

JAN 28 2009

A BILL FOR AN ACT

RELATING TO SMALL BUSINESS.

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

1 SECTION 1. The purpose of this Act is to amend the small
2 business regulatory flexibility act as follows:

3 (1) Requiring the small business regulatory review board
4 to determine the small business impact;

5 (2) Adding definitions of "county" and "State";

6 (3) Amending the definitions of "affected small
7 businesses" and "agency";

8 (4) Increasing the number of board members from eleven to
9 thirteen;

10 (5) Removing the restriction that the chairperson shall
11 serve a term of not more than one year;

12 (6) Codifying the small business bill of rights from Act
13 230, Session Laws of Hawaii 2008, section 2; and

14 (7) Making other non-substantive changes.

15 SECTION 2. Chapter 201M, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:



1 "§201M- Small business bill of rights. The rights of
2 small businesses in the State include but are not limited to:

3 (1) The right to expect state agencies to provide a
4 prompt, accurate, and courteous response to a request
5 for information and to work together to ensure ready
6 access to the information needed to assist businesses
7 in their relationships with state government;

8 (2) The right to a clear, stable, and predictable
9 regulatory and recordkeeping environment with easily
10 accessible information and administrative rules in as
11 clear and concise language as is practicable,
12 including the posting of all proposed administrative
13 rule changes on the Internet website of the office of
14 the lieutenant governor;

15 (3) The right to request and receive timely notice of an
16 agency's rulemaking proceedings. The notice shall be
17 mailed to all persons who have made a written request
18 for such a notice;

19 (4) The right to be treated equally and fairly, with
20 reasonable access to state services;

21 (5) The right to a one-stop permitting process that will,
22 in the long term, include a centralized Internet



1 website-based application system. This site's goals
2 are to have quick and responsible timeframes to
3 process state and county permits, licenses,
4 registrations, and approvals, when appropriate, to
5 simplify and reduce the filing of forms affecting
6 business;

7 (6) The right to a timely response to an application for a
8 permit, license, registration, or approval necessary
9 to operate the small business, within the established
10 maximum period of time for that agency in accordance
11 with section 91-13.5;

12 (7) The right to renewal of essential permits, licenses,
13 registrations, or approvals, absent a specific reason
14 for nonrenewal. All issuing agencies shall take
15 action to grant or deny any renewal application for a
16 business or development-related permit, license,
17 registration, or approval within the established
18 maximum period of time for that agency. The reasons
19 for a denial shall be clearly stated and under
20 conditions set forth in law;

21 (8) Whenever a contested case hearing is provided by law,
22 in the event a regulatory agency takes action against



1 a business, the right to expect a timely hearing.
2 Officials conducting such hearings shall be impartial.
3 Small businesses shall be provided a full and complete
4 hearing to present their explanation of any alleged
5 violation, deficiency, or wrongdoing. In any hearing,
6 there shall be a presumption that the small business
7 did not commit an alleged violation or wrongdoing
8 until the agency proves otherwise by a preponderance
9 of the evidence. The small business shall have the
10 right to present evidence, both oral and written.
11 This evidence must be fully considered by the agency.
12 In the event of an unfavorable decision, the business
13 shall have the right to a judicial review pursuant to
14 section 91-14;

- 15 (9) The right to privacy regarding confidential and
16 proprietary business information when competing for
17 state procurement contracts. No state agency shall
18 mandate the disclosure of confidential or proprietary
19 business information as a condition of obtaining any
20 contract or payment under any contract when a contract
21 is to be awarded on a firm fixed price or cost plus
22 fixed price basis;



- 1 (10) The right to all of the protections afforded in the
2 Taxpayer Bill of Rights, P.L. 104-168;
- 3 (11) The right to submit complaints regarding a violation
4 of these rights or any other administrative acts of
5 state and county agencies with the office of the
6 ombudsman, in accordance with chapter 96;
- 7 (12) The right to request information and an opinion from
8 the office of information practices, in accordance
9 with chapters 92 and 92F, with regard to access to
10 information from public meetings or the release of
11 government documents;
- 12 (13) The right to provide information to the division of
13 consumer advocacy in accordance with chapter 269, with
14 regard to issues under the purview of the public
15 utilities commission;
- 16 (14) The right to request information from the office of
17 consumer protection, in accordance with chapter 487,
18 with regard to business and consumer issues;
- 19 (15) The right to access the small business advocate in the
20 department of business, economic development, and
21 tourism regarding any dispute with a state agency to
22 ensure government resources are coordinated on behalf



1 of small business and the rights of businesses are
2 being upheld; and
3 (16) The right to administrative rule review pursuant to
4 this chapter by filing a petition with the small
5 business regulatory review board in accordance with
6 section 201M-6."

