
A BILL FOR AN ACT

RELATING TO SMALL BUSINESS.

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

1 **PART I**

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

10 The legislature also finds that in the past decade, states
11 adopting a less burdensome method of issuing permits and
12 enforcing laws have obtained more cooperation and have increased
13 regulatory compliance by working in partnership with businesses.
14 Because the regulatory system is often driven by a "fine-and-
15 punishment" approach, state agencies and private businesses
16 often are unnecessarily antagonistic. The small business
17 regulatory review board was established by the legislature in
18 1998 to address these concerns. It works closely with state and



1 county agencies that adopt rules to help reduce the regulatory
2 burden. A "bill of rights" is an essential part of the review
3 process.

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

14 "Small business", meaning any legal entity that is
15 independently owned and operated and employs not more than one
16 hundred full-time employees, is the backbone of Hawaii's
17 economy, and is central to Hawaii's way of life. More than
18 ninety-five per cent of all Hawaii establishments are small
19 businesses, and they provide jobs for sixty per cent of all
20 Hawaii employees. Accordingly, future growth in Hawaii's
21 workforce will come primarily from new, homegrown businesses and
22 from existing small businesses that hire new workers.



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

7 The purpose of this Act is to:

- 8 (1) Set forth specific "rights" that small businesses
9 should have and to allow them to achieve success for
10 themselves and their employees for the good of all the
11 people of Hawaii;
- 12 (2) Authorize the ombudsman to investigate complaints of
13 violations of the foregoing rights; and
- 14 (3) Require the small business regulatory service board to
15 convene a working group to review the process and
16 procedures related to rulemaking, as established under
17 chapter 201M, Hawaii Revised Statutes.

18 **PART II**

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

- 21 (1) The right to expect state agencies to provide a
22 prompt, accurate, and courteous response to a request



- 1 for information and to work together to ensure ready
2 access to the information needed to assist businesses
3 in their relationships with state government;
- 4 (2) The right to a clear, stable, and predictable
5 regulatory and record-keeping environment with easily
6 accessible information and administrative rules in as
7 clear and concise language as is practicable,
8 including the posting of all proposed administrative
9 rule changes on the internet website of the office of
10 the lieutenant governor;
- 11 (3) The right to timely notice of an agency's rulemaking
12 proceedings when requested. The notice should be
13 mailed to all persons who have made a written request
14 for such a notice;
- 15 (4) The right to be treated equally and fairly, with
16 reasonable access to state services;
- 17 (5) The right to a one-stop permitting process that will,
18 in the long term, include a centralized internet
19 website-based application system. This site's goals
20 are to have quick and responsible timeframes to
21 process state and county permits, licenses,
22 registrations, and approvals, when appropriate, to



1 simplify and reduce the filing of forms affecting
2 business;

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

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

17 (8) Whenever a contested case hearing is provided by law,
18 in the event a regulatory agency takes action against
19 a business, the right to expect a timely hearing.
20 Officials conducting such hearings should be
21 impartial. Small businesses should be provided a full
22 and complete hearing to present their explanation of



1 any alleged violation, deficiency, or wrongdoing. In
2 any hearing, there should be a presumption that the
3 small business did not commit an alleged violation or
4 wrongdoing until the agency proves otherwise by a
5 preponderance of the evidence. The small business
6 should have the right to present evidence, both oral
7 and written. This evidence must be fully considered
8 by the agency. In the event of an unfavorable
9 decision, the business should have the right to a
10 judicial review pursuant to section 91-14, Hawaii
11 Revised Statutes;

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

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



- 1 (11) The right to submit complaints regarding the
2 administrative actions of state and county agencies
3 with the office of the ombudsman, in accordance with
4 chapter 96, Hawaii Revised Statutes;
- 5 (12) The right to request information and an opinion from
6 the office of information practices, in accordance
7 with chapters 92 and 92F, Hawaii Revised Statutes,
8 with regard to access to information from public
9 meetings or the release of government documents;
- 10 (13) The right to provide information to the division of
11 consumer advocacy in accordance with chapter 269,
12 Hawaii Revised Statutes, with regard to issues under
13 the purview of the public utilities commission;
- 14 (14) The right to request information from the office of
15 consumer protection, in accordance with chapter 487,
16 Hawaii Revised Statutes, with regard to business and
17 consumer issues;
- 18 (15) The right to access the small business advocate in the
19 department of business, economic development, and
20 tourism regarding any dispute with a state agency to
21 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 the Small Business Regulatory Flexibility Act by
5 filing a petition with the small business regulatory
6 review board in accordance with section 201M-6, Hawaii
7 Revised Statutes.

8 **PART III**

9 SECTION 3. (a) The small business regulatory review board
10 shall convene a working group to review the process and
11 procedures related to rulemaking, as established under chapter
12 201M, Hawaii Revised Statutes.

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

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



- 1 (1) Whether the current statutes are adequate to meet the
2 concerns of small business;
- 3 (2) What concerns have been raised by small businesses,
4 the small business regulatory review board, or
5 government agencies in implementing the statutes;
- 6 (3) The level of difficulty in adequately meeting the
7 requirements of the statutes; and
- 8 (4) Any other issues that may arise during the review.
- 9 (d) The small business regulatory review board shall
10 submit the findings and recommendations of the working group,
11 including any legislation necessary to implement the
12 recommendations, to the legislature no later than twenty days
13 prior to the convening of the regular session of 2009.

14 **PART IV**

15 SECTION 4. Section 96-8, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§96-8 Appropriate subjects for investigation.** An
18 appropriate subject for investigation is an administrative act
19 of an agency which might be:

- 20 (1) Contrary to law;
- 21 (2) Unreasonable, unfair, oppressive, or unnecessarily
22 discriminatory, even though in accordance with law;



- 1 (3) Based on a mistake of fact;
- 2 (4) Based on improper or irrelevant grounds;
- 3 (5) Unaccompanied by an adequate statement of reasons;
- 4 (6) Performed in an inefficient manner; [~~or~~]
- 5 (7) Otherwise erroneous[~~-~~]; or
- 6 (8) A violation of the small business bill of rights.

7 The ombudsman may investigate to find an appropriate
8 remedy."

9 **PART V**

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

12 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Small Business Regulatory Review Board; Rule Impact; Study

Description:

Directs the small business regulatory review board to convene a working group to study and make recommendations to resolve the concerns related to chapter 201M, HRS; and report to the 2009 legislature on its findings and recommendations, including any legislation necessary to implement the recommendations.

Establishes the Small Business Bill of Rights; authorizes the ombudsman to investigate complaints of violations of the Small Business Bill of Rights. Eff. 7/1/2050. (SD2)

