

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
THEODORE E. LIU
Director

Department of Business, Economic Development, and Tourism
before the

**SENATE COMMITTEE ON
ECONOMIC DEVELOPMENT AND TAXATION**

Tuesday, March 11, 2008

1:15 p.m.

State Capitol, Conference Room 224

in consideration of

HB 2736, HD 1

RELATING TO THE SMALL BUSINESS BILL OF RIGHTS.

Chair Fukunaga, Vice Chair Espero and Members of the Committees:

The Department of Business, Economic Development & Tourism (DBEDT)

supports the purpose of House Bill 2736, HD1 "Relating to the Small Business Bill of Rights," however, we believe that a statutory basis is not the most effective way to set forth these rights. We concur with the Small Business Regulatory Review Board which has developed a brochure that these important rights should take.

This bill is the result of an initial effort that began in the 2003 legislative session. It led to the adoption of SCR 76, asking the Small Business Regulatory Review Board, administratively attached to DBEDT, to provide such a "Bill of Rights" for consideration in the 2004 legislative session. This is a far-reaching measure that affects nearly all state and county agencies, many boards and commissions and a large number of businesses defined as "small" for these purposes. We note the difficulty that many agencies may have in determining whether a business that has been cited or denied a permit has fewer

than one hundred (100) employees and thus would not know if that business was entitled to these rights as compared to larger companies, not specifically entitled to them. It would appear to require that a central registry be established so that agencies could verify the size of any entity they are dealing with.

Thank you for the opportunity to provide this testimony.

HAWAII SMALL BUSINESS BILL OF RIGHTS

Small business owners and operators should be informed of their rights, responsibilities and obligations and be assured that these rights will be protected throughout their contact with agencies and departments of the State of Hawaii, among them:

I. The right to expect agencies to provide a prompt, accurate, and courteous response to a request for information and to work together to assure ready access to the information needed to assist business in their relationship with the State;

II. The right to question the actions and decisions of agencies and elected officials without the fear of retaliation and retribution;

III. The right to expect agencies to ensure the accuracy, integrity, objectivity, and consistency of any data that is used when preparing proposed rules and when completing an analysis of the proposed rule;

IV. 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 practicable, including posting of all proposed administrative rules changes on the Internet website of the Office of the Lieutenant Governor;

V. The right to timely notice of an agency's rule making proceedings when requested. The notice shall be mailed to all persons who have made a written request for such a notice;

VI. The right to be treated equally and fairly, with reasonable access to State services;

VII. The right to expect government's efforts toward implementing a one-stop permitting process that includes a centralized internet website. The site shall 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;

VIII. The right to 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 the agency in accordance with Hawaii Revised Statutes (HRS) Section 91-13.5;

IX. The right to be informed of the reasons for a denial of an application for a permit, license, or approval, including renewals of the same, with such reasons clearly stated and pursuant to the law;

X. Whenever a contested case hearing is provided by law in the event a regulatory agency takes an adverse action against a business, the right to expect:

- A timely hearing;
- An impartial official conduction of the hearing;
- The ability to present both oral and written evidence and an explanation of any alleged violation, deficiency, or wrongdoing;

- Having that evidence fully considered by the hearing official;
- Judicial review pursuant to HRS Section 91-14 in the event of an unfavorable decision;

XI. The right to privacy protections regarding confidential and proprietary business information when competing for state procurement funds;

XII. The right to all of the protections afforded in the Hawaii Taxpayer Bill of Rights;

XIII. The right to submit complaints regarding agencies' administrative acts with the Office of the Ombudsman, in accordance with HRS Chapter 96;

XIV. The right to request information and an opinion from the Office of Information Practices under HRS Chapters 92 and 92F to access to information from public meetings or the release of government documents;

XV. The right to provide information to the Division of Consumer Advocacy in the Department of Commerce and Consumer Affairs under HRS Chapter 269 regarding issues under the purview of the Public Utilities Commission;

XVI. The right to request information from the Office of Consumer Protection under HRS Chapter 487 regarding business and consumer issues;

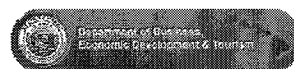
XVII. The right to access the Small Business Advocate in the Department of Business, Economic Development and Tourism regarding disputes with agencies to make sure government resources are coordinated on behalf of small business and the rights of businesses are being upheld;

