



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

**Results for Calendar Year 2018**

**Recommendations and Review  
of 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 2018**

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# **SECTION I**



# SMALL BUSINESS REGULATORY REVIEW BOARD

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**David Y. Ige**  
*Governor*

## MESSAGE FROM THE CHAIR

**Mary Alice Evans**  
*DBEDT Director*

### Members

Anthony Borge  
*Chairperson*  
*O'ahu*

Robert Cundiff  
*Vice Chairperson*  
*O'ahu*

Garth Yamanaka  
*2nd Vice Chairperson*  
*Hawai'i*

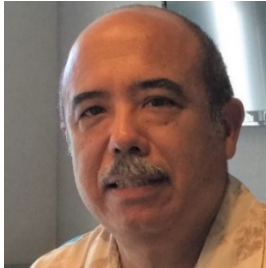
Harris Nakamoto  
*O'ahu*

Nancy Atmospera-Walch  
*O'ahu*

Mary Albitz  
*Maui*

William Lydgate  
*Kaua'i*

Director, DBEDT  
*Voting Ex Officio*



*Anthony Borge, Chair, 2018*

We continue to be blessed to have an outstanding team of volunteer Board members who persevere toward our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii. This year, we welcomed two new members, Ms. Mary Albitz from Maui County and Mr. William Lydgate from Kauai County, whom we are happy to have on our team. The Board consistently meets every month to address, collaborate, and provide timely responses to the Governor, State and County agencies, and small businesses.

On behalf of all the Small Business Regulatory Review Board members, I once again, would like to extend a big Mahalo to Governor David Ige, for his steadfast support, the State Legislature, and all those State and County Agencies that come before this Board to discuss proposed and amended regulations that have a potential to negatively impact small business.

A big Mahalo also goes out to each Board member who continue to donate unselfish hours and time away from their families and businesses, to share their invaluable business knowledge to improve and enhance the growth and success of small businesses throughout the State of Hawaii.

Finally, I extend a very big Mahalo to Luis Salaveria during his tenure at DBEDT for his support of this Board and wish him well in his new endeavor.

## **OVERVIEW**

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January 2018 through December 2018. 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 year 2018 marked the twentieth anniversary of the Small Business Regulatory Review Board. It was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168 and 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 is also charged with reviewing existing rules upon the request from small business owners or at the Board's initiative. For requests regarding County ordinances, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members volunteer their time performing outreach activities to small business organizations, such as the local Chambers of Commerce and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State departments.

As an effective and efficient means of review, each member is assigned to one or more State department as a "discussion leader" and is responsible for the initial review of the administrative rules of that department prior to consideration by the full Board. As of December 2018, the Board was operating with nine? members.

## ADMINISTRATIVE RULE REVIEW

During 2018, the Board reviewed and made recommendations on 58 new and amended rules to State and County Agencies, both pre- and post-public hearing.

Since its inception, the Board reviewed a total of 863 sets of proposed new and amended administrative rules. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
<b>Department of Accounting &amp; General Services – Title 3</b>					
<b>Department of Agriculture – Title 4</b>	162	Food Safety Certification Costs Grant Program	X	X	
	66	Pesticides	X		The Board agreed to encourage the Department of Agriculture and the stakeholders, prior to going to public hearing, to arrive at a mutually acceptable timeframe for the submission of a speaker’s biography and break-out presentation, under Section 4-66-60(c)(1), HRS, regarding continuing education requirements.
	66	Pesticides	X		
	186	Petroleum Products Accounting and Inspection	X	X	
	71	Plant and Non-Domestic Animal Quarantine, Non-Domestic Animal Import Rules / Tilapia and Crickets		X	
	71	Plant and Animal Non-Domestic Quarantine, Non-Domestic Animal Import rules / Wild Animals		X	The Board approved the rules to go to the Governor for adoption with reservations, particularly regarding the impact of banning the transportation of wild animals as it relates to small business; one member opposed, and the motion passed.
	70	Plant and Non-Domestic Animal Quarantine, Plant Import Rules / Subchapter 15, “Introduction of Myrtaceae” (Myrtle Family Plants and Plant Parts)	X		
<b>Department of Business, Economic Development &amp; Tourism – Title 15</b>	37	Solar Water Heater Variance		X	
	15	Land Use Commission Rules	X		
	218	Kaka’ako Reserved Housing Rules	X	X	

