

## ACT 230

H.B. NO. 2781

A Bill for an Act Relating to Small Business.

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

SECTION 1. The legislature finds that small businesses are an essential element in strengthening and diversifying Hawaii's economy and creating jobs for our people. To help ensure that they can achieve this goal, a "small business bill of rights" would afford small businesses equal and fair treatment, as well as reduce the numerous roadblocks to business success, which will inevitably lead to more investment and job growth in Hawaii.

The legislature also finds that in the past decade, states adopting a less burdensome method of issuing permits and enforcing laws have obtained more cooperation and have increased regulatory compliance by working in partnership with businesses. Because the regulatory system is often driven by a "fine-and-punishment" approach, state agencies and private businesses often are unnecessarily antagonistic. The small business regulatory review board was established by the legislature in 1998 to address these concerns. It works closely with state and county agencies to adopt rules that help reduce the regulatory burden. A "bill of rights" is an essential part of the review process.

Additionally, the legislature finds that to ensure that state administrative rules remain relevant to evolving business practices and conditions, a "sunset" process for review of state administrative rules should be put into effect. Every administrative rule maintained by any state agency should be reviewed, updated, and, if appropriate, eliminated by that agency. The small business regulatory review board should assist in that process by reviewing on a periodic basis existing rules to ensure that more innovative approaches to business regulation are fully considered.

"Small business," meaning any legal entity that is independently owned and operated and employs not more than 100 full-time employees, is the backbone of Hawaii's economy, and is central to Hawaii's way of life. More than 95 per cent of all Hawaii establishments are small businesses, and they provide jobs for 60 per cent of all Hawaii employees. Accordingly, future growth in Hawaii's workforce will come primarily from new, homegrown businesses and from existing small businesses that hire new workers.

Hawaii residents should be able to enjoy a business culture that encourages and supports small business. Hawaii currently has the natural, technical, and human resources to ensure that every person who wants to work can achieve meaningful employment and that every company has access to what it needs not only to survive but also to thrive.

The purpose of this Act is to:

- (1) Set forth specific “rights” that small businesses should have and to allow them to achieve success for themselves and their employees for the good of all the people of Hawaii;
- (2) Require agencies to perform and include in their small business impact statement for proposed rules, a more rigorous examination and justification of rules that impose standards more stringent than those mandated by any comparable or related federal, state, or county laws; and
- (3) Require the small business regulatory review board to convene a working group to review the process and procedures related to rulemaking, as established under chapter 201M, Hawaii Revised Statutes.

## PART I

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

- (1) The right to expect state agencies to provide a prompt, accurate, and courteous response to a request for information and to work together to ensure ready access to the information needed to assist businesses in their relationships with state government;
- (2) The right to a clear, stable, and predictable regulatory and record-keeping environment with easily accessible information and administrative rules in as clear and concise language as is practicable, including the posting of all proposed administrative rule changes on the Internet website of the office of the lieutenant governor;
- (3) The right to request and receive timely notice of an agency’s rulemaking proceedings. The notice should be mailed to all persons who have made a written request for such a notice;
- (4) The right to be treated equally and fairly, with reasonable access to state services;
- (5) The right to a one-stop permitting process that will, in the long term, include a centralized Internet website-based application system. This site’s goals are to have quick and responsible timeframes to process state and county permits, licenses, registrations, and approvals, when appropriate, to simplify and reduce the filing of forms affecting business;
- (6) The right to a timely response to an application for a permit, license, registration, or approval necessary to operate the small business, within the established maximum period of time for that agency in accordance with section 91-13.5, Hawaii Revised Statutes;
- (7) The right to renewal of essential permits, licenses, registrations, or approvals, absent a specific reason for nonrenewal. All issuing agencies shall take action to grant or deny any renewal application for a business or development-related permit, license, registration, or approval within the established maximum period of time for that agency. The reasons for a denial should be clearly stated and under conditions set forth in law;
- (8) Whenever a contested case hearing is provided by law, in the event a regulatory agency takes action against a business, the right to expect a timely hearing. Officials conducting such hearings should be impartial.

Small businesses should be provided a full and complete hearing to present their explanation of any alleged violation, deficiency, or wrongdoing. In any hearing, there should be a presumption that the small business did not commit an alleged violation or wrongdoing until the agency proves otherwise by a preponderance of the evidence. The small business should have the right to present evidence, both oral and written. This evidence must be fully considered by the agency. In the event of an unfavorable decision, the business should have the right to a judicial review pursuant to section 91-14, Hawaii Revised Statutes;

- (9) The right to privacy regarding confidential and proprietary business information when competing for state procurement contracts. No state agency shall mandate the disclosure of confidential or proprietary business information as a condition of obtaining any contract or payment under any contract when a contract is to be awarded on a firm fixed price or cost plus fixed price basis;
- (10) The right to all of the protections afforded in the Taxpayer Bill of Rights, P.L. 104-168;
- (11) The right to submit complaints regarding a violation of these rights or any other administrative acts of state and county agencies with the office of the ombudsman, in accordance with chapter 96, Hawaii Revised Statutes;
- (12) The right to request information and an opinion from the office of information practices, in accordance with chapters 92 and 92F, Hawaii Revised Statutes, with regard to access to information from public meetings or the release of government documents;
- (13) The right to provide information to the division of consumer advocacy in accordance with chapter 269, Hawaii Revised Statutes, with regard to issues under the purview of the public utilities commission;
- (14) The right to request information from the office of consumer protection, in accordance with chapter 487, Hawaii Revised Statutes, with regard to business and consumer issues;
- (15) The right to access the small business advocate in the department of business, economic development, and tourism regarding any dispute with a state agency to ensure government resources are coordinated on behalf of small business and the rights of businesses are being upheld; and
- (16) The right to administrative rule review pursuant to the Small Business Regulatory Flexibility Act by filing a petition with the small business regulatory review board in accordance with section 201M-6, Hawaii Revised Statutes.

## PART II

SECTION 3. Section 201M-2, Hawaii Revised Statutes, is amended to read as follows:

**“§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 pre-

pare 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.

~~(e)~~ (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 de-

scribe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives.”

### PART III

SECTION 4. (a) The small business regulatory review board shall convene a working group to review the process and procedures related to rulemaking, as established under chapter 201M, Hawaii Revised Statutes.

(b) The working group shall include but not be limited to representatives of small business organizations, the department of business, economic development, and tourism, the department of commerce and consumer affairs, and others as deemed appropriate. The chairperson of the small business regulatory review board shall serve as chair of the working group.

(c) The working group shall review and make recommendations regarding the rulemaking provisions under chapter 201M, Hawaii Revised Statutes, in particular:

- (1) Whether the current statutes are adequate to meet the concerns of small business;
- (2) What concerns have been raised by small businesses, the small business regulatory review board, or government agencies in implementing the statutes;
- (3) The level of difficulty in adequately meeting the requirements of the statutes; and
- (4) Any other issues that may arise during the review.

(d) The small business regulatory review board shall submit the findings and recommendations of the working group, including any legislation necessary to implement the recommendations, to the legislature no later than twenty days prior to the convening of the regular session of 2009.

### PART IV

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)