XVIII. The right to request a review of administrative rules pursuant to the Small Business Regulatory Flexibility Act by filing a request with the Small Business Regulatory Review Board in accordance with HRS Section 201M-6;

XIX. The right to expect agencies to work together to help small business by providing education, training and support needed to start and run a business;

XX. The right to expect agencies to have fair dealings with small business with no requirement for gratuity, gifts or other unusual financial compensation from the business in order to have access to all the rights outlined in this document;

XXI. The right to enjoy a favorable business culture that encourages and supports small business, including a favorable tax climate, non-punitive user fees or charges, competitive rates for worker's compensation insurance, affordable health insurance for small businesses and their employees, and reasonable access to the same incentives and services available to large businesses.



www.hawaii.gov/dbedt

808-586-2594

Message from Ted Liu

Director, Department of Business,
Economic Development & Tourism

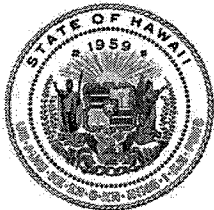


Small businesses are the heart of Hawaii's economy and are central to our way of life. The State of Hawaii recognizes that more than 95% of all businesses in Hawaii are small businesses and they employ more than 60% of Hawaii's workforce. Accordingly, Hawaii's citizens should be able to expect and enjoy a business culture that encourages and supports small business.

The Small Business Bill of Rights is an explanation or summary of the rights and expectations of small business.

This Bill of Rights outlines some of the more important rights and tenants that are available to small business owners and affect the way they do business in Hawaii.

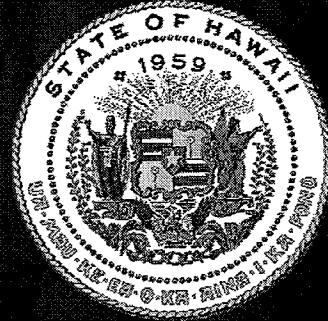
As Hawaii's business advocate, the Small Business Regulatory Review Board is dedicated to achieving complete fulfillment of the following rights, and believes that adherence to them will be mutually beneficial to all businesses in our State.



Department of Business,
Economic Development & Tourism

Small Business Bill of Rights

State of Hawaii



Small Business
Regulatory Review Board
"Hawaii's Business Advocate"

www.hawaii.gov/dbedt

808-586-2594

sbrrb@dbedt.hawaii.gov



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT
AND TAXATION

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Tuesday, March 11, 2008
1:15 p.m.

WRITTEN ONLY

**TESTIMONY ON HOUSE BILL NO. 2736, H.D. 1 – RELATING TO THE SMALL
BUSINESS BILL OF RIGHTS.**

TO THE HONORABLE CAROL FUKUNAGA, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Lawrence M. Reifurth, and I am the Director of Commerce and Consumer Affairs ("Department"). The Department appreciates the intent behind any proposal to afford small business equal and fair treatment, reduce roadblocks to business success, and to cause more investment and job growth in Hawaii. However, we are concerned about any proposal that purports to "set forth specific 'rights' that small businesses should have" when those "rights" are either aspirational (e.g., section 2(5)), or have not been defined and can not be effectively enforced. Such an approach could undercut the Department's ability to protect the interests of consumers.

Furthermore, in testimony submitted at two public hearings in the House, the

Small Business Regulatory Review Board ("SBRRB") has indicated that it believes that businesses would be better served by a Bill of Rights brochure, which it developed and launched at the end of 2007. The brochure focuses on the existing rights held by businesses. The Department concurs with the SBRRB's position that its Bill of Rights brochure already accomplishes the purposes of this legislation.

Nevertheless, if the Legislature prefers to adopt an uncodified "bill of rights" which will create rights not presently in existence and direct that the Ombudsman enforce those rights, then there are several operational concerns that must be addressed before the bill's purpose can be realized.

Section 2(5) of the bill would provide "the right to a one-stop permitting process that includes a centralized Internet website-based application system," and would provide individuals and businesses the right to lodge a complaint with the Ombudsman in the event such a system is not available. The Department is particularly supportive of efforts to provide businesses and consumers with electronic access to government services. We spearheaded the successful Hawaii Business Express, a program that pulls together diverse government agencies in one location for the convenience of those wanting to open new businesses in Hawaii. In addition, we have tasked all of our programs with the responsibility of getting as many consumer services online as quickly as possible. However, there are limitations to what can be done in the very short term.