**Department of  
Commerce and  
Consumer Affairs –  
Title 16**

17 Captive Insurance Companies X

No action was taken due to lack of meeting quorum. Subsequently, the Board approved the amendments to proceed to public hearing.

**Department of Health  
– Title 11**

Repeal 200; Environmental Impact X  
 New 200.1 Statement Rules X  
 55 Water Pollution Control X  
 281 / 280.1 Underground Storage Tanks X X  
 178 Clean and Sober Homes Registry X

The SBRRB members commended DOH’s Clean Water Branch for its pro-active streamlining of the rule amendments.

**Department of Labor  
& Industrial Relations  
– Title 12**

Subtitle 8, Hawaii Occupational Safety and Health Division Part 1, General Legal and Administrative Provisions for Occupational Safety and Health X  
 Chapter 50, General Provisions and Definitions X  
 Chapter 52.1, Recording and Reporting Occupational Injuries and Illnesses  
 Chapter 56, Program Fees and Library Policies, General Safety and Health Requirements  
 Part 2, General Legal and Administrative Provisions for Occupational Safety and Health  
 Chapter 60, General Safety and Health Requirements  
 Part 3, Construction Standards  
 Chapter 110, General Safety and Health Requirements  
 Part 5, Occupational Safety and Health Standards for Shipyard Employment  
 Chapter 180, Shipyards  
 Part 6, Marine Terminals  
 Chapter 180, Marine Terminals  
 Part 7, Safety and Health Regulations for Longshoring  
 Chapter 190, Longshoring  
 Part 8, Other Safety and Health Standards  
 Chapter 208, Other Safety and Health Standards  
 Chapter 22 Wage Determinations and the Administration and Enforcement of Chapter 104, Hawaii Revised Statutes X  
 Chapter 44.1 Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems and Fire Alarm Systems X

Before public hearing, the Board recommended that HIOSH continue the ongoing discussions with the small business stakeholders’ concerns, and to move forward with the public hearing.

After public hearing, the Board recommended the rules proceed to the Governor for adoption.



	Chapter 229	General, Administrative and Legal Provisions		X
	Chapter 230.1	Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices; and		X
	Chapter 240	Elevator Requirements for Individuals with Disabilities		X
<b>Department of Land &amp; Natural Resources – Title 13</b>				
	Chapter 167	Rules of Practice and Procedure for the Commission on Water Resources Management		X
	Chapter 168	Water, Use Wells, and Stream Diversion Works		X
	Chapter 169	Protection of Instream Uses of Water		X
	Chapter 104	Rules Regulating Activities Within Forest Reserves	X	
	Chapter 60.9	Mo’omomi Community-Based Subsistence Fishing Area, Molokai	X	
	Subtitle 11	Ocean Recreation and Coastal Areas		
		Part I Small Boat Harbors – Chapter 234 Fees and Charges	X	
		Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253 Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees	X	
<b>Department of Public Safety – Title 23</b>				
<b>Department of Taxation – Title 18</b>				
	Chapter 37	County Surcharge		X
	Section 8.6			
	New Section 29.53	Exported Services		X
	Chapter 237	General Excise Tax		X
	Chapter 235	Income Tax Law	X	
		Section 98 – Returns; form, verification and authentication, time of filing		
		Section 1.14 (d) “Substantial gainful business or occupation”, defined		
	Chapter 237	General Excise Tax	X	X
	Section 34-13	Persons with a material interest in a tax return		
	Chapter 237D	Transient Accommodations Tax	X	X
	Section 4-01	Certificate of Registration		X
		Display of Registration Certificate		
	Repeal Sections 4-03 to 4-07			X
	New Sections 4-08 to 4-35			X

