

## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> 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: Chairs Taniguchi and Baker, Vice Chairs Hee and Tsutsui, and Senate Committees on Judiciary and Labor, and Ways and Means

Theodore E. Liu  
Director, DBEDT

Re: HB 2781, HD2, SD1 – “Relating to Small Business”

### Members

Lynne Woods  
Chairperson  
Maui

Committee Date: Wednesday, April 2, 2008

Aloha:

Sharon L. Pang  
Vice Chairperson  
Oahu

My name is Lynne Woods and I testify before you as Chairperson of the Small Business Regulatory Review Board.

Michael Yee  
2<sup>nd</sup> Vice Chairperson  
Oahu

The Board **supports** HB 2781, HD2, SD1. The Board believes that a much more extensive impact study is very necessary during the creation or review of rules. The Board receives Agency small business impact statements that are cursory at best with no understanding of the resulting cost.

Peter Yukimura  
Kauai

Dorvin Leis  
Maui

Bruce E. Bucky  
Oahu

The fact that the Board's communications with the Agencies and the Governor are considered recommendations has certainly been a stumbling block. Some requests for review of specific Agency rules have been completely ignored much to the detriment of many small businesses. This bill seemingly will increase significantly the workload for the Board's current personnel resources and will require the expansion of Board member expertise so we will have to request additional funding to move the Board's efforts to this level.

Charles Au  
Oahu

Donald Dymond  
Oahu

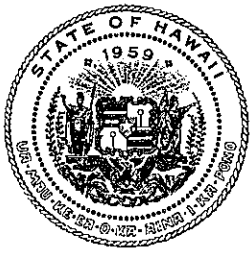
Richard Schnitzler  
Hawaii

On behalf of the members of the Small Business Regulatory Review Board, I thank you for your continuing support of our efforts.

Yours truly,

Lynne Woods, Chairperson  
Small Business Regulatory Review Board

Wednesday, April 2, 2008



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

**LATE**

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

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Statement of  
**THEODORE E. LIU**  
**Director**

Department of Business, Economic Development, and Tourism  
before the

**SENATE COMMITTEES ON JUDICIARY AND LABOR AND  
WAYS AND MEANS**

Wednesday, April 2, 2008  
10:30 a.m.

State Capitol, Conference Room 211

in consideration of  
**HB 2781, HD2 SD1**  
**RELATING TO SMALL BUSINESS**

Chairs Taniguchi and Baker, Vice Chairs Hee and Tsutsui, and Members of the  
Committees:

The Department of Business, Economic Development & Tourism (DBEDT) supports House Bill 2781, HD2, SD1 "Relating to Small Business." The Hawaii Regulatory Flexibility Act 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, 19 states have partial or partially-used regulatory flexibility statutes, and 6 states introduced similar legislation in 2007.

DBEDT supports this proposal as it 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.

Thank you for the opportunity to provide this testimony.



## SMALL BUSINESS REGULATORY REVIEW BOARD

**LATE**

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### AMENDED

Linda Lingle  
Governor

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Theodore E. Liu  
Director, DBEDT

Re: HB 2781, HD2, SD1 – “Relating to Small Business”

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Lynne Woods  
Chairperson  
Maui

Committee Date: Wednesday, April 2, 2008

Sharon L. Pang  
Vice Chairperson  
Oahu

Aloha:

Michael Yee  
2<sup>nd</sup> Vice Chairperson  
Oahu

My name is Lynne Woods and I testify as Chairperson on behalf of the Small Business Regulatory Review Board. The Board **supports** HB 2781, HD2 SD1. The Board believes that a much more extensive impact study is very necessary during the creation or review of rules. The Board receives Agency small business impact statements that are cursory at best with no understanding of the resulting cost.

Peter Yukimura  
Kauai

The fact that the Board's communications with the Agencies and the Governor are considered recommendations has certainly been a stumbling block. Some requests for review of specific Agency rules have been completely ignored much to the detriment of many small businesses. This bill seemingly will increase significantly the workload for the Board's current personnel resources and will require the expansion of Board member expertise so we will have to request additional funding to move the Board's efforts to this level.

Dorvin Leis  
Maui

Bruce E. Bucky  
Oahu

Charles Au  
Oahu

**In addition, I wish to thank the legislature for the opportunity to allow the Board members to work with DCCA Director Larry Reifurth and Hawaii's small business advocates to arrive at acceptable language to HB 2736, HD1 SD1 “Relating to the Small Business Bill of Rights.” After much discussion, this group has arrived at the recommended changes noted on the attached proposed SD2 bill.**

Donald Dymond  
Oahu

Richard Schnitzler  
Hawaii

On behalf of the members of the Small Business Regulatory Review Board, I thank you for your continuing support of our efforts.

Yours truly,

Lynne Woods, Chairperson  
Small Business Regulatory Review Board

Wednesday, April 2, 2008

**Report Title:**

*Small Business Bill of Rights*

**Description:**

*Establishes the Small Business Bill of Rights; authorizes the Ombudsman to investigate complaints of violations of the Small Business Bill of Rights. (SD1)*

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE, 2008  
STATE OF HAWAII

**H.B. NO.** 2736  
H.D. 1  
S.D. 1

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PROPOSED SD2

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# A BILL FOR AN ACT

*RELATING TO THE SMALL BUSINESS BILL OF RIGHTS.*

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

**PART I**

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

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 one hundred full-time employees, is the backbone of Hawaii's economy, and is central to Hawaii's way of life. More than ninety-five per cent of all Hawaii establishments are small

businesses, and they provide jobs for sixty 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's 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 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.

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 timely notice of an agency's rulemaking proceedings when requested. 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[s] a centralized internet website-based application system. This site's goals are to [should] 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 [automatic] 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.

~~[If an agency intends to deny the renewal of the business or development-related permit, license, registration, or approval, the agency should give notice to the holder of the permit, license, registration, or approval, thirty days before the expiration with the reasons for denial.]~~ The reasons for a denial should be clearly stated and under conditions set forth in law;

(8) ~~[The right to a timely hearing in the event a state regulatory agency takes an adverse action against a business.]~~ 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 be notified, in writing, at least thirty days prior to any adverse action by any state agency because of a violation of civil law, except where the violation has health, safety, or environmental impact, or may result in economic loss, unless that notice would allow possible destruction of evidence, continued unlawful practice, or flight;]~~

(9) ~~(10)~~ 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) ~~(11)~~ The right to all of the protections afforded in the Taxpayer Bill of Rights, P.L. 104-168;
- (11) ~~(12)~~ 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;
- (12) ~~(13)~~ 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) ~~(14)~~ 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) ~~(15)~~ 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) ~~(16)~~ 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)-(17) 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 96-8, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Contrary to law;
- (2) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;
- (3) Based on a mistake of fact;
- (4) Based on improper or irrelevant grounds;
- (5) Unaccompanied by an adequate statement of reasons;
- (6) Performed in an inefficient manner; [øx]
- (7) Otherwise erroneous [-]; or
- (8) A violation of the small business bill of rights.

The ombudsman may investigate to find an appropriate  
remedy."

SECTION 4. Statutory material to be repealed is bracketed  
and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2034.

**LATE**



**Before the Senate Committee on Judiciary and Labor  
Before the Senate Committee on Ways and Means**

DATE: Wednesday, April 02, 2008

TIME: 10:30 a.m.

PLACE: Conference Room 211

**Re: *HB 2781, HD2, SD1***  
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, HD2, SD1***. 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.