As a result of our focus on that goal and appreciation for its value, we are sensitive to the current state of the technology and the work involved in moving from paper-based to paper-less processes. There are many, very significant hurdles to

overcome before a one-stop permitting process that includes state and county permits, licenses, registrations, and approvals can be implemented. While a laudable goal, stating this as a “right” raises the question of whether the entire “bill of rights” is intended to confer immediate rights or whether it is meant to enumerate expectations. Either the bill should be amended to make clear that these rights are not enforceable or sections such as this should be removed until they become reasonably feasible.

The “right to automatic renewal of essential ... licenses” includes a provision that license non-renewal requires notice on the part of the agency. See section 2(7). It is the Department’s experience that non-renewal is frequently the consequence of a licensee’s failure to satisfy renewal requirements (no tax clearance, no continuing education certificate, no bond, etc.). We respectfully note that the law no longer requires the “automatic renewal” of licenses, and recommend that the agency should not be charged with what appears to be an additional affirmative duty to remind a licensee that they have failed to do what they are already on notice of the need to do. It does not seem unreasonable to expect a licensed professional to take the necessary steps to renew their license if they are interested in maintaining active status.

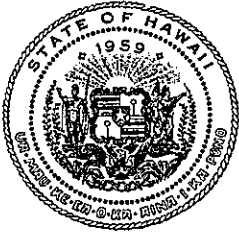
The notice of intent requirement in section 2(7) has even more far-reaching effects as it relates to enforcement agencies charged with investigating and prosecuting violations. Combined with the presumption of innocence established in section 2(8), this provision will stall enforcement efforts, and will have the ultimate effect of putting consumer protection at risk. Section 2(8) should be revised along the lines of the SBRRB Brochure (section X), which provides that “Whenever a contested case hearing

is provided by law in the event a regulatory agency takes an adverse action against a business, the right to expect: ...”.

The right to a thirty-day notice of “any adverse action” in section 2(9) is particularly troublesome in the area of enforcement. Ultimately, it is not clear what amounts to an “adverse action.” The initiation of an investigation might be deemed to be an adverse action. A licensee’s failure to renew his/her license, and the resulting non-renewal of the license, might also be deemed to be an adverse action. This should not be the agency’s obligation.

There are other, similar, areas of concern in this bill. We discussed these concerns with the Department of Business, Economic Development and Tourism and the SBRRB when a similar measure, S.B. No. 1380 was considered by the Legislature during the 2005 and 2006 legislative sessions. We agree with the SBRRB that increased efforts should be made to educate small businesses about their existing rights by means of the SBRRB brochure, a copy of which is attached, rather than an uncodified law that would subject agencies to an investigation for the failure to immediately achieve what may be laudatory goals over time.

Thank you for the opportunity to testify on this bill.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586 2594
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Linda Lingle
Governor

To: Chair Fukunaga, Vice Chair Espero, and Committee Members on Economic Development and Taxation

Theodore E. Liu
Director, DBEDT

Re: HB 2736, HD1 – “Relating to the Small Business Bill of Rights.”

Members

Lynne Woods
Chairperson
Maui

Hearing Date: March 11, 2008

AMENDED

Sharon L. Pang
Vice Chairperson
Oahu

Aloha:

My name is Lynne Woods and I offer testimony in **support** of HB 2736, HD1, as Chairperson of the Small Business Regulatory Review Board on behalf of our Board Members.

Michael Yee
2nd Vice Chairperson
Oahu

Peter Yukimura
Kauai

Dorvin Leis
Maui

It can be said that all of the issues in the Bill of Rights are dealt with in existing laws; however, the actions against the business community over the past two decades indicate a lack of acknowledgement of the existing laws or regulations. Businesses have been denied licenses to operate, suffered from police, such as raids on their business locations as political retaliation, and forced into hearings held by partisan individuals extracting large penalties for issues brought by angry employees seeking retaliation.

