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REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

MONDAY, FEBRUARY 7, 2011
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 1340
RELATING TO ADMINISTRATIVE PROCEDURES

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE RYAN I. YAMANE, VICE CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Kealii Lopez, interim Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide comments on H.B. No. 1340, entitled "Relating to Administrative Procedures."

The bill proposes to establish the Administrative Rules Review Pilot Program ("Program") in the Department. The Program requires the Department to: (1) review all of its rules to determine which should be repealed, amended, or replaced; and (2) consider the feasibility of repealing rules older than three years old. The Program

opposed

further requires the Department to submit a preliminary report and a final report to the Legislature and specifies the information to be included in the final report.

The Department appreciates the intent of the bill, which is to streamline the Department's administrative rules by repealing or amending obsolete, cumbersome, unnecessary, or overly restrictive rules, but believes that it is already complying with the spirit of the proposal, particularly due to the regular review of rules in conjunction with the Small Business Regulatory Review Board.

As the Committee is aware, the purposes of administrative rulemaking are to implement legislation and to establish operating procedures for State agencies. Generally, a legislative act will provide the skeleton or superstructure for a program. Agencies are required to "fill in the details" and implement the program on a day-to-day basis.

The law that controls administrative rulemaking is chapter 91, Hawaii Revised Statutes ("HRS"), entitled "Administrative Procedures." Briefly, the law requires, among other things, that administrative agencies follow certain specified procedures in order to adopt, amend, or repeal rules. For a rule to become binding upon the public, agencies must: (1) provide at least 30 days' notice for a public hearing, (2) afford all interested persons opportunity to submit data, views, or arguments, orally or in writing; and (3) have the rule approved by the Governor. This is similar to the legislative process that bills go through before they are enacted.

Additional rulemaking-related requirements are contained in chapter 201M, HRS, entitled the "Small Business Regulatory Flexibility Act" ("Act"). Specifically, the Act requires administrative agencies to: (1) determine whether the proposed rule affects small business, and if so, the availability and practicality of less restrictive alternatives; (2) submit a small business statement containing a description of how opinions or comments from small business were solicited and a summary of the public and small business comment to the Small Business Regulatory Review Board ("Board"); and (3) submit, in every odd-numbered year, a list of rules that affect small business to the Board.

In fact, the Board took action only two months ago which demonstrated that the processes in place already address the purpose of this proposal. At the Board's