



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**  
KA 'OIHANA HO'OMŌHALA PĀ'OIHANA, 'IMI WAIWAI  
A HO'OMĀKA'IKAI

**DEPT. COMM. NO. 343**

JOSH GREEN, M.D.

GOVERNOR

CHRIS J. SADAYASU  
DIRECTOR

DANE K. WICKER  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [dbedt.hawaii.gov](http://dbedt.hawaii.gov)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

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December 20, 2022

The Honorable Ronald D. Kouchi,  
President and Members  
of the Senate  
Thirty-Second State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirty-Second State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Small Business Regulatory Review Board Annual Report, as required by Section 201M, Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at:

<http://dbedt.hawaii.gov/overview/annual-reports-reports-to-the-legislature/>.

Mahalo a e mālama pono,

Chris J. Sadayasu

Enclosure

c: Legislative Reference Bureau



**HAWAII SMALL BUSINESS  
REGULATORY REVIEW BOARD  
ANNUAL REPORT SUMMARY**

**Results for Calendar Year 2022**

**Recommendations and Review of  
Hawaii Administrative Rules, Legislation  
and**

**Requests from Small Business Owners for Review  
of Any Rule Adopted by a State Agency**

**In Compliance with  
Chapter 201M, Hawaii Revised Statutes**

**HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD**  
**ANNUAL REPORT SUMMARY 2022**

**TABLE OF CONTENTS**

SECTION I ..... 2

MESSAGE FROM THE CHAIR ..... 3

OVERVIEW..... 5

ANNUAL SUMMARY..... 6

SMALL BUSINESS REGULATORY FLEXIBILITY ACT..... 6

ADMINISTRATIVE RULE REVIEW ..... 7

LEGISLATIVE ACTIVITY ..... 10

SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S ADMINISTRATIVE DIRECTIVE (AD) NO. 18-02. 10

CHAIRPERSON / BOARD MEMBERS ..... 10

ACTIVITIES AND PROJECTS..... 12

REQUESTS FROM SMALL BUSINESS FOR REVIEW OF ANY RULE ADOPTED BY A STATE AGENCY..... 14

SECTION II ..... 16

LEGISLATIVE REVIEW..... 17

Appendix ..... 19

1. Chapter 201M, Hawaii Revised Statutes..... 20

2. Administrative Rule Review ..... 31

**Administrative Rule Review – Annual Report 2022..... 32**

3. Administrative Directive No. 18-02..... 34

# **SECTION I**



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813  
Mailing Address: P.O. Box 2359, Honolulu, HI 96804  
Email: [dbedt.SBRRB.info@hawaii.gov](mailto:dbedt.SBRRB.info@hawaii.gov)  
Website: [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov)

Tel: (808) 798-0737

### MESSAGE FROM THE CHAIR

**Josh Green, M.D.**  
*Governor*

**Chris J. Sadayasu**  
*DBEDT Director*

#### Members

Robert Cundiff  
*Chairperson*  
*O'ahu*

Mary Albitz  
*Vice Chairperson*  
*Maui*

Jonathan Shick  
*2nd Vice Chairperson*  
*O'ahu*

Dr. Nancy  
Atmospera-Walch  
*O'ahu*

Garth Yamanaka  
*Hawai'i*

William Lydgate  
*Hawai'i*

James (Kimo) Lee  
*Hawai'i*

Taryn Rodighiero  
*Kaua'i*

Sanford Morioka  
*O'ahu*

Mark Ritchie  
Director, DBEDT  
*Voting Ex Officio*



*Robert Cundiff, Chair, 2022*

I am happy to announce that 2022 has improved after two highly unusual years due to the COVID-19 pandemic. As a result, we have continued our efforts to ensure that Hawaii's regulatory review process does not lose momentum in driving a strong small business friendly regulatory environment.

While we have successfully adjusted to virtual monthly meetings that are open to the public, in 2022 the State of Hawaii's Sunshine Law has been modified by allowing for open board meetings that are accessible to the public, a positive sign for our members.

