

**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE
Wednesday, February 29, 2012
12:30 PM
State Capitol, Conference Room 308

In consideration of
HB 2268 HD1
RELATING TO SMALL BUSINESS

Chair Oshiro, Vice Chair Lee and Members of the House Committee on Finance.

The Department of Business, Economic Development and Tourism offers
comments on HB 2268 HD1.

The proposed amendment to Chapter 201M in the HD 1 allows the Small Business Regulatory Review Board to require another public hearing be held by a department or agency on a proposed rule, if the board finds that the Small Business Impact Statement submitted by a department prior to a public hearing is not consistent with the Small Business Statement submitted to the SBRRB after a public hearing has been held or if the Small Business Statement does not address the concerns of the public.

The language in this proposed amendment could be subject to interpretation and may increase the time that it takes to get a proposed rule or rule change adopted. Currently, the Governor has the authority to require departments to hold additional public hearings on proposed rules prior to adoption of the final rule.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR
Chairperson**

**Before the House Committee on
FINANCE**

**Wednesday, February 29, 2012
12:30 PM
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 2268 HD1
RELATING TO SMALL BUSINESS.**

House Bill 2268, House Draft 1, proposes to authorize the Small Business Regulatory Review Board (SBRRB) to require an agency to conduct another public hearing on a rule change when the rulemaking agency declines to make changes requested at the first hearing and the agency's small business statement, submitted after the hearing, indicates inconsistency with its earlier determination or does not address the public's concerns. The Department of Land and Natural Resources (Department) does not support this bill as presently drafted and offers the following comments.

While the Department recognizes the need to actively incorporate small business concerns into the rulemaking process, there is currently a SBRRB hearing process in place to consider impacts to small businesses. The proposal to potentially require a second public hearing will likely not achieve its intent.

If an agency proceeds with rule-making after declining to make changes suggested at the initial SBRRB hearing, holding an additional hearing would not necessarily compel an agency to incorporate the suggested changes. In addition, the public hearing process is time consuming and expensive. Holding an additional public hearing that may prove ineffectual is not cost effective.

Furthermore, under the current rule-making process, if an agency proceeds with rules that indicate substantive changes post its initial hearing, the agency would invariably need to hold another hearing.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

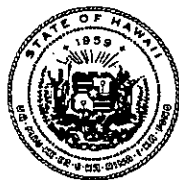
GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
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February 29, 2012

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2268, H.D. 1, S.D. 1 – RELATING TO SMALL BUSINESS**

Hearing: Wednesday, February 29, 2012; 12:30 p.m.
Conference Room 308, State Capitol

PURPOSE: The purpose of this bill is to authorize the Small Business Regulatory Review Board to require an agency to conduct another public hearing on a rule change when the rulemaking agency declines to make changes requested at the first hearing and the agency's small business statement, submitted after the hearing, indicates inconsistency with its earlier determination or does not address the public's concerns.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) opposes this bill. This measure to allow the Small Business Regulatory Review Board (SBRRB) to require a second hearing if the SBRRB determines that a concerns raised at a public hearing were not adequately addressed is unnecessary. There are sufficient protections in the existing Chapter 91-3(a), Hawaii Revised Statutes (HRS), to address the concerns of a party who feels that a rule should be adopted, amended or repealed. In addition, HRS Section 91-6 and HRS Section 201M-6 allows an affected party to file a petition to amend or repeal a rule with an

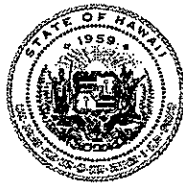
agency that must be responded to in thirty days. The public interest is not served by adding another layer of "red tape" when government should be seeking to streamline its processes.

Requiring a second hearing will also impede agencies' ability to implement on a timely basis, Federal and State statutes governing their programs. Delay in implementation could mean loss of Federal dollars to the State for non-compliance. The vague criteria language of this bill would give the SBRRB the authority to indefinitely delay the adoption and implementation of administrative rules.

Additionally, there will be cost implications to agencies for required to hold a second hearing.

Thank you for the opportunity to provide testimony on this bill.

NEIL ABERCROMBIE
GOVERNOR



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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 29, 2012

H.B. 2268, H.D. 1
RELATING TO SMALL BUSINESS

HOUSE COMMITTEE ON FINANCE

The Department of Transportation opposes this bill.

State agencies are already subject to stringent requirements mandated by Chapter 201M, Hawaii Revised Statutes, and Administrative Directive No. 09-01 to protect the interests of small businesses.

In view of this, we believe this bill is redundant and unnecessary.

It should be noted that Administrative Directive No. 09-01 gives the Attorney General authority to require an additional public hearing but only if there are substantial or material changes made to the proposed rules after the hearing is held.

If there is a disagreement between the Small Business Regulatory Review Board and a state agency regarding non-compliance with the requirements of established policies and procedures, it should be settled by negotiation between the two parties.

We do not understand how an additional public hearing will help resolve the disagreement because all interested persons and groups are given ample opportunity to express their views on the proposed rules during and after the hearing. Our department accepts late testimony a week after the hearing is held and, if necessary, we can continue to accept testimony beyond this time limit.

In the event the Board and state agency cannot resolve their differences, the Governor should make the final decision in accordance with Administrative Directive No. 09-01.

Thank you for the opportunity to provide testimony on this bill.