

SB 2145

EDT-CPN



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 COMMITTEES ON ECONOMIC DEVELOPMENT AND TECHNOLOGY AND COMMERCE AND CONSUMER PROTECTION

Wednesday, February 03, 2010
1:15 PM
State Capitol, Conference Room 016

in consideration of
SB 2145
RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

Chairs Fukunaga and Baker, Vice Chairs Baker and Ige and Committee members:

The Department of Business, Economic Development, and Tourism (DBEDT) respectfully opposes SB2145, which transfers the Small Business Regulatory Review Board (SBRRB) from DBEDT to the Department of Commerce and Consumer Affairs (DCCA), authorizes the board to employ a small business advocate and funds the board through the compliance resolution fund.

On July 1, 1998, the Legislature established the SBRRB with the passage of the Small Business Regulatory Flexibility Act (RFA). The Board serves an important role reviewing administrative rules, regulations and county ordinances that may adversely affect small business. The Legislature appropriately placed the board within DBEDT for administrative purposes, which is the agency that helps small businesses.

DCCA, on the other hand, is a regulatory agency and is primarily an industry regulator. As such, DCCA often appears before the Board on its amendments to administrative rules. Establishing the Board within DCCA may be contrary to the neutrality that the RFA intended, i.e. to provide small businesses with an impartial arbiter to review administrative rules and county ordinances that may have a negative impact on small business.

Thank you for the opportunity to provide these comments.



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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LAWRENCE M. REIFURTH
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TO THE SENATE COMMITTEES ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY

AND

COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

Wednesday, February 3, 2010
1:15 p.m.

**TESTIMONY ON SENATE BILL NO. 2145
RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD**

WRITTEN ONLY

TO THE HONORABLE CAROL FUKUNAGA AND ROSALYN H. BAKER, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs (Department) appreciates the opportunity to testify in opposition to Senate Bill No. 2145, Relating to the Small Business Regulatory Review Board. My name is Lawrence M. Reifurth, and I am the Department's Director. Senate Bill No. 2145 proposes to:

- (1) Transfer the Small Business Regulatory Review Board (SBRRB) from the Department of Business, Economic Development, and Tourism (DBEDT) to the Department;

- (2) Authorize the SBRRB to employ and set the salary of a small business advocate exempt from chapter 76, Hawaii Revised Statutes;
- (3) Require that the expenses of the SBRRB be funded entirely from the Department's Compliance Resolution Fund; and
- (4) Requires the Department to include an amount as part of any fee charged to a person or organization with a reasonable nexus to the activities of the SBRRB.

The Department has several concerns regarding the bill, including the potential for conflicts of interest inherent in the Department's regulatory role, which we raised last year in response to H.B. No. 1260, S.D.1 and S.B. No. 387, C.D. 2, which the Governor vetoed. Our testimony this year will focus on issues that are unique to the Department.

Definition of "Expenses"

The bill authorizes the Department to include an amount as part of any fee charged to a person or organization with a reasonable nexus to the activities of the SBRRB, presumably to provide the SBRRB with a revenue source to fund its activities. The bill also requires that the expenses of the SBRRB be funded entirely from the Department's Compliance Resolution Fund (CRF). However, the bill's definition of "expenses" (page 4, lines 10 to 12) does not include all of the expenses that would be attributed to the SBRRB. Specifically, the definition does not include overhead expenses (e.g., central services assessments).

As currently drafted, the SBRRB would not be paying its fair share and other programs would have to subsidize the expenses of the SBRRB, thereby running afoul of the principles enunciated in the 2008 Supreme Court decision in *HIC v. Lingle*.

Accountability

Although the bill requires that the expenses of the SBRRB be paid for from the CRF, the bill also authorizes the SBRRB to hire and set the salary of a small business advocate. This creates a situation where the Department is accountable for the expenditures of the CRF, but does not have the authority to control all of the CRF's expenditures. Additionally, the situation proposed in the bill is quite dissimilar to the current structure of the Department, where the Department hires the staff that support the Department's other boards and commissions. The current structure enables the Department to truly be accountable for the CRF, while enabling the boards to exercise their authority independent of the Department.

