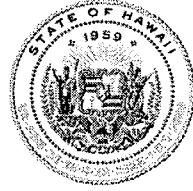


SB 2145, SD1



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

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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

Wednesday, February 24, 2010
10:05 a.m.

**TESTIMONY ON SENATE BILL NO. 2145, SENATE DRAFT 1
RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD**

WRITTEN COMMENTS

TO THE HONORABLE DONNA MERCADO KIM, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (Department) appreciates the opportunity to submit comments in **opposition** to Senate Bill No. 2145, S.D. 1, 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, S.D. 1 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) Authorize 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 or the appearance of conflicts 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.

Notwithstanding Standing Committee Report No. 2149 apparent conclusion that because DBEDT appears before the SBRRB and that has not proven to be an issue of concern, that it should not be an issue for the Department either, the Department still has concerns of the potential conflicts (or appearance of conflicts) inherent in the situation the bill establishes.

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 untenable position 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 Committee to hold the bill.

February 22, 2010

Chairperson Senator Kim
Committee on Ways and Means
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.

We have attached along with this testimony an approximate budget that would return our full time staff member as well as cover our small working expenses.

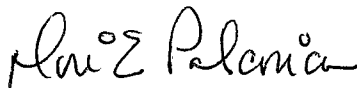
Thank you for your kind attention to this testimony.

Yours truly

Lynne Woods
Chairperson
Small Business Regulatory Review Board

To: Senator Donna Mercado Kim, Chair, and Senator Shan S. Tsutsui, Vice Chair, and Members of the Committee on Ways and Means

From: Dori Palcovich, DBEDT



Re: **SB2145, SD1, Relating to the Small Business Regulatory Review Board
Wednesday, February 24, 2010, at 10:05 a.m. in Conference Room 211**

Date: February 23, 2010

As a concerned DBEDT employee, I respectfully urge you to support the transfer of the Small Business Regulatory Review Board (SBRRB) from DBEDT to DCCA. I have great familiarity with the SBRRB as I was the board's program manager and business advocate for more than nine years at DBEDT.

Over a year ago, DBEDT Director Ted Liu and Ms. Pearl Imada Iboshi separately approached me regarding transferring my then position (#26981) and the SBRRB to DCCA. I was told that DBEDT wanted the SBRRB out of DBEDT despite the Governor's reluctance. Unfortunately, because SB 387 SD1 HD1 CD2 was not overridden by the House during last year's legislative session, the business advocate position and SBRRB remained at DBEDT without funds.

Subsequently, position #26981 became part of the reduction-in-force procedure, along with all other business program positions. Additionally, DBEDT threatened to no longer fund the relatively small costs of neighbor island board members' transportation to meetings and other costs such as printing and distribution of mandated reports. Since then, however, DBEDT is reluctantly funding board meeting costs and providing limited staff support.

Worth noting - due to DBEDT's reluctance, the SBRRB members funded their own transportation costs for the July 2009 board meeting. Also, three years ago, board members Dorvin Leis and George Handgis donated \$55,000 to pay for the services of a public relations firm (Hastings and Pleadwell) to assist the SBRRB with expanding its outreach to the small business community. While this gives you an indication of the members' dedication and commitment to this board, also worth pointing out is that a few years ago after the SBRRB members and I worked diligently with the legislature to approve funds and an administrative assistant position for the SBRRB, DBEDT deliberately transferred the position elsewhere.

I assure you SBRRB Chair Lynne Woods and I have worked extremely hard to create a viable mechanism to assist Hawaii's small business community, and I am **deeply concerned** that DBEDT's negative sentiments towards the SBRRB have not changed.

Therefore, in consideration of HB200, "Relating to the State Budget," which became law effective July 1, 2009, I am respectfully requesting, if possible, that the **SBRRB and Position #26981 be transferred to DCCA**. See **Section 3 of SB2145 SD1**. In essence, the transfers would: 1) accomplish the intent of the legislature; 2) alleviate any concerns DCCA may have with the SBRRB hiring its own business advocate, as the position will already be in existence, as well as 3) budgetary concerns as the position and SBRRB's expenses will not be funded by general funds but by the **Compliance Resolution Fund**, as stated in HB200.

I thank you for your kind consideration.

February 24, 2010

To: Chair Kim
Vice Chair Tsui, and Members of Ways & Means Committee,
From: Sharon L. Pang
Owner, Care Companions & Consulting
Re: **SB2145, SD1 "Relating to the Small Business Regulatory Review Board"**

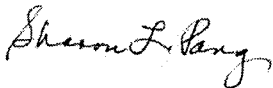
I am the owner of a small business and have served as a member of the Small Business Regulatory Review Board for the past six years. I am in **strong support** of SB2145, SD1 which transfers the administrative assignment of the Small Business Regulatory Review Board from DBEDT to DCCA.

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 this 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. The Board has become a very instrumental voice within our community for small business. To continue our efforts, this move would give us the stability we need to do the work the work that is vital for the small business community.

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

Sincerely,



Sharon L. Pang