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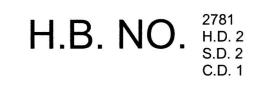
# A BILL FOR AN ACT

RELATING TO SMALL BUSINESS.

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

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

9 The legislature also finds that in the past decade, states adopting a less burdensome method of issuing permits and 10 11 enforcing laws have obtained more cooperation and have increased 12 regulatory compliance by working in partnership with businesses. 13 Because the regulatory system is often driven by a "fine-and-14 punishment" approach, state agencies and private businesses 15 often are unnecessarily antagonistic. The small business regulatory review board was established by the legislature in 16 17 1998 to address these concerns. It works closely with state and 18 county agencies to adopt rules that help reduce the regulatory HB2781 CD1 HMS 2008-4108



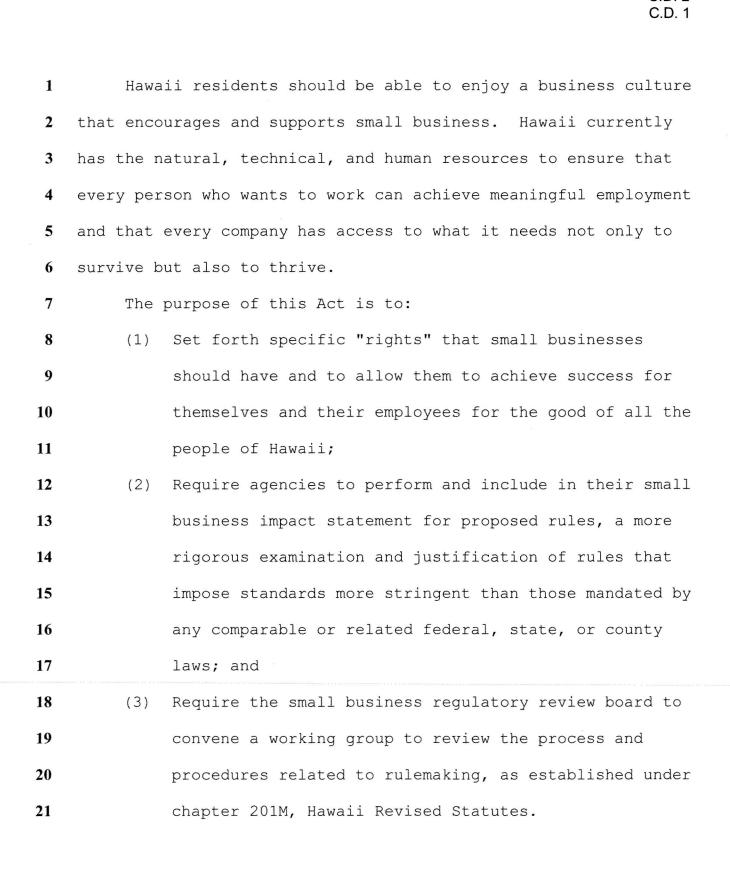
burden. A "bill of rights" is an essential part of the review
 process.

Additionally, the legislature finds that to ensure that 3 state administrative rules remain relevant to evolving business 4 5 practices and conditions, a "sunset" process for review of state 6 administrative rules should be put into effect. Every 7 administrative rule maintained by any state agency should be reviewed, updated, and, if appropriate, eliminated by that 8 9 agency. The small business regulatory review board should assist in that process by reviewing on a periodic basis existing 10 11 rules to ensure that more innovative approaches to business regulation are fully considered. 12

"Small business," meaning any legal entity that is 13 independently owned and operated and employs not more than 100 14 full-time employees, is the backbone of Hawaii's economy, and is 15 central to Hawaii's way of life. More than 95 per cent of all 16 Hawaii establishments are small businesses, and they provide 17 jobs for 60 per cent of all Hawaii employees. Accordingly, 18 future growth in Hawaii's workforce will come primarily from 19 new, homegrown businesses and from existing small businesses 20 that hire new workers. 21

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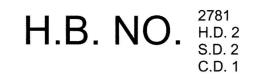