As written, the bill puts the Department in the unenviable situation of being accountable for the CRF, but not able to control all of the fund's costs.

Closing

The Department is not adverse to assuming responsibility for additional programs. In 2005, the Department supported the transfer of the Business Action Center from DBEDT to the Department because that transfer was a good fit. However, the transfer called for in this bill does not fit as well for the reasons enumerated above.

Thank you for the opportunity to oppose the bill. We urge the Committees to hold the bill.

February 1, 2010

Chairperson Senator Fukunaga
Committee on Economic Development and Technology

Chairperson Senator Baker
Committee on Commerce and Consumer Protection

Committee Members

RE: SB2145

Aloha

As Chair of the Small Business Regulatory Review Board I offer this testimony on behalf of our Board Members.

Our Board wishes to thank you for your recognition of our work and your efforts supporting small business in Hawaii during these difficult economic times.

Our primary wish is to have a stable home, staffing and budget for our efforts. Over the years our budget has never been over \$20,000.00, and in fact the Board addresses our budget annually and has cut back expenses as any prudent business should. During last year's budget cuts our neighbor island members paid for their flights to one monthly meeting without reimbursement. The members of SBRRB are extremely committed to their work.

DBEDT managed our budget in the past with no fees charged to the business community to support our work, so we express some concern as to paragraph (g) Section 2 stating that DCCA shall include another fee charge to persons or businesses to support our work. It would be uncomfortable and ironic that our work to eliminate financial impact on small businesses through the rule making process would actually cause an additional financial impact.

The shortage of staffing in DBEDT has certainly caused our Board and the Chairperson to volunteer more time. Our work was previously handled on a full time basis by the Small Business Advocate, Dori Palcovich and since the elimination of that position our work has been squeezed into the work load of an already overloaded staff member. We do not complain about the quality of work, but are concerned about the ability to handle the load as the year's work begins to take shape.

Page 2 SB2145 SBRRB

In spite of the fee concern the Board feels that the stability and staffing being be offered in this bill is what we need to sustain our efforts. Although the Director of DCCA has expressed concerns about fitting us into his department because of the “civil service” versus “non civil service” employee issue it is our opinion this can be worked out.

Thank you for your kind attention to this testimony.

Yours truly

Lynne Woods
Chairperson
Small Business Regulatory Review Board

February 3, 2010

To: Chair Fukunaga, Vice Chair Baker, and Members of the Committee on Economic Development and Technology;
Chair Baker, Vice Chair Ige, and Members of the Committee on Commerce and Consumer Protection

From: Sharon L. Pang
Owner, Care Companions & Consulting

Re: **SB 2145, "Relating to the Small Business Regulatory Review Board"** – Conference Room 016, State Capitol, 1:15 PM

I am the owner of a small business and have served as a member of the Small Business Regulatory Review Board for the past six years. I am in **strong support** of SB 2145, which transfers the administrative assignment of the Small Business Regulatory Review Board from DBEDT to DCCA.

The Review Board is comprised of eleven owners of small businesses across the State, providing recommendations to State and County Agencies and to the Governor regarding new and amended administrative rules that directly impact small business. As small business owners, we volunteer our time and are dependent on DBEDT staff to support and follow up with our responsibilities. Since my start, I am proud to be a member of such a conscientious and pro-active Board that is dedicated to the success of the State's small businesses, as well as to improve relationships with Hawaii's State and County departments.

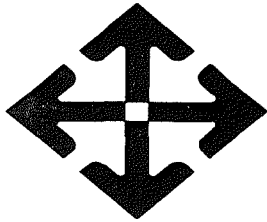
Since last year, this Board has been faced with losing its funding and its full-time administrative support. We are seeking stability to efficiently carry on the work that supports the small business community. The Board has become a very instrumental voice within our community. Without sufficient staff and funding, this Board will continue to digress to near-obscurity within the business community.

Thank you for the opportunity to provide testimony in strong support of this Bill.

Sincerely,

A handwritten signature in cursive script that reads "Sharon L. Pang".