As we report on this past year's activity, I think it is important to note that our Board's strategic efforts to encourage State Agencies to engage with stakeholders prior to generating new or changed rules have significantly impacted the process in a positive way. While we love seeing our small business owners at meetings, we have noticed that many potential concerns are addressed prior to the rules coming to our Board and there are very few objections as we move through the process. This allows our small business owners to focus their time and energy on their business rather than having to attend public hearings. We want to thank our State Agencies and Counties for your proactive efforts to engage with stakeholders early in the process, listen to the impacts to their business and take their suggestions to heart.

This year, we welcomed two new members to our team, Ms. Tessa Gomes, and Mr. Sanford Morioka, both from Oahu. In addition, members William Lydgate, James (Kimo) Lee, and Jonathan Shick were re-appointed to the SBRRB. We now are operating with a complete board.

On behalf of all the board members, I extend a big Mahalo to our out-going Governor David Ige, DBEDT's Director Mike McCartney and Deputy Director Susan Hirai for their

continued support of this Board. We wish them well in their future endeavors. We also send out a big Mahalo to the State Legislature for its continued support of this Board, and to the State and County agencies that come before us discussing both proposed and amended regulations, before and after public hearing, that have a potential to negatively impact small business.

## **OVERVIEW**

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January through December 2022. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, the annual summary is based on the following:

### **201M-5 Small business regulatory review board; powers.**

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

# **ANNUAL SUMMARY**

## **SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168; subsequently the role of the Board was codified in Chapter 201M, Hawaii Revised Statutes (HRS), as amended.

(Appendix 1)

Statutorily, the Board is comprised of eleven members, ten current or former owners or officers of businesses from across the State, and the Director of Business, Economic Development, and Tourism (DBEDT), or the Director's designated representative who serves as an "ex officio" voting member. The Board is administratively attached to DBEDT and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board may also consider any request from small business owners for review of any rule proposed, amended, or 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 rules, the board may make recommendations to the county council or the mayor for appropriate action.

Members volunteer their time performing outreach activities to small business organizations, such as the local Chambers of Commerce, and testifying on legislation. Statutorily, the Board may also solicit testimony from the public regarding any reports submitted to the Board by State departments.

As an effective means of administrative rule review, each board member is assigned to one or more State departments as a "discussion leader" and each neighbor island member is assigned to his or her own respective island. Members are responsible for the initial review of the



administrative rules of these departments and counties prior to consideration by the full Board.

As of December 2022, we are very happy to announce that the Board is operating at full capacity with 11 members.

**ADMINISTRATIVE RULE REVIEW**

Over the past two years, the Board reviewed a lower than usual number of Hawaii Administrative Rules largely as a result of COVID-19. From January through December 2022, a total of 25 rules, before and after public hearing, were reviewed from State Agencies.

Since its inception, the Board reviewed a total of sets of 1,008 proposed new and amended HAR. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
<i>Department of Accounting and General Services - Title 3</i>	40	Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and Other Record Data		X	
<i>Department of Commerce and Consumer Affairs – Title 16</i>	73 78 115	Barbers  Cosmetology  Professional Engineers, Architects, Surveyors and Landscape Architects	X / X	X  X	



		Permit Authorizing Discharges of Treated Process Water Associated with Well Drilling Activities e. Appendix M – NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides	X		
	Chapter 60.1	Air Pollution Control	X		
<b><i>Department of Labor &amp; Industrial Relations – Title 12</i></b>	Chapter 43	Rules of Practice and Procedure Before the Hawaii Labor Relations Board	X	X	
<b><i>Department of Land &amp; Natural Resources – Title 13</i></b>	Chapter 256	Ocean Recreation Management Rules and Areas; Kahaluu Bay Oceans Waters	X	X/X	
	Chapter 251 Subchapters 1, 2, 3, 7	Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches		X	
	Chapter 230 and 256	General Provisions; Ocean Recreation Management Rules and Areas	Deferred		The Board deferred a final recommendation of the rule proposal due to the rules' overall financial impact upon the small businesses in order for DLNR/DOBOR and

					the stakeholders to meet prior to the public hearing to discuss the detrimental impacts and negative concerns addressed by the affected businesses.
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**LEGISLATIVE ACTIVITY**

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of the report for legislation the Board followed in 2022.

**SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S ADMINISTRATIVE DIRECTIVE (AD) NO. 18-02**

AD 18-02 was issued in 2018 to update the policy and procedures by which State departments and agencies request Governor’s approval for a public hearing of any proposed adoption, amendment, or repeal of administrative rules developed under Chapter 91, HRS. (Appendix 3).

Under Section 201M-2, HRS, State agencies wanting to adopt new or modified administrative rules that have an impact on small business are required to submit to the Board a small business impact statement showing the economic impact on those businesses.

**CHAIRPERSON / BOARD MEMBERS**

Under Section 201M-5 (c), “a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds

vote of all members to which the board is entitled.” The following elections were held at the June 2022 meeting:

- Chair – Robert Cundiff
- Vice Chair – Mary Albitz
- Second Vice Chair – Jonathan Shick

The Board member nomination process, under Section 201M-5, HRS, states, “the Board shall consist of 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 by 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;

(4) Two members shall be appointed by the governor;

(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;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business;

and

(8) There shall be at least one representative from each county.”

In addition, nominations shall be solicited from small business organizations, state and county chambers of commerce and other interested business and trade organizations. Except for

the ex officio member, all members are either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government.”

At the end of December 2022, the Board was comprised of the following members:

- 1) Mary Albitz, Island Art Party, County of Maui
- 2) Dr. Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, City and County of Honolulu
- 3) Robert Cundiff, Business/Management Consultant with Lokama Group, City and County of Honolulu
- 4) James (Kimo) Lee, W. H. Shipman, Ltd., Hawaii County
- 5) William Lydgate, Steelgrass Farm, County of Kauai
- 6) Taryn Rodighiero, County of Kauai
- 7) Jonathan Shick, Pono Consulting Group, LLD., City and County of Honolulu
- 8) Garth Yamanaka, Yamanaka Enterprises, Inc., Hawaii County
- 9) Sanford Morioka, Edward Enterprises, Inc., City and County of Honolulu
- 10) Tessa Gomes, Fred and Kate Events, City and County of Honolulu
- 11) Mark Ritchie, Business Support Program Manager, Business Development & Support Division, DBEDT, Voting Ex Officio Member

## **ACTIVITIES AND PROJECTS**

The following activities and projects were accomplished in 2022:

- **Hawaii Small Business Fair** – On September 17<sup>th</sup>, the SBRRB Office Assistant attended Hawaii Small Business Fair at Leeward Community College for outreach purposes.

- **Website** – The Board is happy to announce the launch of its new, improved website.

Through the professional direction and expertise of NIC Hawaii, the Board can now boast a high

level, updated, user-friendly website that includes a redesigned homepage and department level filtering to meeting, agendas and reports. Go to <https://sbrrb.hawaii.gov>

- **e-Newsletter** – The Board continues to send out monthly e-Newsletters to small business organizations, chambers of commerce, trade organizations and State legislators;

- **Facebook, Twitter, Instagram** – In 2022, the Board regularly sent out notices on Facebook, Twitter and Instagram to enhance its outreach efforts. As of the end of 2022, the Board can proudly boast 32 Friends on Facebook, has 106 followings on Twitter, and 55 followers on Instagram.

