



GOV. MSG. NO. 918

EXECUTIVE CHAMBERS
HONOLULU

July 9, 2008

LINDA LINGLE
GOVERNOR

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 2781 HD2 SD2 CD1

On July 8, 2008, House Bill No. 2781, entitled "A Bill for an Act Relating to Small Business" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purposes of this bill are to: (1) set forth rights that small businesses in Hawaii should have; (2) require agencies that are proposing an administrative rule that is more stringent than comparable or related federal, State, or county standards to provide additional information in their small business impact statements; and (3) require the Small Business Regulatory Review Board to convene a working group to review the rulemaking provisions under chapter 201M, Hawaii Revised Statutes.

As an advocate for small businesses in Hawaii, I appreciate this bill's attempt to guard against rules that may be excessively or unnecessarily confining to the detriment of our State's small businesses. However, this bill requires agencies to identify comparable or related federal, State, or county standards that are less stringent than the agency's proposed rule, compare their purposes, application, and administration, compare their monetary costs and benefits, compare their adverse effects on small businesses, and justify why the more rigorous rule is needed.

These requirements exceed the original rule-making notice and comment process contained in chapter 91 of Hawaii Revised Statutes. They transform the rule-making procedures into an extensive documentation effort that may not significantly benefit the State or small businesses and further lengthen the rule-making process.

Given that State agencies are already required to conduct a small business impact statement for proposed rules, I am hopeful these new requirements will be judiciously applied.

The Honorable Colleen Hanabusa, President
and Members of the Senate

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For the foregoing reasons, I allowed House Bill No. 2781 to become law as Act 230,
effective July 8, 2008, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO SMALL BUSINESS.

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

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

9 The legislature also finds that in the past decade, states
10 adopting a less burdensome method of issuing permits and
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
16 regulatory review board was established by the legislature in
17 1998 to address these concerns. It works closely with state and
18 county agencies to adopt rules that help reduce the regulatory



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

3 Additionally, the legislature finds that to ensure that
4 state administrative rules remain relevant to evolving business
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
8 reviewed, updated, and, if appropriate, eliminated by that
9 agency. The small business regulatory review board should
10 assist in that process by reviewing on a periodic basis existing
11 rules to ensure that more innovative approaches to business
12 regulation are fully considered.

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



1 Hawaii residents should be able to enjoy a business culture
2 that encourages and supports small business. Hawaii currently
3 has the natural, technical, and human resources to ensure that
4 every person who wants to work can achieve meaningful employment
5 and that every company has access to what it needs not only to
6 survive but also to thrive.

7 The purpose of this Act is to:

- 8 (1) Set forth specific "rights" that small businesses
9 should have and to allow them to achieve success for
10 themselves and their employees for the good of all the
11 people of Hawaii;
- 12 (2) Require agencies to perform and include in their small
13 business impact statement for proposed rules, a more
14 rigorous examination and justification of rules that
15 impose standards more stringent than those mandated by
16 any comparable or related federal, state, or county
17 laws; and
- 18 (3) Require the small business regulatory review board to
19 convene a working group to review the process and
20 procedures related to rulemaking, as established under
21 chapter 201M, Hawaii Revised Statutes.



PART I

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 request and receive timely notice of an agency's rulemaking proceedings. 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;

- 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;



1 (8) Whenever a contested case hearing is provided by law,
2 in the event a regulatory agency takes action against
3 a business, the right to expect a timely hearing.
4 Officials conducting such hearings should be
5 impartial. Small businesses should be provided a full
6 and complete hearing to present their explanation of
7 any alleged violation, deficiency, or wrongdoing. In
8 any hearing, there should be a presumption that the
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,



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.

PART II

14
15 SECTION 3. Section 201M-2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§201M-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 shall determine whether the proposed rules affect small
21 business, and if so, the availability and practicability of less



1 restrictive alternatives that could be implemented. This
2 section shall not apply to emergency rulemaking.

3 (b) If the proposed rules affect small business, the
4 agency shall consider creative, innovative, or flexible methods
5 of compliance for small businesses and prepare a small business
6 impact statement to be submitted with the proposed rules to the
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. The
10 statement shall provide a reasonable determination of the
11 following:

12 (1) The businesses that will be directly affected by, bear
13 the costs of, or directly benefit from the proposed
14 rules;

15 (2) Description of the small businesses that will be
16 required to comply with the proposed rules and how
17 they may be adversely affected;

18 (3) In dollar amounts, the increase in the level of direct
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;



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



1 federal, state, or county standards, the agency shall, in
2 addition to the information required by subsection (b), include
3 in the small business impact statement information comparing the
4 costs and benefits of the standard set by the proposed rule to
5 the costs and benefits of the standard under the comparable or
6 related federal, state, or county law. The agency shall also
7 include an explanation of its decision to impose the higher
8 standard. The agency's comparison and justification shall
9 include:

- 10 (1) A description of the public purposes to be served by
11 imposing the standard under the proposed rule;
- 12 (2) The text of the related federal, state, or county law,
13 including information about the purposes and
14 applicability of the law;
- 15 (3) A comparison between the proposed rule and the related
16 federal, state, or county law, including a comparison
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, with the
22 costs and benefits of imposing or deferring to the



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 [(e)] (d) 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



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.



1 SECTION 6. This Act shall take effect on July 1, 2008.

APPROVED this day of , 2008

GOVERNOR OF THE STATE OF HAWAII

