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# 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 small  
7        businesses in their relationships with state  
8        government;
- 9        (2)    The right to a clear, stable, and predictable  
10       regulatory and recordkeeping environment with easily  
11       accessible information and administrative rules in as  
12       clear and concise language as is practicable,  
13       including the posting of all proposed administrative  
14       rule changes on the internet website of the office of  
15       the lieutenant governor;
- 16       (3)    The right to request and receive timely notice of an  
17       agency's rulemaking proceedings.    The notice shall be  
18       mailed to all persons who have made a written request  
19       to receive those notices;
- 20       (4)    The right to be treated equally and fairly, with  
21       reasonable access to state services;

- 1       (5) The right to a one-stop permitting process that will,  
2       in the long term, include a centralized internet  
3       website-based application system. This website's  
4       goals are to have quick and dependable timeframes to  
5       process state and county permits, licenses,  
6       registrations, and approvals, when appropriate, to  
7       simplify and reduce the filing of forms affecting  
8       small business;
- 9       (6) The right to a timely response to an application for a  
10       permit, license, registration, or approval necessary  
11       to operate the small business, within the established  
12       maximum period of time for that agency in accordance  
13       with section 91-13.5;
- 14       (7) The right to renewal of essential permits, licenses,  
15       registrations, or approvals, absent a specific reason  
16       for nonrenewal. All issuing agencies shall take  
17       action to grant or deny any renewal application for a  
18       small business or development-related permit, license,  
19       registration, or approval within the established  
20       maximum period of time for that agency. The reasons  
21       for a denial shall be clearly stated and under  
22       conditions set forth in law;

- 1       (8) Whenever a contested case hearing is provided by law,  
2       in the event a regulatory agency takes action against  
3       a small business, the right to a timely hearing.  
4       Officials conducting hearings shall be impartial.  
5       Small businesses shall be provided a full and complete  
6       hearing to present their explanation of any alleged  
7       violation, deficiency, or wrongdoing. In any hearing,  
8       there shall be a presumption that the small business  
9       did not commit an alleged violation or wrongdoing  
10       until the agency proves otherwise by a preponderance  
11       of the evidence. The small business shall have the  
12       right to present oral and written evidence. The  
13       evidence on the record of the case shall be fully  
14       considered by the agency. In the event of an  
15       unfavorable decision, the small business shall have  
16       the right to a judicial review pursuant to section  
17       91-14;
- 18       (9) The right to privacy regarding confidential and  
19       proprietary small business information when competing  
20       for state procurement contracts. No state agency  
21       shall mandate the disclosure of confidential or  
22       proprietary information as a condition of obtaining

- 1           any contract or payment under any contract when a  
2           contract is to be awarded on a firm fixed price or  
3           cost plus fixed price basis;
- 4       (10) The right to all of the protections afforded in the  
5           Taxpayer Bill of Rights, P.L. 104-168;
- 6       (11) The right to submit complaints regarding a violation  
7           of these rights or any other administrative acts of  
8           state and county agencies with the office of the  
9           ombudsman, in accordance with chapter 96;
- 10      (12) The right to request information and an opinion from  
11           the office of information practices, in accordance  
12           with chapters 92 and 92F, with regard to access to  
13           information from public meetings or the release of  
14           government documents;
- 15      (13) The right to provide information to the division of  
16           consumer advocacy in accordance with chapter 269, with  
17           regard to issues under the purview of the public  
18           utilities commission;
- 19      (14) The right to request information from the office of  
20           consumer protection, in accordance with chapter 487,  
21           with regard to business and consumer issues;

1        (15) The right to access the small business advocate in the  
2                    department of business, economic development, and  
3                    tourism regarding any dispute with a state agency to  
4                    ensure government resources are coordinated on behalf  
5                    of small business and the rights of small businesses  
6                    are being upheld; and

7        (16) The right to administrative rule review pursuant to  
8                    this chapter by filing a petition with the small  
9                    business regulatory review board in accordance with  
10                   section 201M-6."

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

13                1. By adding two new definitions to be appropriately  
14 inserted and to read:

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

16                "State" means the State of Hawaii."

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

19                "Affected small businesses" or "affects small business"  
20 means any potential or actual requirement imposed upon a small  
21 business through an agency's proposed or adopted rule that will  
22 cause or has caused a direct and significant economic burden

1 upon a small business, or is directly related to the formation,  
2 operation, or expansion of a small business.

3 "Agency" means each [~~state or county~~] board, commission,  
4 department, or officer under the jurisdiction of the State or  
5 its counties authorized by law to make rules, except those in  
6 the legislative or judicial branches."