Bruce E. Bucky
Oahu

Charles Au
Oahu

Donald Dymond
Oahu

Richard Schnitzler
Hawaii

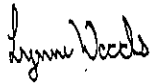
The Board spent many hours researching the original Bill of Rights. When we established the concept of the Small Business Bill of Rights bill five years ago, we were not asking for considerations for criminal activities, but for the understanding that businesses should be innocent until proven guilty. Basic rights extended to all citizens of the United States.

Our Board is most appreciative of the change of attitude towards business shown over the past few years. The support we are receiving from current department directors and from many elected officials is gratifying. We urge the passing of this proposed bill in order to ensure that future administrations and those holding public office will continue the work on behalf of business and support our rights.

We are also appreciative of your re-establishing these most important basic business rights, however, the Board believes that there have been misunderstandings and difficulties the Small Business Bill of Rights suffered during previous legislative sessions. **We therefore believe that although businesses would be better served by a Bill of Rights brochure, we are also in support of this bill that creates a more formal Bill of Rights. The Bill of Rights brochure, which was created by this Board and launched at the end of calendar year 2007, however, also focuses on twenty-one existing rights held by businesses in the State of Hawaii.**

On behalf of the members of the Small Business Regulatory Review Board, I thank you for your attention to the issues our Hawaii's business community.

Yours truly,



Lynne Woods
Chairperson
Small Business Regulatory Review Board

Tuesday, March 11, 2008



Robin K. Matsunaga
Ombudsman

David T. Tomatani
First Assistant

**OFFICE OF THE OMBUDSMAN
STATE OF HAWAII**

465 South King Street, 4th Floor
Honolulu, Hawaii 96813
Tel: 808-587-0770 Fax: 808-587-0773 TTY: 808-587-0774
complaints@ombudsman.hawaii.gov

**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON H.B. NO. 2736, H.D.1, A BILL FOR AN ACT
RELATING TO THE SMALL BUSINESS BILL OF RIGHTS**

**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION
MARCH 11, 2008**

Chair Fukunaga and Members:

Thank you for this opportunity to testify on H.B. No. 2736, H.D. 1. My testimony pertains only to those portions of the bill that relate to the Office of the Ombudsman, for which I have the following concerns.

First, paragraph 12 of Section 2 of the bill provides small businesses:

The right to request information relating to administrative actions of state agencies from the office of the ombudsman, in accordance with chapter 96, Hawaii Revised Statutes, except where prohibited by law.

I believe that as currently written, this provision may cause a small business to incorrectly assume that the Ombudsman is authorized to disclose information relating to a complaint that is being or has been investigated by the Ombudsman. However, Section 96-9, HRS, requires the Ombudsman to keep confidential all matters coming before the Ombudsman, except as necessary to carry out the Ombudsman's duties and to support the Ombudsman's recommendations. Therefore, **I am requesting that the current language in paragraph 12 be replaced with the following:**

The right to submit complaints regarding the administrative actions of state and county agencies with the office of the ombudsman, in accordance with chapter 96, Hawaii Revised Statutes.

The revised language I am requesting more accurately describes the services that are available to small businesses and other members of the public from the Office of the Ombudsman.

Second, Section 3 of the bill authorizes any person injured by reason of any violation of the Small Business Bill of Rights to file a complaint with the Ombudsman, and also requires the Ombudsman to promptly investigate the complaint and render findings, opinions, and recommendations. However, requiring the investigation of every complaint conflicts with the existing statutory authority provided to the Ombudsman to determine whether a complaint is appropriate for investigation. In effect, this will create a class of complainants that is treated separately, if not preferentially, from the general public. There are a number of reasons why the Ombudsman may decide not to investigate a complaint. Some of these reasons include:

1. The complaint is not timely.
2. There is an available process to remedy the complaint.
3. The complaint was previously investigated.
4. The complainant refuses to be identified.
5. The office lacks the resources to investigate the complaint.
6. The office lacks the expertise to investigate the complaint.

Retaining the discretion to determine which complaints to investigate is very important to the overall functions and effectiveness of the Ombudsman, given the finite resources of the office. Therefore, **I am requesting that this bill be amended by deleting Section 3.** (Since the existing law already allows any person, including a small business, to submit a complaint to the Ombudsman, if this committee agrees that the Ombudsman should not be required to investigate every complaint lodged by persons who are injured by reason of any violation of the Small Business Bill of Rights, then none of the language in Section 3 is necessary.)