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1		PART I
2	SECT	ION 2. The rights of small businesses in the State of
3	Hawaii in	clude but are not limited to:
4	(1)	The right to expect state agencies to provide a
5		prompt, accurate, and courteous response to a request
6		for information and to work together to ensure ready
7		access to the information needed to assist businesses
8		in their relationships with state government;
9	(2)	The right to a clear, stable, and predictable
10		regulatory and record-keeping 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 should be
18		mailed to all persons who have made a written request
19		for such a notice;
20	(4)	The right to be treated equally and fairly, with
21		reasonable access to state services;

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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 site's goals
4		are to have quick and responsible 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		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, Hawaii Revised Statutes;
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		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 should be clearly stated and under
22		conditions set forth in law;



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Whenever a contested case hearing is provided by law, 1 (8) 2 in the event a regulatory agency takes action against 3 a business, the right to expect a timely hearing. Officials conducting such hearings should be 4 5 impartial. Small businesses should be provided a full and complete hearing to present their explanation of 6 7 any alleged violation, deficiency, or wrongdoing. In any hearing, there should be a presumption that the 8 9 small business did not commit an alleged violation or 10 wrongdoing until the agency proves otherwise by a 11 preponderance of the evidence. The small business 12 should have the right to present evidence, both oral 13 and written. This evidence must be fully considered 14 by the agency. In the event of an unfavorable 15 decision, the business should have the right to a 16 judicial review pursuant to section 91-14, Hawaii 17 Revised Statutes;

18 (9) The right to privacy regarding confidential and
19 proprietary business information when competing for
20 state procurement contracts. No state agency shall
21 mandate the disclosure of confidential or proprietary
22 business information as a condition of obtaining any





1		contract or payment under any contract when a contract
2		is to be awarded on a firm fixed price or cost plus
3		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, Hawaii
10		Revised Statutes;
11	(12)	The right to request information and an opinion from
12		the office of information practices, in accordance
13		with chapters 92 and 92F, Hawaii Revised Statutes,
14		with regard to access to information from public
15		meetings or the release of government documents;
16	(13)	The right to provide information to the division of
17		consumer advocacy in accordance with chapter 269,
18		Hawaii Revised Statutes, with regard to issues under
19		the purview of the public utilities commission;
20	(14)	The right to request information from the office of
21		consumer protection, in accordance with chapter 487,



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1		Hawaii Revised Statutes, with regard to business and
2		consumer issues;
3	(15)	The right to access the small business advocate in the
4		department of business, economic development, and
5		tourism regarding any dispute with a state agency to
6		ensure government resources are coordinated on behalf
7		of small business and the rights of businesses are
8		being upheld; and
9	(16)	The right to administrative rule review pursuant to
10		the Small Business Regulatory Flexibility Act by
11		filing a petition with the small business regulatory
12		review board in accordance with section 201M-6, Hawaii
13		Revised Statutes.
14		PART II
15	SECT	ION 3. Section 201M-2, Hawaii Revised Statutes, is
16	amended to	o read as follows:
17	"§20	1M-2 Determination of small business impact; small
18	business	impact statement. (a) Prior to submitting proposed
19	rules for	adoption, amendment, or repeal under section 91-3, the
20	agency sha	all determine whether the proposed rules affect small
21	business,	and if so, the availability and practicability of less

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Page 9 H.B. NO. 1 restrictive alternatives that could be implemented. This 2 section shall not apply to emergency rulemaking. 3 If the proposed rules affect small business, the (b) agency shall consider creative, innovative, or flexible methods 4 of compliance for small businesses and prepare a small business 5 impact statement to be submitted with the proposed rules to the 6 7 departmental advisory committee on small business and the board 8 when the rules are essentially complete and before the rules are 9 submitted to the governor for approval for public hearing. 10 statement shall provide a reasonable determination of the 11 following: The businesses that will be directly affected by, bear 12 (1)13 the costs of, or directly benefit from the proposed 14 rules; Description of the small businesses that will be 15 (2)required to comply with the proposed rules and how 16 they may be adversely affected; 17 In dollar amounts, the increase in the level of direct 18 (3) 19 costs such as fees or fines, and indirect costs such 20 as reporting, recordkeeping, equipment, construction, 21 labor, professional services, revenue loss, or other 22 costs associated with compliance;