- **Articles, Press Releases**

- 1) On April 1, 2022, the *Pacific Business News* printed the following article, which featured this Board’s Vice Chair, Ms. Mary Albitz company Island Art Party, “Work’s a ‘party’ for this business.”
- 2) In June 2022, DBEDT submitted a press release announcing the recent election of new board officers, Robert Cundiff, Chair; Mary Albitz, Vice Chair; and Jonathan Shick, Second Vice Chair.
- 3) In August 2022, the *Pacific Business News* printed the following article, which featured one of the Board’s newest member, Ms. Tessa Gomes, “How Hawaii’s wedding industry has rebounded post-Covid restrictions.”
- 4) On October 4, 2022, DBEDT submitted a press release announcing the launching of the Board’s new and improved website, “Small Business Regulatory Review Board Website Enhancements.” Go to <https://sbrrb/hawaii.gov>.

## **REQUESTS FROM SMALL BUSINESS FOR REVIEW OF ANY RULE ADOPTED BY A STATE AGENCY**

Under Section 201M-5, HRS, in 2022, the following requests from business owners were received.

- 1) A “regulation for review” was received from a property owner of a legal vacation rental on Maui regarding a concern over Maui County’s 3% County TAT. The SBRRB thanked the business owner for the request and referred the individual to the Mayor of County of Maui indicating that the SBRRB’s purview is to review Hawaii Administrative Rules and not County ordinances.
- 2) A “regulation for review” from Aloha Surf Adventures, LLC regarding HAR Chapter 13-256-152 expressed a concern that the proposed new rules may “put a lot of small business owners out of business on the Big Island.” This is because the “number of students and permits will likely force this business to let go all of his staff.” Aloha Surf suggested one permit per eight students with no time limit.  
  
Response from the SBRRB was that this rule proposal on November 17<sup>th</sup> at the regularly scheduled board meeting and it was unanimously agreed to send it to the Governor for adoption. However, given Aloha Surf’s concerns, it was recommended that the concerns be submitted to the Governor (both current Governor and incoming Governor) with a copy to DOBOR/DLNR.
- 3) A “regulation for review” from Kona Town Surf Adventures for HAR Chapter 13-256-152 stated that “this new rule chokes out 90% of small businesses, operating at a Kahului Beach in Kailua Kona. By limiting the hours and the permits and the amount of people that can be taken out, it will essentially have to eliminate 90% of staff as well as



competitors.” It was suggested that the state make the rules the same as any other island but in particular, Maui, whereby Maui’s ordinances state that a permit can take out eight people and no surf lessons on Sunday and state holidays.

The Board responded that the SBRRB members reviewed this rule proposal on November 17<sup>th</sup> at the regularly scheduled board meeting and unanimously agreed to send it forward to the Governor for adoption. However, given Aloha Surf’s concerns, it was highly recommended that the concerns be submitted to the Governor (both current Governor and incoming Governor) with a copy to DOBOR/DLNR.

# **SECTION II**

## LEGISLATIVE REVIEW

Testimony was submitted on the following measures during the 2022 legislative session.

1. **GM 725 – Submitting for consideration and confirmation to the Small Business**

**Regulatory Review Board Gubernatorial Nominee, James Lee, for a term to expire 6-30-2024**

**Background:** This measure was submitted for consideration of Mr. James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024.

**Recommendation:** The Board strongly supported the measure.

**Result:** On April 1, 2022, the Senate’s “advise and consent” was confirmed.

2. **GM 726 – Submitting for consideration and confirmation to the Small Business**

**Regulatory Review Board Gubernatorial Nominee, Sanford Morioka, for a term to expire 6-30-2023**

**Background:** This measure was submitted for consideration of Mr. Sanford Morioka to the Small Business Regulatory Review Board for a term to expire June 30, 2023.

**Recommendation:** The Board strongly supported the measure.

**Result:** On April 1, 2022, the Senate’s “advise and consent” was confirmed.

3. **GM 730 – Submitting for consideration and confirmation to the Small Business**

**Regulatory Review Board Gubernatorial Nominee, William Lydgate, for a term to expire 6-30-2026**

**Background:** This measure was submitted for consideration of Mr. William Lydgate to the Small Business Regulatory Review Board for a term to expire June 30, 2026.