<b>Department of Transportation – Title 19</b>	Chapter 20.1	Commercial Services at Public Airports	X /X /X	X	The Board recommended that DOT-Harbors Division make an effort to engage Hawaii small businesses that will be impacted by the proposed fee increases through the outreach of business organizations and trade associates, such as the Chamber of Commerce of Hawaii.
<b>University of Hawaii</b>	Chapter 26	Public and Commercial Activities on Mauna Kea Lands	X		
<b>City and County of Honolulu</b>	Chapters I – V, Board of Water Supply rules and Regulations	In compliance with Section 54-26, HRS, for the Adoption of New Water Rates and Charges	X	X	
<b>County of Kauai</b>		Rules of Practice and Procedure of the Kauai Historic Preservation Review Commission:			
	I.	1) General Provisions	X		
	II.	Organization & Parliamentary Rules	X		
	III.	Public Records, Inspection and Availability	X		
		Rule Adoption, Amendment, or Repeal Procedures	X		
	Chapter 8, 9, 10	Kauai County Code (1987) Enforcement of KPAR 8-19, Chapter 8, Article 17, Relating to Transient Vacation Rentals of the Kauai County Code	X		
	Title 1, Rules of Practice and Procedure of the Kauai County Planning Commission (Modified 2014)	Chapter 9, Appeals from Actions of the Planning Director	X		
		Chapter 6, Agency Hearing Procedures	X		
	Kauai County Code Section 18-65.3 Department of Public Works	Revocable Permits to Vend within County Right-of-Ways	X		
	Part VI	Rules and Regulations Governing the Operation of Commercial Food Truck Concessions in County Parks	X		
<b>County of Maui</b>	Title 8 Chapter 101	Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui	X		

## **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 this report for specific legislation the Board followed during the 2018 session.

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

In 2018, AD 18-02 was issued and updated 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). It is believed that the Board was instrumental in encouraging Governor Ige to amend AD 09-01 to reflect changes made to Chapter 201-M, HRS in 2017.

Under Section 201M-2, HRS, State agencies that want 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. As a result, the Board reviews the small business impact statements and the AD 18-02, while working with the rule-drafting agencies on behalf of the small business community.

## **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.” At the May 2018 board meeting, Mr. Anthony Borge was again elected Chair, Mr. Robert Cundiff re-elected Vice Chair, and Mr. Garth Yamanaka was re-elected Second Vice Chair.

The Board member nomination process, under Section 201M-5, HRS, provides “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 organizations. 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.”

During 2018, the Board members welcomed three new board members, Mr. Reg Baker, Ms. Mary Albitz, and Mr. William Lydgate. The Board members also bid fond farewells to Ms. Kyoko Kimura, representative from Maui County who has been a member since 2012 and Mr. Baker, who moved to a new state with his family.

At the end of December 2018, the Board was comprised of the following xx members:

- 1) Mary Albitz, FocalPoint, representing the County of Maui
- 2) Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, representing the City and County of Honolulu

- 3) Anthony Borge, RMA Sales, representing the City and County of Honolulu
- 4) Robert Cundiff, representing the City and County of Honolulu
- 5) Harris Nakamoto, Kaiser Permanente, representing the City and County of Honolulu
- 6) William Lydgate, Steelgrass Farm, representing the County of Kauai
- 7) Garth Yamanaka, Yamanaka Enterprises, Inc., representing Hawaii County
- 8) DBEDT Director, Voting Ex Officio Member

## ACTIVITIES AND PROJECTS

The following activities and projects were achieved in 2018:

