

**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE  
GOVERNOR  
THEODORE E. LIU  
DIRECTOR  
MARK K. ANDERSON  
ACTING DEPUTY DIRECTOR

No. 1 Capitol District Bldg., 250 South Hotel St., 5th Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

Tel.: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**THEODORE E. LIU**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEES ON  
ECONOMIC DEVELOPMENT & BUSINESS CONCERNS  
AND  
AGRICULTURE**

Tuesday, February 5, 2008  
8:30 a.m.

State Capitol, Conference Room 325

in consideration of  
**HB 2781**  
**RELATING TO SMALL BUSINESS**

Chair Yamashita, Chair Tsuji, Vice Chair Wakai, Vice Chair Brower and

Members of the Committees:

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of House Bill 2781 "Relating to Small Business," and also proposes a minor change to the reporting suggestion. HB 2781 includes additional requirements of the Small Business Regulatory Review Board (Board) and adds specific requirements to the small business impact statement statutorily referred to in the Regulatory Flexibility Act (RFA). The Hawaii RFA was initially passed in 1998 and later codified as Chapter 201M, Hawaii Revised Statutes. This law is now a model for many other states that have joined Hawaii in helping local small businesses through a fair and equitable regulatory process. To date, 18 states have active regulatory flexibility statutes or executive orders,

19 states have partial or partially-used regulatory flexibility statutes, and 6 states introduced similar legislation in 2007.

The bill provides that when a rule-making agency proposes a rule that imposes a higher standard than federal, state or county law, the agency is required to justify the higher standards; such standards must also be justified on a periodic basis. The bill further describes specific criteria utilized when justifying such higher standards. DBEDT is in support of the proposed criteria as it addresses many of the pertinent questions that the Board is already seeking from the rule-making agencies during its rule review.

Section 2 (a) of the bill provides that the Review Board “periodically evaluate existing rules affecting small business,” and in Section 3. 2. Subsection (c), the bill provides that the Review Board’s 201M-7 report “may be combined with the annual report required by section 201M-5(f).” Since the RFA was enacted, all existing rules pursuant to 201M-7 that affect small business then in effect were to be looked at by the Review Board; since that time the process has been successful and completed twice. The Board and DBEDT are suggesting that the added verbiage not be included in the statute as it is believed that the two different reports will lose the specific focus and intent of each separate analysis and purpose.

In summary, we support the requirement that provides when a proposed rule is more stringent than those mandated that the small business impact statement include the agency’s comparisons and justification. However, we believe that the current statutory reporting requirements are appropriate and flexible methods of accomplishing the RFA’s objectives.

Thank you for the opportunity to provide this testimony.



LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

LAWRENCE M. REIFURTH  
DIRECTOR  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT  
AND BUSINESS CONCERNS

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Tuesday, February 5, 2008  
8:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 2781 – RELATING TO SMALL BUSINESS**

TO THE HONORABLE KYLE YAMASHITA, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Lawrence Reifurth, and I am the Director of the Department of Commerce and Consumer Affairs (“Department”). The Department strongly supports the role of small business in Hawaii’s economy and appreciates as well the role that the Small Business Regulatory Review Board (SBRRB) plays in the process of state regulation of business. Nevertheless, we have some concerns over the implementation of this proposal.

I would first note that the current process, under chapters 91 and 201M, HRS, already provides interested parties with ample opportunity to share their views with the rule-making agency before rules are adopted. In addition to having an opportunity to testify before the SBRRB, interested parties can testify at the public hearing(s) on a proposed rule. These protections are appropriate and help ensure that regulations do not slip by without input.

The Department strongly appreciates the value in requiring that an agency consider whether its proposed rules are more stringent than those mandated by comparable or related federal, state or county standards, and in requiring that an

**DCCA Testimony of Lawrence Reifurth**  
**H.B. No. 2781**  
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agency explain why its proposed rule might be more stringent. It is important to note, though, that this is already required under the law. Haw. Rev. Stat. § 201M-2(b)(7).

