
A BILL FOR AN ACT

RELATING TO SMALL BUSINESS.

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

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

3 "**§201M-2 Determination of small business impact; small**
4 **business impact statement.** (a) Prior to submitting proposed
5 rules for adoption, amendment, or repeal under section 91-3, the
6 agency shall determine whether the proposed rules affect small
7 business, and if so, the availability and practicability of less
8 restrictive alternatives that could be implemented. This
9 section shall not apply to emergency rulemaking.

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

HB HMS 2008-1306



- 1 (1) The businesses that will be directly affected by, bear
2 the costs of, or directly benefit from the proposed
3 rules;
- 4 (2) Description of the small businesses that will be
5 required to comply with the proposed rules and how
6 they may be adversely affected;
- 7 (3) In dollar amounts, the increase in the level of direct
8 costs such as fees or fines, and indirect costs such
9 as reporting, recordkeeping, equipment, construction,
10 labor, professional services, revenue loss, or other
11 costs associated with compliance;
- 12 (4) The probable monetary costs and benefits to the
13 implementing agency and other agencies directly
14 affected, including the estimated total amount the
15 agency expects to collect from any additionally
16 imposed fees and the manner in which the moneys will
17 be used;
- 18 (5) The methods the agency considered or used to reduce
19 the impact on small business such as consolidation,
20 simplification, differing compliance or reporting
21 requirements, less stringent deadlines, modification
22 of the fines schedule, performance rather than design



1 standards, exemption, or any other mitigating
2 techniques;

3 (6) How the agency involved small business in the
4 development of the proposed rules; and

5 (7) Whether the proposed rules include provisions that are
6 more stringent than those mandated by any comparable
7 or related federal, state, or county standards, with
8 an explanation of the reason for imposing the more
9 stringent standard.

10 (c) When a proposed rule includes provisions that are more
11 stringent than those mandated by any comparable or related
12 federal, state, or county standards, the agency shall, in
13 addition to the information required by subsection (b), include
14 in the small business impact statement information comparing the
15 costs and benefits of the standard set by the proposed rule to
16 the costs and benefits of the standard under the comparable or
17 related federal, state, or county law. The agency shall also
18 include a justification of its decision to impose the higher
19 standard. The agency's comparison and justification shall
20 include:

21 (1) A description of the public purposes to be served by
22 imposing the standard under the proposed rule;



- 1 (2) The text of the related federal, state, or county law,
2 including information about the purposes and
3 applicability of the law;
- 4 (3) A comparison between the proposed rule and the related
5 federal, state, or county law, including a comparison
6 of their purposes and of the standards and their
7 application and administration;
- 8 (4) A comparison of the monetary costs and benefits to the
9 implementing agency and other agencies directly
10 affected, of imposing the proposed standard, with the
11 costs and benefits of imposing or deferring to the
12 related federal, state, or county standard, as well as
13 a description of the manner in which any additional
14 fees derived from imposition of the proposed standard
15 are to be used;
- 16 (5) A comparison, in dollar amounts, of the direct costs
17 such as fees or fines, and indirect costs such as
18 reporting, recordkeeping, equipment, construction,
19 labor, professional services, revenue loss, or other
20 costs associated with compliance with the standard
21 under the proposed rule, with the costs of compliance
22 with the related federal, state, or county standard;



- 1 (6) A comparison of the adverse effects on small
- 2 businesses of the standard imposed by the proposed
- 3 rule, with the adverse effects on small business of
- 4 the related federal, state, or county standard;
- 5 (7) A description of any objections or concerns identified
- 6 by the agency related to the imposition of a higher
- 7 standard under the proposed rule than imposed under
- 8 the related federal, state, or county law, and of
- 9 possible alternatives to imposing the higher standard,
- 10 or possible means of mitigating the undesirable
- 11 effects of the higher standard; and
- 12 (8) The agency's reasons for rejecting any possible
- 13 alternatives or methods of mitigation.

14 [~~e~~] (d) This chapter shall not apply to proposed rules
15 adopted by an agency to implement a statute or ordinance that
16 does not require an agency to interpret or describe the
17 requirements of the statute or ordinance, such as federally-
18 mandated regulations that afford the agency no discretion to
19 consider less restrictive alternatives."