- **Hawaii Business with Reg Baker** – In January, Anthony Borge and Reg Baker were on ThinkTechhawaii.com show, “Hawaii Business with Reg Baker.” The link to the show can be found at: <https://youtu.be/5ula2xsEDu0?t=26>
- **Hawaii Small Business Conference** - sponsored by Maui Economic Development Board, on May 2 and 3, DBEDT staff attended this well-received small business conference for outreach purposes.
- **e-Newsletter** – The Board continues to send out monthly e-Newsletters to small business organizations, chambers of commerce and State Legislators.
- **Facebook and Twitter** – The Board regularly sends out notices on Facebook and Twitter to enhance its outreach efforts.
- **Website Development** – The Board created an investigative taskforce, consisting of board member Mr. Cundiff and DBEDT staff, to assist in crafting the development and redesign of the Board’s existing website. In accordance with Section 92-2.5(b) (1), HRS, the taskforce approached the Board with its findings and recommendations, and in April 2018, the Board

approved the proposed budget for the Website. Subsequently, Phase I of the website, which consists of creating a design prototype was accomplished. Phase II is currently in process.

- **Hawaii Public Radio (HPR)** – At the April board meeting, members reviewed proposed changes to Hawaii Administrative Rules, Chapter 18-20.1, Commercial Services at Public Airports, with regards to the State Department of Transportation’s pilot program requiring Uber and Lift drivers to conduct pick-up service at Hawaii airports.

The next day, April 19, 2018, a segment of the board meeting discussing the proposed rules was highlighted on HPR (Hawaii Public Radio). To hear this show, go to:

<http://hawaiipublicradio.org/post/tension-high-over-airport-rideshare-pilot-program>.

- **Articles and Press Releases**

- 1) On May 17, 2018, The *Star Advertiser*, posted an article entitled “DOT Tweaking Airport Rules for Ride-Hailing Operators” that discussed DOT redrafting HAR Chapter 20.1, and cancelling the scheduled public hearings to include concerns posed by the Board to account for changes at the airports that include “ride-hailing” operators.
- 2) On May 23, 2018, DBEDT distributed a press release announcing the 2018 to 2019 Board officers, Anthony Borge, Chair; Robert Cundiff, Vice Chair; Garth Yamanaka, Second Vice Chair as well as the newly appointed board members, Ms. Mary Albitz, Mr. Reg Baker and Mr. William Lydgate.
- 3) On July 31, 2018, DBEDT distributed a press release announcing, “Small Business Regulatory Review Board Commemorates 20<sup>th</sup> Anniversary”
- 4) On August 1, 2018, *Hawaii Free Press* picked up the Board’s press release announcing the 20<sup>th</sup> Anniversary of the Small Business Regulatory Review Board

**REQUESTS FROM SMALL BUSINESS FOR REVIEW**  
**OF ANY RULE ADOPTED BY A STATE AGENCY /**  
**REGULATION REVIEW CARD**

In accordance with Section 201M-5, HRS, the following outlines requests from small business owners for review of any rule adopted by a state agency, and recommendations made by the board to an agency.

1. At year-end 2017, Ms. Dale Evans, CEO of Charley's Taxi and Limousine, representing the small business taxi industry, requested assistance from the Board for updated rules and regulations that provide transportation services at the Honolulu International Airport (HIA) from the State Department of Transportation (DOT) that are fair, equitable, and level the playing field for small businesses, drivers of taxi cabs, Uber, and Lyft.

**Action:** In response, correspondence was sent to DOT and Governor Ige, requesting that DOT explain what administrative rules, if any, would apply to Uber and Lyft operations at HIA and to respond to the concerns that DOT is not providing fair and equitable treatment to all small businesses allowed to operate at HIA.

Subsequently, the following actions were taken:

- A letter was sent to Governor Ige his review of Ms. Evans' concerns
- At three consecutive board meetings, DOT presented proposed amendments designed to bring fairness to the small business drivers
- The Board recommended that the proposed administrative rules proceed to public hearing and upon reviewing the small business statement after public hearing recommended that the proposal proceed to the Governor for adoption.