7 SECTION 3. Section 201M-1, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By adding two new definitions to be appropriately
10 inserted and to read:

11 "County" means any county located in the State of Hawaii.
12 "State" means the State of Hawaii."

13 2. By amending the definitions of "affected small
14 businesses" or "affects small business" and "agency" to read:

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

21 "Agency" means each [~~state or county~~] board, commission,
22 department, or officer under the jurisdiction of the State or



1 its counties authorized by law to make rules, except those in
2 the legislative or judicial branches."

3 SECTION 4. Section 201M-2, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) Prior to submitting proposed rules for adoption,
6 amendment, or repeal under section 91-3, the agency shall
7 [~~determine~~] declare whether the proposed rules affect small
8 business, [~~and if so,~~] subject to the determination of the small
9 business regulatory review board. If the small business
10 regulatory review board determines that the proposed rules
11 affect small business, the agency shall also recommend the
12 availability and practicability of less restrictive alternatives
13 that could be implemented. This section shall not apply to
14 emergency rulemaking.

15 (b) If the proposed rules affect small business, the
16 agency shall consider creative, innovative, or flexible methods
17 [~~of compliance~~] that are less burdensome and restrictive for
18 small businesses and prepare a small business impact statement
19 to be submitted with the proposed rules to the departmental
20 advisory committee on small business and the board when the
21 rules are essentially complete and before the rules are
22 submitted to the governor for approval for public hearing. The



1 statement shall provide a reasonable determination of the
2 following:

3 (1) The businesses that will be directly affected by, bear
4 the costs of, or directly benefit from the proposed
5 rules;

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

9 (3) In dollar amounts, the increase in the level of direct
10 costs such as fees or fines, and indirect costs such
11 as reporting, recordkeeping, equipment, construction,
12 labor, professional services, revenue loss, or other
13 costs associated with compliance;

14 (4) The probable monetary costs and benefits to the
15 implementing agency and other agencies directly
16 affected, including the estimated total amount the
17 agency expects to collect from any additionally
18 imposed fees and the manner in which the moneys will
19 be used;

20 (5) The methods the agency considered or used to reduce
21 the impact on small business such as consolidation,
22 simplification, differing compliance or reporting



1 requirements, less stringent deadlines, modification
2 of the fines schedule, performance rather than design
3 standards, exemption, or any other mitigating
4 techniques;

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

7 (7) Whether the proposed rules include provisions that are
8 more stringent than those mandated by any comparable
9 or related federal, state, or county standards, with
10 an explanation of the reason for imposing the more
11 stringent standard."

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

14 1. By amending subsections (a) to (c) to read:

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



1 board may make recommendations to the county council or the
2 mayor for appropriate action.

3 (b) The board shall consist of [eleven] thirteen members,
4 who shall be appointed by the governor pursuant to section 26-
5 34. Nominations to fill vacancies shall be made from names
6 submitted by the review board. The appointments shall reflect
7 representation of a variety of businesses in the State; provided
8 that no more than two members shall be representatives from the
9 same type of business, and that there shall be at least two
10 representatives from each county.

11 (c) All members of the board shall be either a current or
12 former owner or officer of a business and shall not be an
13 officer or employee of the federal, state, or county government.
14 A majority of the board shall elect the chairperson. [The
15 chairperson shall serve a term of not more than one year, unless
16 removed earlier by a two-thirds vote of all members to which the
17 board is entitled.]"

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

19 "(f) The board shall submit an annual report to the
20 legislature twenty days prior to each regular session detailing
21 any requests from small business owners for review of any rule
22 adopted by [a state] any agency, and any recommendations made by



1 the board to an agency or the legislature regarding the need for
2 a rule change or legislation. The report shall also contain a
3 summary of the comments made by the board to agencies regarding
4 its review of proposed new or amended rules."

5 SECTION 6. Section 201M-6, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) In addition to the basis for filing a petition
8 provided in section 91-6, any affected small business may file a
9 written petition with the agency that has adopted the rules
10 objecting to all or part of any rule affecting small business on
11 any of the following grounds:

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

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

19 (3) These impacts were not previously considered at the
20 public hearing on the rules;

21 (4) The rules create an undue barrier to the formation,
22 operation, and expansion of small businesses in a



1 manner that significantly outweighs its benefit to the
2 public;

3 (5) The rules are obsolete, duplicate, overlap, [or]
4 conflict with, or are more burdensome than rules
5 adopted by another agency or violate the substantive
6 authority under which the rules were adopted; or

7 (6) The technology, economic conditions, or other relevant
8 factors justifying the purpose for the rules have
9 changed or no longer exist."

