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S.B. NO. 188

A Bill for an Act Relating to the Small Business Regulatory Flexibility Act.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

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

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

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

“(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 ~~[small business regulatory review]~~ board ~~[prior to providing notice for a public hearing.]~~ 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 ~~[cost]~~ 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) 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 ~~[which affords]~~ that afford the agency no discretion to consider less restrictive alternatives.”

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

1. By amending subsection (a) to read:

“(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 or to consider any request from small business owners for review of any rule 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 ordinances, the board may make recommendations to the county council or the mayor for appropriate action.”

2. By amending subsection (f) to read:

“(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.”

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

“**[§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; [or]
- (3) These impacts were not previously considered at the public hearing on the rules[-];

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

- ~~[(1)]~~ (4) The rules ~~[created]~~ create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- ~~[(2)]~~ (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
- ~~[(3)]~~ (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

~~[(e)]~~ (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.

~~[(d)]~~ (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 ~~[small-business-regulatory-review]~~ 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. ~~[For rules adopted after July 1, 1998, the]~~ 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; ~~[or]~~
- (3) These impacts were not previously considered at the public hearing on the rules~~[-];~~

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

- ~~[(1)]~~ (4) The rules ~~[created]~~ 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;
- ~~[(2)]~~ (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
- ~~[(3)]~~ (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

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

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

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

1. By amending subsection (a) to read:

"(a) Each agency having rules that affect small business [in effect on July 1, 1998] shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation."

2. By amending subsection (c) to read:

"(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 [small-business-regulatory-review] board shall

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submit an evaluation report to [each] the next regular session of the legislature [~~in even-numbered years~~]. 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 [such] any action in response to the report as it finds appropriate."

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

SECTION 8. This Act shall take effect upon approval.

(Approved June 28, 2007.)