**Recommendation:** The Board strongly supported the measure.

**Result:** On April 1, 2022, the Senate’s “advise and consent” was confirmed.

**4. GM 823 – Submitting for consideration and confirmation to the Small Business Regulatory Review Board Gubernatorial Nominee, Jonathan Shick, for a term to expire 6-30-2026**

**Background:** This measure was submitted for consideration of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2026.

**Recommendation:** The Board strongly supported the measure.

**Result:** On April 18, 2022, the Senate’s “advise and consent” was confirmed.

**5. GM 862 & GM863 – Submitting for consideration and confirmation to the Small Business Regulatory Review Board Gubernatorial Nominee, Tessa Gomes, for terms to expire 6-30-2022 and 6-30-2026, respectively**

**Background:** This measure was submitted for consideration of Ms. Gomes to the Small Business Regulatory Review Board for terms to expire June 30, 2022 and June 30, 2026.

**Recommendation:** The Board strongly supported the measure.

**Result:** On April 18, 2022, the Senate’s “advise and consent” was confirmed.

## **Appendix**

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 18-02

## **1. Chapter 201M, Hawaii Revised Statutes**

CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact; small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business; consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

**§201M-1 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

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

"Small business" means a for-profit 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. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

**§201M-2 Determination of small business impact; small business impact statement.** (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less

restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

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

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in



addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

(d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

**§201M-3 Small business statement after public hearing.** (a) For any proposed rule that affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
  - (A) Attended the public hearing;
  - (B) Testified at the hearing; and
  - (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a) (3):

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

- (1) Specifically address each issue and concern raised in the board's request for a written response; and
- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

**[\$201M-4] Advisory committee on small business; consultation process for proposed rules.** (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of

regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

**§201M-5 Small business regulatory review board; powers.** (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. 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 proposed, amended or 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 rules, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of 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 by 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;
- (4) Two members shall be appointed by the governor;
- (5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting members of the board;
- (6) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representative from the same type of business; and
- (8) There shall be at least one representative from each county. For 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.

(c) **Except for the ex officio member**, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule

adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

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

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits

the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

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

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

**§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 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 continue implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

(b) The 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 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. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6; am L 2012, c 241, §4]

**§201M-8 Waiver or reduction of penalties.** (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
  - (2) The violation was unintentional or the result of excusable neglect; or
  - (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
  - (2) When a violation involves willful or criminal conduct;
  - (3) When a violation results in serious health and safety impacts;
  - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
  - (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
  - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6) (A), (B), (C), and (D).
- (c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

