



# 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

## **HOUSE COMMITTEES ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS AND CONSUMER PROTECTION & COMMERCE**

Wednesday, January 27, 2010  
2:30 p.m.  
State Capitol, Conference Room 325

in consideration of  
**HB 2065**  
**RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.**

Chairs McKelvey and Herkes, Vice Chairs Choy and Wakai and Committee members:

The Department of Business, Economic Development, and Tourism (DBEDT) respectfully opposes HB2065, which administratively transfers the Small Business Regulatory Review Board (SBRRB) from DBEDT to the Department of Commerce and Consumer Affairs (DCCA).

On July 1, 1998, the Legislature established the SBRRB within DBEDT 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. Recently, funds to maintain the Board's important functions have been reduced to help balance the State budget during these difficult economic times. While the level of

services provided to the Board remains constant, providing additional services for a more proactive Board would not be possible until such time as the current budget constraints pass.

This bill transfers the Board's functions, duties and responsibilities to DCCA. However, the bill does not provide funds or a funding source for Board expenses.

We also point out that DCCA is primarily an industry regulator. As such, DCCA often appears before the Board on its amendments to administrative rules. Conversely, DBEDT does not have a regulatory role and is charged with facilitation of business. Establishing the Board within DCCA may be contrary to the neutrality that the RFA intended. The RFA intended 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.



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
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### MEMORANDUM

**Linda Lingle**  
*Governor*

January 27, 2010

**Theodore E. Liu**  
*Director, DBEDT*

**Mark K. Anderson**  
*Deputy Director, DBEDT*

#### Members

**Lynne Woods**  
*Chairperson*  
*Maui*

**Charles Au**  
*Vice Chairperson*  
*Oahu*

**Richard Schnitzler**  
*2<sup>nd</sup> Vice Chairperson*  
*Hawaii*

**Dorvin Leis**  
*Maui*

**Donald Dymond**  
*Oahu*

**David S. De Luz, Jr.**  
*Hawaii*

**Sharon L. Pang**  
*Oahu*

**Bruce Bucky**  
*Oahu*

**Peter Yukimura**  
*Kauai*

Chairman McKelvey  
Committee on Economic Revitalization, Business & Military Affairs  
Chairman Herkes  
Committee on Consumer Protection & Commerce  
Committee Members  
Conference Room 325 at 2:30 PM

RE: HB 2065, Relating to the Small Business Regulatory Review Board

Aloha:

This testimony is offered by Lynne Woods, Chairperson, on behalf of the Small Business Regulatory Review Board.

The members of our Board are supportive of this effort to transfer us to the Department of Commerce and Consumer Affairs from the Department of Business, Economic Development and Tourism as is proposed in this bill.

We would ask that you specifically mention the Regulatory Alert system under Section 4 as this program was specifically developed by the SBRRB in partnership with Chambers of Commerce and other business advocacy groups with particular concerns for their communication agreements with their membership. To have it left behind in DBEDT would cause great harm to the efforts of our small business partnerships.

The corresponding Senate Bill #2145 recommending the transfer of the Board to DCCA has approached the staff situation differently, stating that the Board would be responsible for hiring a Business Advocate to handle our work under the guidelines of Chapter 76. The Board would prefer the position be classified as a civil service position with all benefits and entitlements as indicated in your bill.

We thank you for your kind attention to this testimony and for your efforts during these very difficult economic times.

Yours truly,

Lynne Woods  
Chairperson

**Testimony of Thomas J. Smyth, CEcD**  
**Before the**  
**House Committee on Economic Revitalization, Business, & Military Affairs**  
**House Committee on Consumer Protection & Commerce**  
**Wednesday, January 27, 2010 2:30 p.m. Conference Room 325**  
**on**  
**HB2065 Relating to the Small Business Regulatory Review Board**

Chairs McKelvey and Herkes, Vice Chairs Choy and Wakai, 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 the purpose and intent of HB 2065, but am concerned with some of its current provisions.**

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. In 2002 the board became permanent. 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 the impact statements have greatly improved.

Unfortunately, DBEDT as part of its reduction in force procedure, laid off the Business Advocate who provides staff support after earlier removing the administrative assistant who helped with the often 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, the department reluctantly agreed to provide minimal staff support and fund meeting costs.

