

ACT 174

S.B. NO. 908

A Bill for an Act Relating to the Small Business Regulatory Flexibility Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to increase the clarity and effectiveness of the Small Business Regulatory Flexibility Act by:

- (1) Adopting a more explicit definition of “small business”;
- (2) Clarifying the powers of the small business regulatory review board when reviewing administrative rules that impact small business;
- (3) Increasing the number of board members from nine to eleven; and
- (4) Clarifying when agencies are required to report to the small business regulatory review board and when the board is required to report to the legislature.

SECTION 2. Section 201M-1, Hawaii Revised Statutes, is amended by amending the definition of "small business" to read as follows:

"Small business" means a for-profit [enterprise consisting of] 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."

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

"(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 [ø-tø]. 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 [~~nine~~] 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 to 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;
- ~~(3)~~ (4) Two members shall be appointed by the governor;
- ~~(4)~~ (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;
- ~~(5)~~ (6) The appointments shall reflect representation of a variety of businesses in the State;
- ~~(6)~~ (7) No more than two members shall be representatives from the same type of business; and
- ~~(7)~~ (8) There shall be at least one representative from each county.

For the 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."

SECTION 4. Section 201M-7, Hawaii Revised Statutes, is amended to read as follows:

"§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 [~~to the small business regulatory review~~

~~board;] 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 continued implementation of the rules;~~ provided that, by June 30 of each year, each agency shall submit to the ~~[small-business regulatory review]~~ board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute~~[-. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.]~~ that impacts small business.

(b) The ~~[small-business regulatory review]~~ 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 ~~[next regular session of 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.”

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

SECTION 6. This Act shall take effect on July 1, 2017.

(Approved July 11, 2017.)

Note

1. Prior to amendment “by” appeared here.