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

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

19 (b) If the proposed rules affect small business, the  
20 agency shall consider creative, innovative, or flexible methods  
21 [~~of compliance~~] that are less burdensome and restrictive for  
22 small businesses and prepare a small business impact statement

1 to be submitted with the proposed rules to the departmental  
2 advisory committee on small business and the board when the  
3 rules are essentially complete and before the rules are  
4 submitted to the governor for approval for public hearing. The  
5 statement shall provide a reasonable determination of the  
6 following:

- 7 (1) The businesses that will be directly affected by, bear  
8 the costs of, or directly benefit from the proposed  
9 rules;
- 10 (2) Description of the small businesses that will be  
11 required to comply with the proposed rules and how  
12 they may be adversely affected;
- 13 (3) In dollar amounts, the increase in the level of direct  
14 costs such as fees or fines, and indirect costs such  
15 as reporting, recordkeeping, equipment, construction,  
16 labor, professional services, revenue loss, or other  
17 costs associated with compliance;
- 18 (4) The probable monetary costs and benefits to the  
19 implementing agency and other agencies directly  
20 affected, including the estimated total amount the  
21 agency expects to collect from any additionally



1 imposed fees and the manner in which the moneys will  
2 be used;

3 (5) The methods the agency considered or used to reduce  
4 the impact on small business such as consolidation,  
5 simplification, differing compliance or reporting  
6 requirements, less stringent deadlines, modification  
7 of the fines schedule, performance rather than design  
8 standards, exemption, or any other mitigating  
9 techniques;

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

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

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

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

20 "(a) There shall be established within the department of  
21 business, economic development, and tourism, for administrative  
22 purposes, a small business regulatory review board to review any

1 proposed new or amended rule or to consider any request from  
2 small business owners for review of any rule adopted by [~~a~~  
3 ~~state~~] any agency and to make recommendations to the agency or  
4 the legislature regarding the need for a rule change or  
5 legislation. For requests regarding county ordinances, the  
6 board may make recommendations to the county council or the  
7 mayor for appropriate action.

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

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

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

2           "(f) The board shall submit an annual report to the  
3 legislature twenty days prior to each regular session detailing  
4 any requests from small business owners for review of any rule  
5 adopted by [~~a state~~] any agency, and any recommendations made by  
6 the board to an agency or the legislature regarding the need for  
7 a rule change or legislation. The report shall also contain a  
8 summary of the comments made by the board to agencies regarding  
9 its review of proposed new or amended rules."

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

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

17           (1) The actual effect on small business was not reflected  
18           in, or significantly exceeded, the small business  
19           impact statement submitted prior to the adoption of  
20           the rules;

- 1 (2) The small business impact statement did not consider  
2 new or significant economic information that reveals  
3 an undue impact on small business;
- 4 (3) These impacts were not previously considered at the  
5 public hearing on the rules;
- 6 (4) The rules create an undue barrier to the formation,  
7 operation, and expansion of small businesses in a  
8 manner that significantly outweighs its benefit to the  
9 public;
- 10 (5) The rules are obsolete, duplicate, overlap, [~~or~~]  
11 conflict with, or are more burdensome than rules  
12 adopted by another agency or violate the substantive  
13 authority under which the rules were adopted; or
- 14 (6) The technology, economic conditions, or other relevant  
15 factors justifying the purpose for the rules have  
16 changed or no longer exist."

17 SECTION 7. Section 2, Act 230, Session Laws of Hawaii  
18 2008, is repealed.

19 [~~SECTION 2. The rights of small businesses in the State  
20 of 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 request and receive timely notice of an~~  
12 ~~agency's rulemaking proceedings. 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 a violation~~  
2       ~~of these rights or any other administrative acts of~~  
3       ~~state and county agencies with the office of the~~  
4       ~~ombudsman, in accordance with chapter 96, Hawaii~~  
5       ~~Revised Statutes;~~
- 6       ~~(12) The right to request information and an opinion from~~  
7       ~~the office of information practices, in accordance~~  
8       ~~with chapters 92 and 92F, Hawaii Revised Statutes,~~  
9       ~~with regard to access to information from public~~  
10       ~~meetings or the release of government documents;~~
- 11       ~~(13) The right to provide information to the division of~~  
12       ~~consumer advocacy in accordance with chapter 269,~~  
13       ~~Hawaii Revised Statutes, with regard to issues under~~  
14       ~~the purview of the public utilities commission;~~
- 15       ~~(14) The right to request information from the office of~~  
16       ~~consumer protection, in accordance with chapter 487,~~  
17       ~~Hawaii Revised Statutes, with regard to business and~~  
18       ~~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       ~~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           SECTION 8. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10          SECTION 9. This Act shall take effect on January 1, 2090.

**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. Effective 01/01/90. (SD2)