In the 2009 session, efforts were made to transfer the Board to DCCA both in the budget and by statute. These efforts were not successful and it remains under supported in DBEDT.

I am concerned with some of the language in HB 2065:

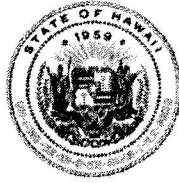
1. There is no provision for transfer of the Business Advocate, a uniquely classified Economic Development Specialist with a Selectively Certified position description. Current support staff does not have that certification. I believed that transfer legislation would have authorized SBRRB to hire its own staff, further removing it from administrative control of DCCA. Argument has been made that DCCA is a regulatory agency and there would be a potential conflict of interest if the Board were placed there. It should be noted that DBEDT has several business regulations itself and Administrative Rules of its attached agencies, such as HCDA, LUC, ATDC, HTDC, HSDC and NELHA are certainly regulatory.

2. The intent of the first paragraph in Section 3 is not apparent. **It appears to transfer ALL powers and functions of DBEDT to DCCA.**

3. Since there are no personnel involved in the transfer to DCCA there appears be no need for the second and third paragraphs of Section 3.

**I respectfully ask that these issues be considered as the bill moves forward as it is an important measure very much needed at this time.**

Thank you for the opportunity to provide comments.



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

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LAWRENCE M. REIFURTH  
DIRECTOR  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON  
ECONOMIC REVITALIZATION, BUSINESS,  
AND MILITARY AFFAIRS

AND

CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2010

Wednesday, January 27, 2010  
2:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 2065  
RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD**

TO THE HONORABLE ANGUS L.K. MCKELVEY AND ROBERT N. HERKES, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs (Department) appreciates the opportunity to **express concerns** with House Bill No. 2065, Relating to the Small Business Regulatory Review Board. My name is Lawrence M. Reifurth, and I am the Department's Director. House Bill No. 2065 proposes to transfer the Small Business Regulatory Review Board (SBRRB) from the Department of Business, Economic Development, and Tourism (DBEDT) to the Department. 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.

### **Rights, powers, functions and duties**

Section 3 of the bill proposes to transfer “all rights, powers, functions and duties” of DBEDT to the Department. Presumably, it is the bill’s intention to only transfer those rights, powers, functions and duties related to or for the benefit of the small business regulatory review board. If so, the Department recommends that that clarification be added.

### **Funding**

A bigger concern is funding the activities of the SBRRB. The Department is a self-sufficient agency. We exist exclusively on what we charge our customers, in addition to the fines, penalties and settlements obtained through our business regulatory functions. The bill is silent on the subject of how the SBRRB’s activities will be paid for.

In order to ensure that there is a reasonable relation between the Department’s revenues and the services that it provides, the bill should be amended to authorize the Department to identify a revenue source with a sufficient nexus between it and the SBRRB function, and to determine and assess fees as may be necessary to pay for SBRRB operations. Alternatively, the Legislature itself could identify the revenue source and set the fee itself in the bill. The concern is that without a revenue source to cover SBRRB expenses, other fee payers who may not have a reasonable nexus to the activities of the SBRRB would have to subsidize the activities of the SBRRB. This could

run afoul of the principles enunciated in the Hawaii Supreme Court's December 2008 decision in *HIC v. Lingle, et al.*

**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 and we were involved in the early discussions and cooperative planning for the transfer, which occurred before the 2005 session. However, the transfer called for in this bill does not fit as well for the reasons enumerated above.

Thank you for the opportunity to express our concerns over the proposal.



February 27, 2010

To: Chair Angus L.K. McKelvey  
Vice Chair Choy, and Members of the Committee on Economic Revitalization,  
Business and Military Affairs;  
Chair Robert N. Herkes, Vice Chair Wakai, and Members of the Committee on Consumer  
Protection & Commerce

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

Re: **HB 2065, "Relating to the Small Business Regulatory Review Board"** – Conference Room 326,  
State Capitol, 2:30 P.M.

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 HB 2065, 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.

One of the significant accomplishments we have created is a direct communication with small businesses with "Reg Alert". It is important that this component also transfer with our board for the most current communication and awareness regarding small business community.

Since last year, this Board has been faced with losing its funding and its full-time administrative support. There is also no more business advocacy for the State, an extremely important role that supports the small business community. The Board has become a very instrumental voice within our community for small business. 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,



Sharon L. Pang