Sharon L. Pang



The Hawaii Business League

Century Square 1188 Bishop St., Ste 1003 Honolulu, HI 96813-3304
Phone: (808) 533-6819 ♦ Facsimile: (808) 533-2739

February 3, 2010

Testimony To: Senate Committee on Economic Development and Technology
Senator Carol Fukunaga, Chair

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons
President

Subject: S.B. 2145 – RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

Chair Fukunaga, Chair Baker and Members of the Joint Committees:

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

We don't support this bill but we don't oppose it. The bottom line is that we don't think it really matters where the Small Business Regulatory Review Board is housed as long as it has autonomy and can operate free of administrative restraints. In order to achieve that, we think this bill needs some amendments in order to provide that the Board, as well as a the Small Business Advocate would fall under the appropriate department purely for "administrative purposes".

We would request that the Committee look at Section 103D-204 (a) and (d) which is language that provides for the State Procurement Administrator. You will note it emphasizes that the individual is based there purely for "administrative purposes" and provides specific language that the administrator must operate independently of the department director.

Over the years in working with the procurement administrator, we have noted that he is often times able to speak very frankly about other agencies and is not "muzzled" by any administrative restraints as far as we can tell. We would recommend and suggest that the same kind of set up be given to the Small Business Regulatory Relief Board and the Small Business Advocate regardless of where you may place the office or where the funds come from in order operate.

Hawaii achieved national history when this mechanism was implemented and it is only in recent years that it has actually matured and become quite a benefit for the small business community. Now is not the time to lose that.

Thank you.

February 3, 2010

Conference Room 016 – 1:15 PM

Chair Fukunaga, Vice Chair Baker, and Members on the Committee on Economic Development and Technology;

Chair Baker, Vice Chair Ige, and Members on the Committee on Commerce and Consumer Protection

Re: Support of SB 2145, "Relating to the Small Business Regulatory Review Board"

Good afternoon Chairs Fukunaga and Baker and members of the committees. Thank you for the opportunity to testify **in support of SB 2145 RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD that transfers the administrative assignment of the small business regulatory review board from the department of business, economic development, and tourism to the department of commerce and consumer affairs.**

I am familiar with this program because I have had the opportunity to work in the **CBED** Program and the **EZ** Program with program manager Wayne Thom for two years during the 1990s. **The Small Business Regulatory Review Board (SBRRB)** has assisted Hawaii's small business community with addressing regulatory concerns of Hawaii's small business owners. In my humble opinion, I believe that the most cost effective and community effective programs for small businesses and small business startups in the state is presently being downsized, gutted or threatened into extinction by the Director of DBEDT and the Lingle Administration.

The SBRRB has done an effective and efficient job for the State of Hawaii in generating revenue, advertising and cutting regulatory red tape for small businesses. **The elimination or reduction in managers and staffing within this program severely undermines the effectiveness and efficiency of work for our state.** Small Business is a main generator of jobs in the State of Hawaii and The Small Business Regulatory Review Board assists small businesses in maneuvering through the red tape of doing business in the state of Hawaii.

THE SBRRB currently FACES A SUPPORT DILEMMA as DBEDT is *reluctantly* funding SBRRB meetings, which provides for the most part, the cost of transportation for our neighbor island members. Previously, there were two (2) staff positions that provided much needed support for the board however that has currently been reduced to one TEMPORARY overseer where previously the BUSINESS ADVOCATE at DBEDT provided total support for the board, and for the State's business advocacy assistance.

The SBRRB is *cut off at the knees* in its role as a Small Business Advocate Board in Hawaii. In short, DBEDT has abandoned the Small Business Advocate position and small business mission role in the State of Hawaii, a role that it has been tasked to do since DBEDT's

inception. No small business support by the state equates to a *no jobs* scenario in Hawaii State.

I STRONGLY SUPPORT SB 2065 RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD WHICH TRANSFERS THE ADMINISTRATIVE ASSIGNMENT OF THE SMALL BUSINESS REGULATORY REVIEW BOARD FROM THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM TO THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS.

