
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 legislature further finds that when the Small Business
8 Regulatory Flexibility Act was enacted on July 1, 1998, it was
9 necessary to review administrative rules that were in place
10 before the small business regulatory review board began its
11 review of new or modified rules. Each rule-making agency has
12 submitted to the small business regulatory review board a list
13 of rules adopted before July 1, 1998, affecting small business
14 and described the public purpose for the rule and any other
15 reasons to justify continued implementation. A report of this
16 review has been made to the legislature as required by the
17 statute. The need to periodically review adopted rules for



1 their small business impact remains valid as technology and
2 public policy develop. Accordingly, a periodic review process
3 will ensure that agencies thoughtfully consider if the original
4 public purpose for rule adoption remains.

5 The purpose of this Act is to clarify the Small Business
6 Regulatory Flexibility Act, chapter 201M, Hawaii Revised
7 Statutes. Specifically, this Act provides that a small business
8 impact statement will be prepared and submitted to the small
9 business regulatory review board as early as practicable in the
10 rule drafting process. It also provides that adopted rules
11 affecting small business will be reviewed to determine if they
12 are still appropriate within five years after adoption. The Act
13 further provides for other changes to chapter 201M to clarify
14 the definition of a rule and to remove outdated sections of the
15 chapter.

16 SECTION 2. Section 201M-1, Hawaii Revised Statutes, is
17 amended by inserting a new definition to read as follows:

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

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

21 "(b) If the proposed rules affect small business, the
22 agency shall consider creative, innovative, or flexible methods



1 of compliance for small businesses and prepare a small business
2 impact statement to be submitted with the proposed rules to the
3 departmental advisory committee on small business and the small
4 business regulatory review board [~~prior to providing notice for~~
5 ~~a public hearing.~~] when the rules are essentially complete and
6 before the rules are submitted to the governor for approval for
7 public hearing. The statement shall provide a reasonable
8 determination of the following:

- 9 (1) The businesses that will be directly affected by, bear
10 the costs of, or directly benefit from the proposed
11 rules;
- 12 (2) Description of the small businesses that will be
13 required to comply with the proposed rules and how
14 they may be adversely affected;
- 15 (3) In dollar amounts, the increase in the level of direct
16 costs such as fees or fines, and indirect costs such
17 as reporting, recordkeeping, equipment, construction,
18 labor, professional services, revenue loss, or other
19 costs associated with compliance;
- 20 (4) The probable monetary costs and benefits to the
21 implementing agency and other agencies directly
22 affected, including the estimated total amount the



1 agency expects to collect from any additionally
2 imposed fees and the manner in which the moneys will
3 be used;

4 (5) The methods the agency considered or used to reduce
5 the impact on small business such as consolidation,
6 simplification, differing compliance or reporting
7 requirements, less stringent deadlines, modification
8 of the fines schedule, performance rather than design
9 standards, exemption, or any other mitigating
10 techniques;

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

13 (7) Whether the proposed rules include provisions that are
14 more stringent than those mandated by any comparable
15 or related federal, state, or county standards, with
16 an explanation of the reason for imposing the more
17 stringent standard.

18 (c) This chapter shall not apply to proposed rules adopted
19 by an agency to implement a statute or ordinance that does not
20 require an agency to interpret or describe the requirements of
21 the statute or ordinance, such as federally-mandated regulations



1 ~~[which affords]~~ that afford the agency no discretion to consider
2 less restrictive alternatives."

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

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

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

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

17 "(f) The board shall submit an annual report to the
18 legislature twenty days prior to each regular session detailing
19 any requests from small business owners for review of any rule
20 adopted by a state agency, and any recommendations made by the
21 board to an agency or the legislature regarding the need for a
22 rule change or legislation. The report shall also contain a



1 summary of the comments made by the board to agencies regarding
2 its review of proposed new or amended rules."

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

5 "[+]§201M-6[+] Petition for regulatory review. (a) In
6 addition to the basis for filing a petition provided in section
7 91-6, any affected small business may file a written petition
8 with the agency that has adopted the rules objecting to all or
9 part of any rule affecting small business on any of the
10 following grounds:

11 (1) The actual effect on small business was not reflected
12 in, or significantly exceeded, the small business
13 impact statement submitted prior to the adoption of
14 the rules;

15 (2) The small business impact statement did not consider
16 new or significant economic information that reveals
17 an undue impact on small business; [ø]

18 (3) These impacts were not previously considered at the
19 public hearing on the rules[-];

20 [~~(b)~~ For rules adopted prior to July 1, 1998, an affected
21 small business may file a written petition with the agency that



1 ~~adopted the rules objecting to all or part of any rules~~
2 ~~affecting small business on any of the following grounds:~~

3 ~~(1)~~ (4) The rules ~~[ereated]~~ create an undue barrier to
4 the formation, operation, and expansion of small
5 businesses in a manner that significantly outweighs
6 its benefit to the public;

7 ~~(2)~~ (5) The rules duplicate, overlap, or conflict with
8 rules adopted by another agency or violate the
9 substantive authority under which the rules were
10 adopted; or

11 ~~(3)~~ (6) The technology, economic conditions, or other
12 relevant factors justifying the purpose for the rules
13 have changed or no longer exist.

