dale Evans, CEO of Charley's Taxi and Limousine, representing the small business taxi industry, requested potential assistance from the Board on rules and regulations pertaining to the State Department of Transportation (DOT) that would be fair, equitable, and level the playing field for all small businesses, such as drivers of taxi cabs, Uber, and Lyft that provide transportation services within the Honolulu Airport.

Action: Correspondence was sent to DOT requesting, among other suggestions, that a DOT representative attend the next Board to discuss Ms. Evans' concerns.

6. **Result:** Pending.

SECTION II

LEGISLATIVE REVIEW

The Board submitted testimony on the following measures during the 2017 legislative session.

1. Senate Bill 762, HD1, SD1 – Relating to the Small Business Regulatory Review Board

Background: This measure, companion to House Bill 587, HD1, SD1, appropriates funds to DBEDT to provide additional resources for the small business regulatory review board.

Recommendation: The Board supported this measure.

Result: The measure did not cross-over; companion bill, House Bill 587 HD1 continued throughout the session (see HB587 below).

2. Senate Bill 908 SD2, HD1, CD1 – Relating to the Small Business Regulatory Flexibility Act

Background: This measure, companion to House Bill 1042, HD1, adopts a more explicit definition of “small business,” clarifies the powers of the Small Business Regulatory Review Board, increases the number of board members from nine to eleven, and clarifies when reporting by the agencies is required for submission to the board and for submission by the board to the legislature.

Recommendation: The Board supported this measure.

Result: This measure became law under Act 174, SLH 2017.

3. Senate Bill 1059, SD1, HD1 – Relating to Small Business

Background: This measure establishes and defines a three-year small business assistance initiative within the state procurement office to develop an effective

small business state contracting program. It also establishes a small business assistance coordinator position, small business office, and small business advisory group as part of the initiative and appropriates funds for the administration and operation of the initiative.

Recommendation: The Board monitored this measure.

Result: This measure did not cross-over. Companion bill, House Bill 1382 SD1, HD1 continued throughout the Legislative session (see HB 1382, SD1, HD1 below).

4. House Bill 75, HD1 – Relating to the Small Business Regulatory

Flexibility Act

Background: This measure extends the time given to an agency to submit a small business impact statement to the departmental advisory committee on small business and the Small Business Regulatory Review Board.

Recommendation: The Board opposed this measure.

Result: The measure was indefinitely deferred.

5. House Bill 587 HD1, SD1 – Relating to Small Business

Background: This measure appropriates funds to DBEDT to provide additional resources for the small business regulatory review board.

Recommendation: The Board supported this measure.

Result: This measure was deferred as \$28,000 was appropriated into the State's budget to DBEDT for an office assistant for this Board.

6. Senate Bill 1042, HD1 – Relating to the Small Business Regulatory

Flexibility Act

Background: This measure, companion to SB 908, SD1, HD2, CD1, adopts a more explicit definition of “small business,” clarifies the powers of the Small Business Regulatory Review Board, increases the number of board members from nine to eleven, and clarifies when reporting by the agencies is required for submission to the board and for submission by the board to the Legislature.

Recommendation: The Board supported this measure.

Result: This measure did not cross-over; Senate Bill 908, SD1, HD2, CD1, continued throughout the Legislative session (see SB 908, SD1 above).

7. House Bill 1382 SD1, HD2, CD1 – Relating to Procurement

Background: This measure assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory council, small business office, and small business procurement coordinator position within the state procurement office, and appropriates funds.

Recommendation: The Board supported this measure.

Result: This measure became law under Act 42, SLH 2017.

8. Governor’s Message No. 535 - Submission for Consideration and

Confirmation to the Small Business Regulatory Review Board, Gubernatorial

Nominee, Robert Cundiff, for a term to expire June 30, 2020.

Background: The Board supported this measure.

Recommendation and Result: In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Mr. Cundiff’s nomination was confirmed. On October 17, 2017,

Mr. Cundiff was confirmed as a member of this Board in a commissioning ceremony held at the Hawaii State Art Museum in October.

Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 09-01

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 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 ordinances, 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 Matrix

2017 Administrative Rule Review Matrix

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2016		549	13	67	35	17	9	0
FY 2017	Jul-16	6						
	Aug-16	4						
	Sep-16	7					1	
	Oct-16	1						
	Nov-16	3						
	Dec-16	1						
	Jan-17	9				1		
	Feb-17	3						
	Mar-17	4					1	
	Apr-17	2			2			
	May-17	0						
	Jun-17	11			1			
FY 2018	Jul-17	5						
	Aug-17	5			1			
	Sep-17	2						
	Oct-17	12			1			
	Nov-17	6						
	Dec-17	2						7
	Total	632	13	67	40	18	11	7

3. Administrative Directive 09-01



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

October 29, 2009

ADMINISTRATIVE DIRECTIVE NO. 09-01

To: All Agency Heads

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of 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 rescinds Administrative Directive No. 99-02, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated August 2, 1999.