**[\$201M-9] Executive order.** The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]



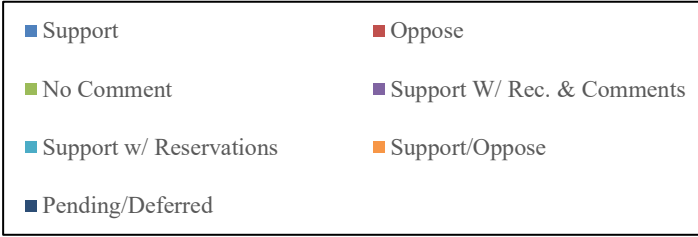
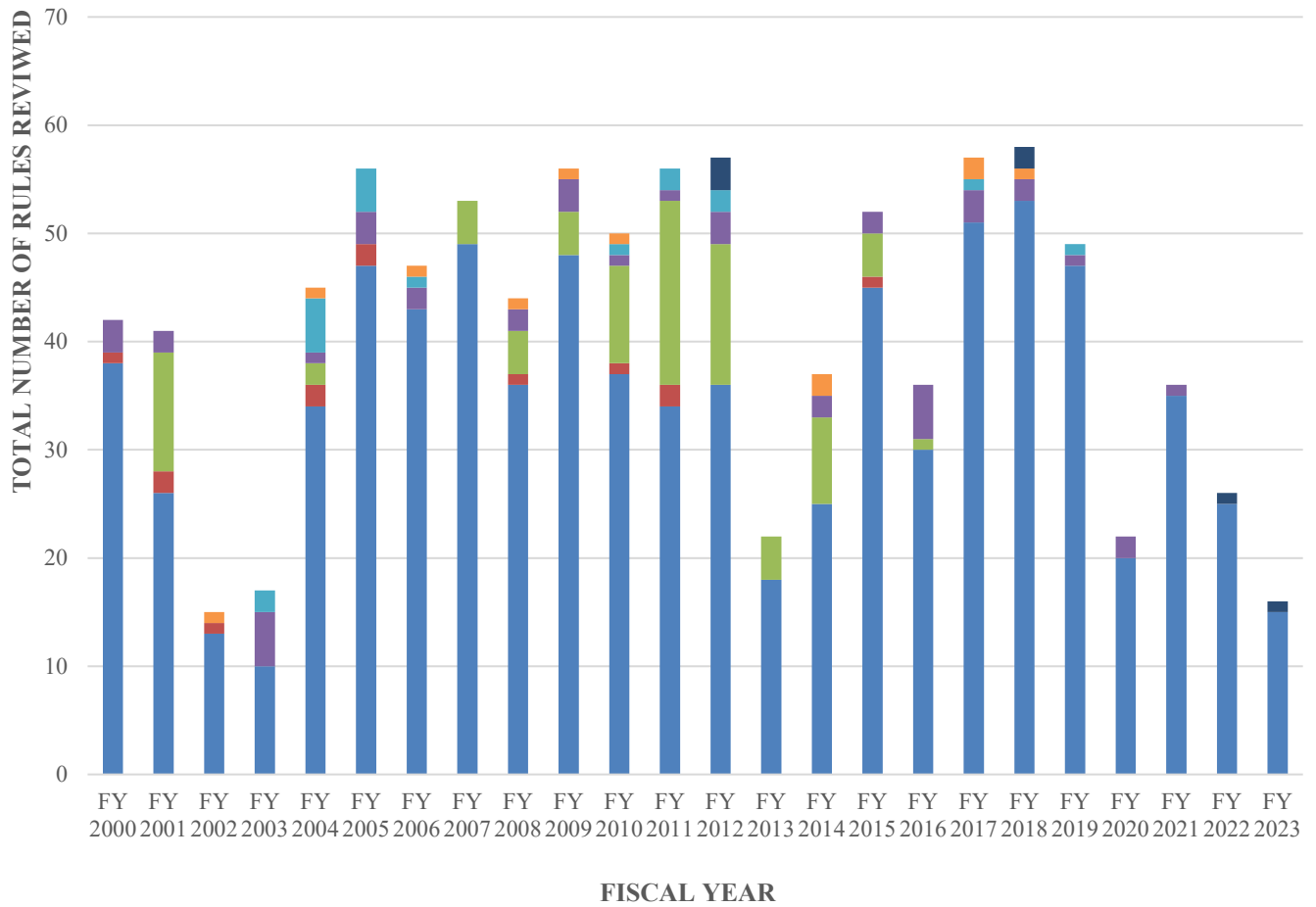
## **2. Administrative Rule Review**