10 SECTION 7. Section 2, Act 230, Session Laws of Hawaii
11 2008, is repealed.

12 [~~SECTION 2. The rights of small businesses in the State~~
13 ~~of Hawaii include but are not limited to:~~

14 ~~(1) The right to expect state agencies to provide a~~
15 ~~prompt, accurate, and courteous response to a request~~
16 ~~for information and to work together to ensure ready~~
17 ~~access to the information needed to assist businesses~~
18 ~~in their relationships with state government;~~

19 ~~(2) The right to a clear, stable, and predictable~~
20 ~~regulatory and record keeping environment with easily~~
21 ~~accessible information and administrative rules in as~~
22 ~~clear and concise language as is practicable,~~



- 1 ~~including the posting of all proposed administrative~~
2 ~~rule changes on the Internet website of the office of~~
3 ~~the lieutenant governor;~~
- 4 ~~(3) The right to request and receive timely notice of an~~
5 ~~agency's rulemaking proceedings. The notice should be~~
6 ~~mailed to all persons who have made a written request~~
7 ~~for such a notice;~~
- 8 ~~(4) The right to be treated equally and fairly, with~~
9 ~~reasonable access to state services;~~
- 10 ~~(5) The right to a one stop permitting process that will,~~
11 ~~in the long term, include a centralized Internet~~
12 ~~website based application system. This site's goals~~
13 ~~are to have quick and responsible timeframes to~~
14 ~~process state and county permits, licenses,~~
15 ~~registrations, and approvals, when appropriate, to~~
16 ~~simplify and reduce the filing of forms affecting~~
17 ~~business;~~
- 18 ~~(6) The right to a timely response to an application for a~~
19 ~~permit, license, registration, or approval necessary~~
20 ~~to operate the small business, within the established~~
21 ~~maximum period of time for that agency in accordance~~
22 ~~with section 91-13.5, Hawaii Revised Statutes;~~



- 1 ~~(7) The right to renewal of essential permits, licenses,~~
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- 10 ~~(8) Whenever a contested case hearing is provided by law,~~
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19 ~~wrongdoing until the agency proves otherwise by a~~
20 ~~preponderance of the evidence. The small business~~
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1 ~~by the agency. In the event of an unfavorable~~
2 ~~decision, the business should have the right to a~~
3 ~~judicial review pursuant to section 91-14, Hawaii~~
4 ~~Revised Statutes;~~

5 ~~(9) The right to privacy regarding confidential and~~
6 ~~proprietary business information when competing for~~
7 ~~state procurement contracts. No state agency shall~~
8 ~~mandate the disclosure of confidential or proprietary~~
9 ~~business information as a condition of obtaining any~~
10 ~~contract or payment under any contract when a contract~~
11 ~~is to be awarded on a firm fixed price or cost plus~~
12 ~~fixed price basis;~~

13 ~~(10) The right to all of the protections afforded in the~~
14 ~~Taxpayer Bill of Rights, P.L. 104-168;~~

15 ~~(11) The right to submit complaints regarding a violation~~
16 ~~of these rights or any other administrative acts of~~
17 ~~state and county agencies with the office of the~~
18 ~~ombudsman, in accordance with chapter 96, Hawaii~~
19 ~~Revised Statutes;~~

20 ~~(12) The right to request information and an opinion from~~
21 ~~the office of information practices, in accordance~~
22 ~~with chapters 92 and 92F, Hawaii Revised Statutes;~~



- 1 with regard to access to information from public
2 meetings or the release of government documents;
- 3 ~~(13) The right to provide information to the division of~~
4 ~~consumer advocacy in accordance with chapter 269,~~
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6 ~~the purview of the public utilities commission;~~
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- 11 ~~(15) The right to access the small business advocate in the~~
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14 ~~ensure government resources are coordinated on behalf~~
15 ~~of small business and the rights of businesses are~~
16 ~~being upheld; and~~
- 17 ~~(16) The right to administrative rule review pursuant to~~
18 ~~the Small Business Regulatory Flexibility Act by~~
19 ~~filing a petition with the small business regulatory~~
20 ~~review board in accordance with section 201M-6, Hawaii~~
21 ~~Revised Statutes."]~~



S.B. NO. 1276

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.
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INTRODUCED BY:

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Report Title:

Small Business Regulatory Flexibility

Description:

Makes various administrative and technical amendments to the small business regulatory flexibility act. Codifies the small business bill of rights.

