
A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

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

1 SECTION 1. The legislature finds that there is a need to
2 clarify the timing of preparation and distribution of the small
3 business impact statement required by chapter 201M, Hawaii
4 Revised Statutes, to allow adequate review and comment to the
5 agency by small businesses directly affected by a proposed rule
6 and by the small business regulatory review board.

7 The purpose of this Act is to require that the small
8 business impact statement be prepared and submitted to the small
9 business regulatory review board as early as practicable in the
10 rule drafting process. The Act also expands the duties of the
11 board to include review of any new or proposed rule, requires
12 the board to inform a small business that they may submit a
13 complaint to the ombudsman when the decision is to uphold a
14 rule, and makes housekeeping amendments to the Small Business
15 Regulatory Flexibility Act.



1 SECTION 2. Section 201M-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Rule" shall have the same meaning as in section 91-1."

5 SECTION 3. Section 201M-2, Hawaii Revised Statutes, is
6 amended by amending subsections (b) and (c) to read as follows:

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

17 (1) The businesses that will be directly affected by, bear
18 the costs of, or directly benefit from the proposed
19 rules;

20 (2) Description of the small businesses that will be
21 required to comply with the proposed rules and how
22 they may be adversely affected;



- 1 (3) In dollar amounts, the increase in the level of direct
2 costs such as fees or fines, and indirect costs such
3 as reporting, recordkeeping, equipment, construction,
4 labor, professional services, revenue loss, or other
5 costs associated with compliance;
- 6 (4) The probable monetary [~~cost~~] costs and benefits to the
7 implementing agency and other agencies directly
8 affected, including the estimated total amount the
9 agency expects to collect from any additionally
10 imposed fees and the manner in which the moneys will
11 be used;
- 12 (5) The methods the agency considered or used to reduce
13 the impact on small business such as consolidation,
14 simplification, differing compliance or reporting
15 requirements, less stringent deadlines, modification
16 of the fines schedule, performance rather than design
17 standards, exemption, or any other mitigating
18 techniques;
- 19 (6) How the agency involved small business in the
20 development of the proposed rules; and
- 21 (7) Whether the proposed rules include provisions that are
22 more stringent than those mandated by any comparable



1 or related federal, state, or county standards, with
2 an explanation of the reason for imposing the more
3 stringent standard.

4 (c) This chapter shall not apply to proposed rules adopted
5 by an agency to implement a statute or ordinance that does not
6 require an agency to interpret or describe the requirements of
7 the statute or ordinance, such as federally-mandated regulations
8 [~~which affords~~] that afford the agency no discretion to consider
9 less restrictive alternatives."

10 SECTION 4. Section 201M-5, Hawaii Revised Statutes, is
11 amended as follows:

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

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



1 2. By amending subsection (f) to read:

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

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

12 "~~§~~201M-6~~§~~ **Petition for regulatory review.** (a) In
13 addition to the basis for filing a petition provided in section
14 91-6, any affected small business may file a written petition
15 with the agency that has adopted the rules objecting to all or
16 part of any rule affecting small business on any of the
17 following grounds:

18 (1) The actual effect on small business was not reflected
19 in, or significantly exceeded, the small business
20 impact statement submitted prior to the adoption of
21 the rules;



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

4 (3) These impacts were not previously considered at the
5 public hearing on the rules~~[-]~~;

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

10 ~~[-1)]~~ (4) The rules ~~[created]~~ create an undue barrier to
11 the formation, operation, and expansion of small
12 businesses in a manner that significantly outweighs
13 its benefit to the public;

14 ~~[-2)]~~ (5) The rules duplicate, overlap, or conflict with
15 rules adopted by another agency or violate the
16 substantive authority under which the rules were
17 adopted; or

18 ~~[-3)]~~ (6) The technology, economic conditions, or other
19 relevant factors justifying the purpose for the rules
20 have changed or no longer exist.

21 ~~[-e)]~~ (b) Upon submission of the petition, the agency
22 shall forward a copy of the petition to the board, as



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

13 ~~[(d)]~~ (c) If the agency determines that the petition does
14 not merit the adoption, amendment, or repeal of any rule, any
15 affected small business may seek a review of the decision by the
16 ~~[small business regulatory review]~~ board. The board shall
17 promptly convene a meeting pursuant to chapter 92 for the
18 purpose of soliciting testimony that will assist in its
19 determination whether to recommend that the agency initiate
20 proceedings in accordance with section 91-3. ~~[For rules adopted~~
21 ~~after July 1, 1998, the]~~ The board may base its recommendation
22 on any of the following reasons:



- 1 (1) The actual effect on small business was not reflected
2 in, or significantly exceeded, the impact statement
3 submitted prior to the adoption of the rules;
- 4 (2) The impact statement did not consider new or
5 significant economic information that reveals an undue
6 impact on small business; [~~or~~]
- 7 (3) These impacts were not previously considered at the
8 public hearing on the rules [~~-~~];
- 9 [~~(c) For rules adopted prior to July 1, 1998, the~~
10 ~~regulatory review board may base its recommendation to the~~
11 ~~agency on any of the following reasons:~~
- 12 ~~(1)]~~ (4) The rules [~~created~~] create an undue barrier to
13 the formation, operation, and expansion of small
14 businesses in the State in a manner that significantly
15 outweighs its benefit to the public;
- 16 ~~(2)]~~ (5) The rules duplicate, overlap, or conflict with
17 rules adopted by another agency or violate the
18 substantive authority under which the rules were
19 adopted; or
- 20 ~~(3)]~~ (6) The technology, economic conditions, or other
21 relevant factors justifying the purpose for the rules
22 have changed or no longer exist.



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

9 (e) If the board does not recommend that an agency
10 initiate rulemaking proceedings, the board shall notify the
11 small business of its decision and inform the small business
12 that the small business may submit a complaint to the ombudsman
13 pursuant to chapter 96 regarding the decision of the agency or
14 board.

15 ~~[(g)]~~ (f) Nothing in this section shall entitle an
16 affected small business to a contested case hearing under
17 chapter 91."

18 SECTION 6. Section 201M-7, Hawaii Revised Statutes, is
19 amended as follows:

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

21 "(a) Each agency having rules that affect small business
22 ~~[in effect on July 1, 1998]~~ shall submit by June 30 of each odd-



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

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 [~~small-business regulatory~~
12 ~~review~~] board shall submit an evaluation report to [~~each~~] the
13 next regular session of the legislature [~~in even-numbered~~
14 ~~years~~]. The evaluation report shall include an assessment as to
15 whether the public interest significantly outweighs a rule's
16 effect on small business and any legislative proposal to
17 eliminate or reduce the effect on small business. The
18 legislature may take [~~such~~] any action in response to the report
19 as it finds appropriate."

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 8. This Act shall take effect upon approval.



S.B. NO. 188
S.D. 2
H.D. 1
C.D. 1

Report Title:

Small Business; Regulatory Flexibility Act

Description:

Amends Small Business Regulatory Flexibility Act by requiring a small business impact statement to be submitted to the Small Business Regulatory Review Board as early as possible in the review process. Requires the board to notify a small business that they may complain to the ombudsman if the decision is to uphold an agency rule. Expands board duties to include review of any proposed new or amended rule. Makes housekeeping amendments. (CD1)