## Administrative Rule Review – Annual Report 2022

Calendar Year 2022	Month/Year	Supported (1)	Opposed (2)	No Comment/ No Action (3)	Supported W/ Rec. & Comments (4)	Supported w/ Reservations (5)	Supported/ Opposed (6)	Pending/ Deferred (7)
	Jan-22	3						
	Feb-22	1						
	Mar-22	2						
	Apr-22	NA						
	May-22	NA						
	Jun-22	3						
	Jul-22	NA						
	Aug-22	10						
	Sep-22	2						
	Oct-22	1						
	Nov-22	2						1
	Dec-22	NA						
	<b>Total Calendar Year 2022</b>	<b>24</b>						<b>1</b>
	<b>Total Past Years</b>	<b>809</b>	<b>13</b>	<b>81</b>	<b>47</b>	<b>21</b>	<b>12</b>	<b>0</b>
	<b>Total</b>	<b>833</b>	<b>13</b>	<b>81</b>	<b>47</b>	<b>21</b>	<b>12</b>	<b>1</b>
	<b>Total HAR Reviewed Since Inception</b>	<b>1008</b>						

- 1) Unanimous support of HAR
- 2) Opposed HAR
- 3) Either no comment or no action taken on HAR
- 4) Supported HAR with recommendations and/or comments
- 5) Supported HAR with Reservations
- 6) Partially opposed but supported HAR
- 7) Deferred action

## Administrative Rule Review Matrix



### **3. Administrative Directive No. 18-02**



EXECUTIVE CHAMBERS  
HONOLULU

DAVID IGE  
GOVERNOR

January 1, 2018

## ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of  
Hawaii Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It replaces Administrative Directive No. 09-01, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated October 29, 2009.

### **Legal References:**

1. Hawaii Revised Statutes Chapter 91
2. Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

### **Policy:**

1. All requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS).

<https://hawaiiomt.sharepoint.com/sites/gov/adminrules/>

Prior to all submittals, the department must obtain the Attorney General's approval "as to form".

2. **Small Business Regulatory Flexibility Act**

In accordance with Chapter 201M, the department must complete the following steps before submitting a request to conduct public hearing if the proposed rule affects small business:

- a. Complete Small Business Impact Statement
  - i. See HRS Section 201M-2
- b. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board

### **3. Public Hearing Approval**

In the request to conduct public hearing, the department will provide response to the following:

- a. Summary of changes
  - i. Why is this section of Hawaii Administrative Rules being amended?
  - ii. What problem is the rule change meant to solve?
  - iii. List all changes that are being made.
- b. Impact of changes
  - i. How does this rule change address the problem?
  - ii. Who are the stakeholders? Positive and negative.
  - iii. What are the potential problems with the rule change?
  - iv. What is the fiscal impact?
  - v. What is the economic impact to the State?
- c. Consequences if changes are not made
  - i. What are the consequences if the rule change does not get adopted, amended or repealed?

### **4. Public Hearings**

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

- a. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
- b. The department must accept written testimony from all parties who are unable to attend the public hearing.
- c. The department will be responsible for transcribing the testimony from the

public hearing into a public hearing summary document that will be required upon submittal of Final Rule.

## **5. Final Rule**

In the request for approval of Final Rule, the department will provide response to the following:

- a. Changes in Final Rule
  - i. What changes were made in the Final Rule?
  - ii. Why were these changes made?
- b. Other
  - i. Describe how the department has worked with stakeholders to gain support for the rule?
  - ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?
  - iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

## **6. Filing of Final Rule**

Upon approval of Final Rule through HARPS, the Department will send 3 hard copies to Office of the Governor. When approved, these copies will be filed with the Office of the Lieutenant Governor. Rule will take effect 10 days after filing.

## **7. Department of Budget and Finance (BUF) and Department of Business, Economic Development and Tourism (BED)**

BUF and BED will receive electronic notification upon submittal of public hearing request. Both departments will have the ability to submit comments and concerns through HARPS. Response will be due 10 business days after Final Rule is submitted. Comments will be optional unless the following applies:

- a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
- b. BED will be required to provide response if the proposed rule has economic impact or affects small business.



Department of Business, Economic Development & Tourism  
**Small Business Regulatory Review Board**

***No. 1 Capitol District Building  
250 South Hotel Street, 5<sup>th</sup> Floor  
Honolulu, Hawaii 96813***

***Telephone: (808) 798-0737***

***Website: [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov)***

***Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)***