Finally, **I am also requesting the deletion of Section 4 of this bill**, which proposes to add "a violation of the Small Business Bill of Rights" as a specific subject that would be appropriate for investigation by the Ombudsman. Since this bill would establish the Small Business Bill of Rights in law, any administrative act which allegedly violates a provision of the Small Business Bill of Rights would also be an alleged violation of the law, and an administrative act that is contrary to law is already listed in Section 96-8, HRS, as an appropriate subject for the Ombudsman's investigation. Therefore, the proposed amendment is not necessary.

Your favorable consideration of the requested amendments to H.B. No. 2736, H.D. 1, would be greatly appreciated.

If you should have any questions, I would be happy to answer them.



Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair
Committee on Economic Development & Taxation
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, March 11, 2008
 1:15 pm
 Conference Room 224

RE: HB2736, HD1, Relating to the Small Business Bill of Rights

Chair Fukunaga, Vice Chair Espero, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. More than 50% of our members have fewer than fifty employees, and of those, two-thirds have fewer than ten.

RMH supports HB 2736, HD1 and applauds the Legislature for recognizing the benefit of small business to Hawaii's economy and the indomitable spirit of our entrepreneurs. Acknowledging the special challenges of small businesses, our Board of Directors is committed to continue focusing considerable resources on this vital segment of our industry.

Thank you for your consideration and for the opportunity to comment on this measure.

President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202
email: retailmerchantssofhawaii@RMHawaii.org

testimony

From: Meja Kaniho [mkaniho@hawaii.rr.com]
Sent: Friday, March 07, 2008 3:52 PM
To: testimony
Subject: NFIB - HB 2736, HD1 - testimony submittal
Attachments: NFIB testimony - HB 2736, HD1 - small business bill of rights - 3-07-08.doc

Please see attached. Thank you.

Melissa T. Pavlicek
HAWAII PUBLIC POLICY ADVOCATES, LLC
1099 Alakea Street, Suite 2140
Honolulu, Hawaii 96813
Telephone: 447-1840
Facsimile: 523-3712

March 11, 2008

To: Senate Committee on Economic Development and Taxation

From: Melissa Pavlicek
pavlicekm001@hawaii.rr.com

Testifier: Melissa T. Pavlicek – National Federation of Independent Business

Date: Tuesday, March 11, 2008

Time: 1:15 p.m.

Conference Room 224

Measure Number – HB 2736, HD1 – Relating to the Small Business Bill of Rights

Committee is requesting 5 copies.

Thank you.



**Before the Senate Committee on
Economic Development and Taxation**

DATE: Tuesday, March 11, 2008

TIME: 1:15 p.m.

PLACE: Conference Room 224

**Re: HB 2736, HD1
Relating to the Small Business Bill of Rights
Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you pass **HB 2736, HD1**. NFIB supports this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We believe that a small business bill of rights will be an important step toward supporting Hawaii's small businesses.

Thank you for the opportunity to testify.



**The Chamber of
Commerce of Hawaii**

Since 1850

**Testimony to Senate Committee on Economic Development and Taxation
Hawaii State Capitol
Conference Room 224
415 South Beretania Street
Tuesday, March 11, 2008 at 1:15 pm**

SUBJECT: HOUSE BILL 2736 HD1- RELATING TO SMALL BUSINESS BILL OF RIGHTS

Chair Fukunaga, Vice Chair Espero, and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I appreciate the opportunity to state The Chamber's support of House Bill No. 2736 HD1, relating to the Small Business Bill of Rights.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The measure, as received by your Committee, establishes the Small Business Bill of Rights. It also requires the Ombudsman to investigate complaints of violations of the Small Business Bill of Rights.

The Chamber supports this bill as it recognizes the benefit of small business to Hawaii. Small businesses play an integral role in providing jobs and sustaining the economy. Therefore, it is essential that we provide the type of security and equity that this bill offers.

In light of this, The Chamber of Commerce of Hawaii supports HB 2736 HD1 and respectfully requests that the measure be passed for further discussion.

Thank you for the opportunity to express our views on this matter.