I have not heard any objection from SBRRB or anyone else associated with the process that agencies are not following the law and are not providing the required information. In fact, one of my concerns with this bill is that I have not heard any explanation for why this proposal is necessary at all.

In the absence of any discernable problem, I do not know that using the proposed subsection (c) to provide more detail about how to comply with subsection (b)(7) will be helpful. Subsection (b)(7) is already difficult enough to comply with.

The Department appreciates the value in examining comparable regulations before enacting our own, and we try always to include reference to other jurisdictions in our explanations to SBRRB. I would submit that the problem is not that agencies are deferring any logical or necessary analysis of comparable regulations, but that sometimes it is inherently unclear whether another federal, state or county rule is “comparable” or “related”.

It is one thing, for instance, to understand that if an agency proposes to raise the minimum average MPG fuel standard for cars sold in Hawai'i to 30 MPG, and other states have minimum standards of 27 MPG, that the comparable standard is 27 MPG. It is quite another, though, when looking at a broader licensing scheme that includes, for instance, 1000 hours of education, a degree from a school that is accredited by a particular accrediting agency, and 1 year of practicum training, when compared against 50 different jurisdictions with 50 different licensing schemes, one of which has no education requirement, another of which uses a different accrediting agency, and another of which requires no practicum training at all.

In other cases, it is hard to determine if something is comparable or related at all. It might not be measurable. Or, it might be that the ten steps that the Insurance Division uses in evaluating a rate filing might not compare at all with the six steps that another state uses to conduct its analysis because that other state is not computerized and the steps are all different. Do those ten steps amount to a more stringent standard?

In sum, I see no benefit added by section 1 of the bill. SBRRB can already tell an applicant agency that it has not presented enough analysis to justify the SBRRB's support. The value of the analysis notwithstanding, subsection (b)(7) is already difficult enough to comply with, without being even more specific about the detail to be presented when the bigger problem is in knowing when and whether a regulation is comparable or related. I respectfully submit that SBRRB already has sufficient tools to cause applicant agencies to provide the necessary analysis without making the process so rules-bound that it no longer makes sense.

I would like to thank the Committee for the opportunity to present testimony on H.B. No. 2781.



**Before the House Committee on  
Economic Development & Business Concerns**

DATE: Tuesday, February 5, 2008

TIME: 8:30 a.m.

PLACE: Conference Room 309

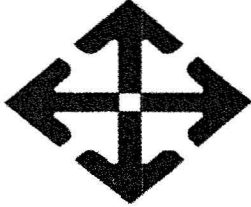
**Re: HB 2781  
Relating to Small Business  
Testimony of Melissa Pavlicek for NFIB Hawaii**

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 2781. 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 this bill will be an important step toward supporting Hawaii's small businesses.

Thank you for the opportunity to testify.



# The Hawaii Business League

820 Mililani St., Ste. 810 Honolulu, Hawaii 96813-2938  
Phone: (808) 533-6819 ♦ Facsimile: (808) 533-2739

February 5, 2008

Testimony To: House Committee on Economic Development & Business Concerns  
Representative Kyle T. Yamashita, Chair

Presented By: Tim Lyons  
President

Subject: H.B. 2781 – RELATING TO SMALL BUSINESS.

Chair Yamashita and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization. We support this bill.

Anytime there is a federal, state or county law, we know that it has gone through some sort of a hearing process and there has at least been some attempt at rationalization as to why it should exist. This bill requires that an impact statement is required anytime where a proposed rule has provisions that are more stringent than those already mandated by a federal, state or county law. Since we would like to think that the government agency went through some sort of rationalization in promulgating the law, we think it only appropriate that when another rule making authority comes along and wants to have something that is more stringent, they should have to justify it and look at the impact that it will have on small businesses.

Therefore, based on the above, we highly agree with this bill and recommend its passage.

Thank you.