**Result:** Final rules for HAR Chapter 20.1 Commercial Services at Public Airports became effective August 24, 2018.

2. In October 2018, Mr. Wesley Moore submitted to the Board a Regulation Review Card under Section 13-231-50 through 70, requesting that “caps” be placed on commercial permits, specifically at the Keauhou boat ramp.

**Action:** The board recommended that DOBOR report back to them with any changes that may apply and satisfy Mr. Moore’s request.

**Result:** Pending.



# **SECTION II**

## **LEGISLATIVE REVIEW**

The Board submitted testimony on the following measures during the 2018 legislative session.

### **1. House Bill 2235 – Relating to the Small Business Regulatory Review Board**

**Background:** This measure clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

**Recommendation:** The Board supported this measure.

### **2. House Bill 2326 – Relating to the Small Business Regulatory Review Board**

**Background:** This measure clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

**Recommendation:** The Board supported this measure.

**Result:** The measure was not heard.

### **3. Senate Bill 2753 – Relating to the Small Business Regulatory Review Board**

**Background:** This Administration measure, companion to House Bill 2326, clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

**Recommendation:** The Board supported this measure.

**Result:** The measure was passed in the Senate, crossed over to the House, approved in the Committee on Economic Development & Business, and then was not heard in the House Judiciary Committee.

#### 4. **Senate Bill 2885 – Relating to the Small Business Regulatory Review Board**

**Background:** This Administrative measure clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

**Recommendation:** The Board supported this measure.

**Result:** The measure passed in the Senate and did not cross over.

#### 5. **Senate Bill 2059 – Relating to Public Accountancy**

**Background:** Specifies who may be granted a temporary permit to practice public accountancy. Specifies the requirements that must be met prior to obtaining a temporary permit to practice. Requires a person to obtain a temporary permit to practice from the board of public accountancy prior to commencing public accountancy services in Hawaii. Specifies a time frame for the temporary permit to practice. Requires that persons who are granted a temporary permit to practice to consent to and certify various obligations, including being under the authority of the board of public accountancy and paying all applicable taxes to the State. Makes conforming amendments to the laws relating to public accountancy; takes effect on 1/1/2019.

**Recommendation:** The Board monitored this measure

**Result:** The measure passed in the Senate, crossed over but did not pass.

#### 6. **Governor’s Message No. 513 and 514 - Submission for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Reg Baker, for a term to expire June 30, 2018 and June 30, 2022.**

**Background:** The Board supported this measure.

**Recommendation and Result:** In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Mr. Baker's nomination was confirmed. On April 13, 2018, Mr. Baker was confirmed as a member by the Senate.

7. **Governor's Message No. 673 and 674** - Submission for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Will Lydgate, for a term to expire June 30, 2018, and June 30, 2022, respectively.

**Background:** The Board supported this measure.

**Recommendation and Result:** In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Mr. Lydgate's nomination was confirmed. On April 13, 2018, Mr. Lydgate was confirmed by the Senate.

8. **Governor's Message No. 675** - Submission for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Mary Albitz, for a term to expire June 30, 2020.

**Background:** The Board supported this measure.

**Recommendation and Result:** In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Ms. Albitz's nomination was confirmed. On April 13, 2018, Ms. Albitz was confirmed as a member by the Senate.