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1	(4)	The probable monetary costs and benefits to the
2		implementing agency and other agencies directly
3		affected, including the estimated total amount the
4		agency expects to collect from any additionally
5		imposed fees and the manner in which the moneys will
6		be used;
7	(5)	The methods the agency considered or used to reduce
8		the impact on small business such as consolidation,
9		simplification, differing compliance or reporting
10		requirements, less stringent deadlines, modification
11		of the fines schedule, performance rather than design
12		standards, exemption, or any other mitigating
13		techniques;
14	(6)	How the agency involved small business in the
15		development of the proposed rules; and
16	(7)	Whether the proposed rules include provisions that are
17		more stringent than those mandated by any comparable
18		or related federal, state, or county standards, with
19		an explanation of the reason for imposing the more
20		stringent standard.
21	(c)	When a proposed rule includes provisions that are more

22 stringent than those mandated by any comparable or related



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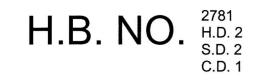
1	federal, state, or county standards, the agency shall, in	
2	addition to the information required by subsection (b), ir	lclude
3	in the small business impact statement information compari	ng the
4	costs and benefits of the standard set by the proposed rul	.e to
5	the costs and benefits of the standard under the comparabl	.e or
6	related federal, state, or county law. The agency shall a	lso
7	include an explanation of its decision to impose the highe	r
8	standard. The agency's comparison and justification shall	÷
9	include:	
10	(1) A description of the public purposes to be serve	d by
11	imposing the standard under the proposed rule;	
12	(2) The text of the related federal, state, or count	y law,
13	including information about the purposes and	
14	applicability of the law;	
15	(3) A comparison between the proposed rule and the r	elated
16	federal, state, or county law, including a compa	rison
17	of their purposes and of the standards and their	_
18	application and administration;	
19	(4) A comparison of the monetary costs and benefits	to the
20	implementing agency and other agencies directly	
21	affected, of imposing the proposed standard, wit	h the
22	costs and benefits of imposing or deferring to t	he



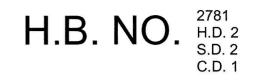
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1	related federal, state, or county standard, as well as
2	a description of the manner in which any additional
3	fees derived from imposition of the proposed standard
4	are to be used; and
5	(5) A comparison of the adverse effects on small
6	businesses of the standard imposed by the proposed
7	rule, with the adverse effects on small business of
8	the related federal, state, or county standard.
9	[ <del>(c)</del> ] <u>(d)</u> This chapter shall not apply to proposed rules
10	adopted by an agency to implement a statute or ordinance that
11	does not require an agency to interpret or describe the
12	requirements of the statute or ordinance, such as federally-
13	mandated regulations that afford the agency no discretion to
14	consider less restrictive alternatives."
15	PART III
16	SECTION 4. (a) The small business regulatory review board
17	shall convene a working group to review the process and
18	procedures related to rulemaking, as established under chapter
19	201M, Hawaii Revised Statutes.
20	(b) The working group shall include but not be limited to
21	representatives of small business organizations, the department
22	of business, economic development, and tourism, the department
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1	of commerce and consumer affairs, and others as deemed
2	appropriate. The chairperson of the small business regulatory
3	review board shall serve as chair of the working group.
4	(c) The working group shall review and make
5	recommendations regarding the rulemaking provisions under
6	chapter 201M, Hawaii Revised Statutes, in particular:
7	(1) Whether the current statutes are adequate to meet the
8	concerns of small business;
9	(2) What concerns have been raised by small businesses,
10	the small business regulatory review board, or
11	government agencies in implementing the statutes;
12	(3) The level of difficulty in adequately meeting the
13	requirements of the statutes; and
14	(4) Any other issues that may arise during the review.
15	(d) The small business regulatory review board shall
16	submit the findings and recommendations of the working group,
17	including any legislation necessary to implement the
18	recommendations, to the legislature no later than twenty days
19	prior to the convening of the regular session of 2009.
20	PART IV
21	SECTION 5. Statutory material to be repealed is bracketed
22	and stricken. New statutory material is underscored.
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1 SECTION 6. This Act shall take effect on July 1, 2008.



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#### Report Title:

Small Business Regulatory Review Board; Rule Impact; Study

#### Description:

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Establishes the Small Business Bill of Rights. Requires agencies to perform a more rigorous examination and justification of rules that impose standards stricter than comparable federal, state or county law. Directs the small business regulatory review board to convene a working group to study and make recommendations to resolve concerns related to chapter 201M, HRS, and report to the 2009 legislature, including any recommended legislation. (HB2781 CD1)