Thank you for an opportunity to testify on this matter.

LATE

Testimony of Thomas J. Smyth, CEcD

**Before the
Senate Committee on Economic Development and Technology
Senate Committee on Commerce and Consumer Protection**

Wednesday February 3, 2010, 1:15 p.m. Conference Room 016

On

SB 2145 Relating to the Small Business Regulatory Review Board

Chairs Fukunaga and Baker, Vice Chair Ige and Committee Members:

Having helped to establish the SBRRB and managed it as it grew to become a vital element in the effort to assist small business in complying with the many regulations that cover their operations, I have been greatly concerned with its current status in DBEDT. **I strongly support SB 2145 which would transfer the SBRRB to DCCA and provide for staffing and a specific funding source.**

The Board was established by the Legislature in 1998, at the request of the Administration, as a four-year pilot effort to help small businesses deal with the costly and time-consuming burden of many state and county Administrative Rules. It became permanent in 2002, again in agreement between the Legislature and the Governor. In the past several years it has refined its hearing processes and was operating efficiently and economically. State agencies have accepted its purpose and the quality of their impact statements has greatly improved.

Unfortunately DBEDT, as part of its reduction-in-force procedure, laid-off the Business Advocate who provided staff support after earlier removing the administrative assistant who helped with the voluminous paperwork presented to the Board. After threatening to no longer fund the relatively small costs of transportation to meetings and printing and distribution of mandated reports, DBEDT reluctantly agreed to provide minimal staff support and fund meeting costs.

In the 2009 session, efforts were made to transfer the Board to DCCA in the budget and by statute. This was unsuccessful. It remains, under-supported, in DBEDT.

The argument will be made that placing the SBRRB as an attached agency to DCCA will create a conflict of interest because DCCA has many Administrative Rules that affect small business. But so does DBEDT, although many do not see it as a regulating agency. In fact there are a number of rules in Title 15, Hawaii Administrative Rules that do affect small businesses.

More significantly, since the Board deals primarily with rule changes and far less with the day-to-day imposition of the rules themselves, DBEDT has attached to it many very regulatory agencies who impose, create or change rules. These include HCDA, ATDC, LUC, NELHA and HTDC, all of whom regulate in one way or another.

When these entities change a rule it has to go through the DBEDT Director on its way to the Governor and to the SBRRB.

In addition, the DBEDT Director is a member of each of these rule-making agencies, except the Land Use Commission. In this role the Director or designee would have voted on the propose rule change itself.

Ironically, the Director of DCCA does not sit as a voting member of the many boards and commissions in DCCA. **So it can certainly be argued that there is less, rather than more, of a conflict of interest if the SBRRB is attached to DCCA.**

The alleged conflict is even less if the SBRRB staff support is hired and fired by the SBRRB itself, rather than by the department. We have seen the interference with the Board created by DBEDT since it controlled staffing and the budget.

This is a measure that should provide the stability needed to ensure that this nationally known friend of small business is able to continue to do its important work.

Thank you for the opportunity to provide comments on this important bill.

LATE



SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: February 03, 2010
TIME: 1:15 p.m.
PLACE: Conference Room 016

Re: SB 2145 Relating to the Small Business Regulatory Review Board

Testimony of Melissa Pavlicek for NFIB Hawaii

We are testifying on behalf of the National Federation of Independent Business (NFIB) with comments on SB 2145, relating to the small business regulatory review board.

This measure transfers the small business regulatory review board from the department of business, economic development, and tourism to the department of commerce and consumer affairs; authorizes the board to employ and set the salary of a small business advocate; and authorizes the expenses of the board to be funded entirely from the compliance resolution fund.

NFIB believes that the small business regulatory review board provides a vital function that helps to address the needs of small businesses. We support its efforts on behalf of the business community.

NFIB is the largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitols, with more than 1,000 members in Hawaii and 600,000 members nationally. NFIB members are a diverse group consisting of high-tech manufacturers, retailers, farmers, professional service providers and many more.

We welcome the opportunity to engage with legislators on this and other issues during this session.