## **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 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.

(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]

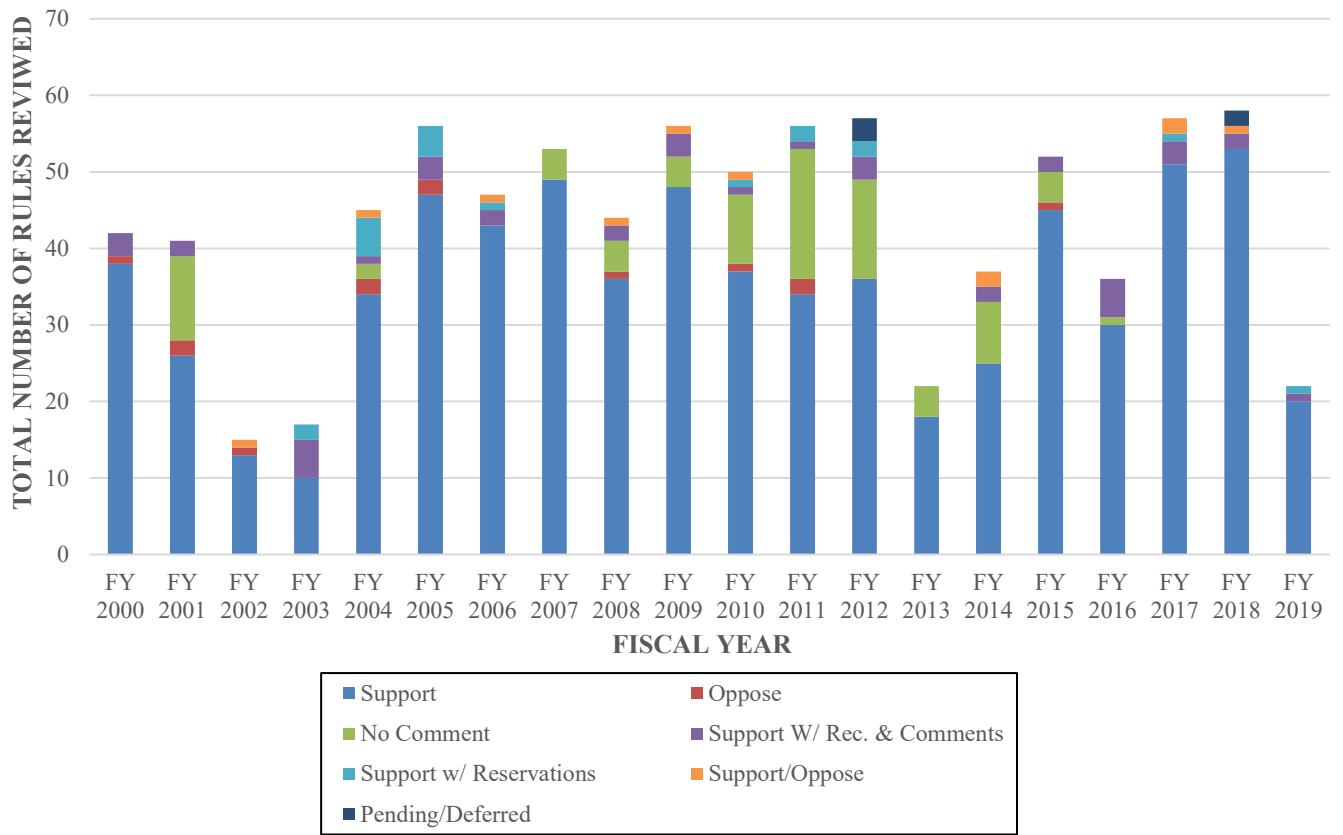


## **2. Administrative Rule Review**

## 2018 Administrative Rule Review

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2017		620	13	81	38	18	10	3
FY 2018	Jul-17	5						
	Aug-17	5			1			
	Sep-17	2					1	
	Oct-17	12			1			
	Nov-17	6						
	Dec-17	2						
FY 2018	Jan-18	2						
	Feb-18	NA						
	Mar-18	9						
	Apr-18	4						1
	May-18	1						1
	Jun-18	5						
FY 2019	Jul -18	3						
	Aug-18	3						
	Sep-18	3						
	Oct-18	6						
	Nov-18	0						
	Dec-18	5			1	1		
	<b>Total</b>	<b>693</b>	<b>13</b>	<b>81</b>	<b>41</b>	<b>19</b>	<b>11</b>	<b>2</b>

## 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.



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