Legal Reference:

Section 91-3(c), Hawaii Revised Statutes, provides that, "the adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor."

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:

Whenever any department or agency requests executive approval for the proposed adoption, amendment, or repeal of a rule, the director of the department or agency shall ensure that the proposed changes conform to existing legal provisions, including Chapter 91, Hawaii Revised Statutes. In requesting the adoption, amendment, or repeal of any rule, the director will explain or submit the following:

1. Explain the exact changes to be made and the purpose, reasons for the changes, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing.

2. Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.
3. Identify the final result expected by instituting the proposal (e.g. a program improvement/clarification of statute).
4. Identify any program and financial impacts on the State that will arise upon the implementation of the proposal to include:
 - a. Long- and short-range program impacts, and
 - b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period, and the assumptions used to arrive at the estimates.
5. Describe long- and short-term impacts to the public or the economy of the State.
6. Identify the alternatives explored in lieu of implementing the proposal.
7. Provide an explanation of whether the proposal will affect small business. For purposes of this Directive, a proposal will affect small business if 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.

If a proposal affects small business, the department or agency will describe:

- a. Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposal;
- b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule; and
- c. Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M.

Procedure:

1. Approval of the Governor is required prior to any rule change proceeding to a public hearing.

Prior to formal publication of notice of public hearing on the proposed adoption, amendment, or repeal of any rule, departments and agencies will:

- a. Obtain the Attorney General's approval "as to form" prior to submitting the rule to me for approval for public hearing; provided that as to rules proposed for adoption, amendment, or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General. The Department of the Attorney General will complete its pre-hearing review on an expeditious basis;
- b. Provide the Governor's office with a copy of the proposed rule, including the information requested in "Policy" items 1 through 7 above; and
- c. At the time the rules are submitted to the Governor's Office, concurrently provide copies to the Director of Budget and Finance (B&F) and to the Director of Business, Economic Development and Tourism (DBEDT) for their prompt review. B&F and DBEDT comments will be forwarded directly to the Governor.

2. Notice of Public Hearings.

If any proposed rule affects small business, the notice of public hearing will summarize any business impact described in the "Small Business Impact Statement," and will state any new fee or compliance burdens that will be placed on small business.

3. Final Approval After Public Hearing.

Departments and agencies will obtain the Governor's final approval for the adoption, amendment, or repeal of any rule after the required public hearing has been held. In seeking final approval, the director of the department or agency concerned shall:

- a. Indicate whether any revision is being recommended to the proposed rule, amendment, or repeal based on facts and circumstances brought out in the public hearing;
- b. If a revision or change is recommended, provide a copy of the proposed rule with revisions and changes to the Attorney General for approval "as to form" prior to resubmitting the rule to the Governor for final approval; provided that as to rules proposed for adoption, amendment or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General.

The Attorney General's office will approve the form within two weeks of receipt if the changes are not substantive. If the changes are determined to be substantial or material by the Attorney General, an additional public hearing will be held.

If a re-hearing of a proposed rule is sought, the procedures required for approval to proceed to public hearing will again be followed;

- c. Indicate whether the proposal affects small business, and, if so, whether a "Small Business Statement," which provides the information described in HRS Chapter 201M, has been submitted to the Small Business Regulatory Review Board; and
 - d. Submit three copies of the proposal in standard format and in accordance with Chapter 91, HRS, for the Governor's final approval. The original and a copy of the rules adopted by the department or agency will be signed by the director of the department, by the chairperson of a board or commission of a principal department, or by the chairperson of a board or commission if the rule has been adopted by a board or commission which is assigned to a department for administrative purposes. The third copy may use a facsimile of the required signatures.
4. Distribution of Approved Adopted Rules.
- a. A complete set consisting of three copies approved by the Governor will be filed at the Office of the Lieutenant Governor.
 - b. The Office of the Lieutenant Governor will provide one copy to the agency adopting, amending, or repealing the rule.
 - c. Each department or agency adopting, amending, or repealing the rule will provide one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

LINDA LINGLE

APPROVED AS TO FORM:


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