1 SECTION 2. Section 201M-5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) There shall be established within the department of
4 business, economic development, and tourism, for administrative
5 purposes, a small business regulatory review board to review any
6 proposed new or amended rule [~~or to~~], consider any request from
7 small business owners for review of any rule adopted by a state
8 agency, and [~~to~~] periodically evaluate existing rules affecting
9 small business. The board shall also make recommendations to
10 the agency or the legislature regarding the need for a rule
11 change or legislation. For requests regarding county
12 ordinances, the board may make recommendations to the county
13 council or the mayor for appropriate action."

14 SECTION 3. Section 201M-7, Hawaii Revised Statutes, is
15 amended as follows:

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

17 "(a) Each agency having rules that affect small business
18 shall submit by June 30 of each odd-numbered year, a list of
19 those rules to the small business regulatory review board.
20 [~~The~~] For each rule, the agency shall [~~also submit a report~~
21 ~~describing~~] describe the specific public purpose or interest for
22 adopting the [~~respective rules~~] rule, and set forth any other



1 reasons to justify its continued implementation. The agency
2 shall also identify each rule that imposes requirements more
3 stringent than those mandated by any comparable or related
4 federal statute or regulation, and explain why the higher
5 standard is necessary."

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








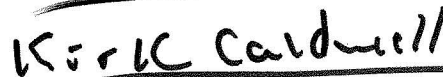
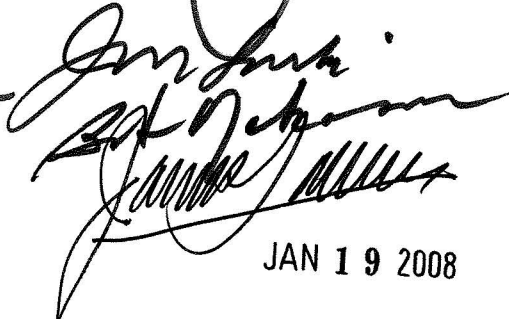


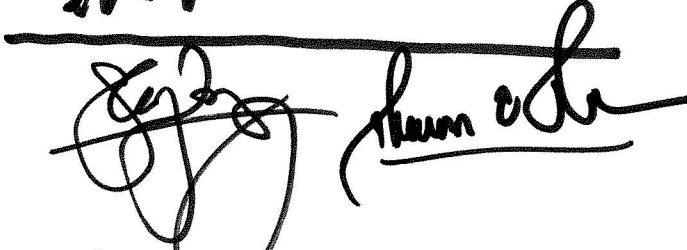
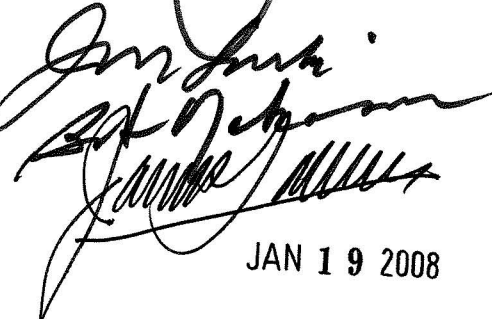
7 "(c) The board may solicit testimony from the public
8 regarding any report submitted by the agency under this section
9 at a public meeting held pursuant to chapter 92. Upon
10 consideration of any report submitted by an agency under this
11 section and any public testimony, the board shall submit an
12 evaluation report to the agency and the legislature not later
13 than twenty days prior to the next regular session of the
14 legislature[-], which report may be combined with the annual
15 report required by section 201M-5(f). The evaluation report
16 shall include an assessment [~~as to~~] of whether the public
17 interest significantly outweighs [~~a rule's~~] the effect of a
18 rule, or of a higher standard than imposed by federal law, on
19 small business [~~and any legislative proposal].~~ The report shall
20 also include recommendations for the amendment or repeal of
21 rules to eliminate or reduce the effect of a rule on small



1 business. The legislature may take any action in response to
2 the report as it finds appropriate."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.
6

INTRODUCED BY:   
     
   

Report Title:

Small Business Regulatory Review Board; Rule Impact Statement

Description:

Requires agency Small Business Impact Statement for a proposed rule that imposes a higher standard than federal, state, or county law, to justify the proposed higher standard; requires agency to periodically identify and justify existing rules that impose those higher standards.