14 ~~(e)~~ (b) Upon submission of the petition, the agency
15 shall forward a copy of the petition to the board as
16 notification of a petition filed under this chapter~~(-)~~ and to
17 the ombudsman. The agency shall promptly consider the petition
18 and may seek advice and counsel regarding the petition from the
19 appropriate departmental advisory committee on small business.
20 Within sixty days after the submission of the petition, the
21 agency shall determine whether the impact statement or the
22 public hearing addressed the actual and significant impact on



1 small business. The agency shall submit a written response of
2 the agency's determination to the small business review board
3 within sixty days after receipt of the petition. If the agency
4 determines that the petition merits the adoption, amendment, or
5 repeal of a rule, it may initiate proceedings in accordance with
6 section 91-3.

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

- 17 (1) The actual effect on small business was not reflected
18 in, or significantly exceeded, the impact statement
19 submitted prior to the adoption of the rules;
- 20 (2) The impact statement did not consider new or
21 significant economic information that reveals an undue
22 impact on small business; ~~[or]~~



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

3 ~~[(e) For rules adopted prior to July 1, 1998, the
4 regulatory review board may base its recommendation to the
5 agency on any of the following reasons:~~

6 ~~+(1)]~~ (4) The rules ~~[ereated]~~ create an undue barrier to
7 the formation, operation, and expansion of small
8 businesses in the State in a manner that significantly
9 outweighs its benefit to the public;

10 ~~+(2)]~~ (5) The rules duplicate, overlap, or conflict with
11 rules adopted by another agency or violate the
12 substantive authority under which the rules were
13 adopted; or

14 ~~+(3)]~~ (6) The technology, economic conditions, or other
15 relevant factors justifying the purpose for the rules
16 have changed or no longer exist.

17 ~~+(f)]~~ (d) If the small business regulatory review board
18 recommends that an agency initiate rulemaking proceedings for
19 any reason provided in subsection ~~[(d) or (e)]~~ (c) it shall
20 submit to the legislature an evaluation report and the agency's
21 response as provided in subsection ~~[(e)]~~ (b). The legislature



1 may subsequently take such action in response to the evaluation
2 report and the agency's response as it finds appropriate.

3 [~~g~~] (e) Nothing in this section shall entitle an
4 affected small business to a contested case hearing under
5 chapter 91."

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

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

9 "(a) Each agency having rules that affect small business
10 [~~in effect on July 1, 1998~~] shall submit by June 30, 2007, [~~of~~
11 ~~each odd-numbered year,~~] and every five years thereafter, a list
12 of those rules adopted in the previous five years to the small
13 business regulatory review board~~[-]~~ and to the ombudsman. The
14 agency shall also submit a report describing the specific public
15 purpose or interest for adopting the respective rules and any
16 other reasons to justify its continued implementation."

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

18 "(c) The board may solicit testimony from the public
19 regarding any report submitted by the agency under this section
20 at a public meeting held pursuant to chapter 92. Upon
21 consideration of any report submitted by an agency under this
22 section and any public testimony, the small business regulatory



1 review board shall submit an evaluation report to [each] the
2 next regular session of the legislature [~~in even-numbered~~
3 ~~years~~]. The evaluation report shall include an assessment as to
4 whether the public interest significantly outweighs a rule's
5 effect on small business and any legislative proposal to
6 eliminate or reduce the effect on small business. The
7 legislature may take such action in response to the report as it
8 finds appropriate."

9 SECTION 7. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Small Business; Regulatory Flexibility Act

Description:

Amends the Small Business Regulatory Flexibility Act; provides that a small business impact statement will be prepared and submitted to the small business regulatory review board as early as practicable in the rule drafting process; provides that adopted rules affecting small business will be reviewed to determine if they are still appropriate within five years after adoption; requires selected information to be sent to the ombudsman; makes changes to chapter 201M to clarify the definition of a rule and to remove outdated sections. (SD1)

