

---

---

# 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:



- 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 standard  
7        under the proposed rule higher than imposed under the  
8        related federal, state, or county law, and of possible  
9        alternatives to imposing the higher standard, or  
10       possible means of mitigating the undesirable effects  
11       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. The evaluation report shall include an assessment  
15 [~~as to~~] of whether the public interest significantly outweighs  
16 [~~a rule's~~] the effect of a rule, or of a higher standard than  
17 imposed by federal law, on small business [~~and any legislative~~  
18 ~~proposal~~]. The report shall also include recommendations for  
19 the amendment or repeal of rules to eliminate or reduce the  
20 effect of a rule on small business. The legislature may take  
21 any action in response to the report as it finds appropriate."



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 Statutory material to be repealed is bracketed  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

3 SECTION 5. This Act shall take effect on July 1, 2034.





**Report Title:**

Small Business Regulatory Review Board; Rule Impact

**Description:**

Requires an agency to include, in its Small Business Impact Statement, information comparing the costs and benefits of a proposed rule to those of the comparable or related federal, state, or county law, to justify the proposed higher standard. Requires an agency to periodically identify and justify existing rules that impose those higher standards. (HB2781 HD1)

