

NEIL ABERCROMBIE
Governor



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LATE

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Wednesday, March 14, 2012
1:30 P.M.
ROOM 016

HOUSE BILL NO. 2268, HOUSE DRAFT 2
RELATING TO SMALL BUSINESS

Chairperson Fukunaga and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2268, HD 2. 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 small business statement post public hearing indicates inconsistency with the earlier determination or does not address the public's concerns. The department opposes the bill.

The Department believes that the current rulemaking process provides sufficient review of agency rules with respect to small businesses. This bill would increase the time required for the already lengthy rulemaking process resulting in increased costs and a decrease in efficiency.

Thank you for the opportunity to submit testimony.



LATE

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IN REPLY REFER TO:

March 14, 2012

H.B. 2268, H.D. 2
RELATING TO SMALL BUSINESS

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

The Department of Transportation opposes this bill.

The bill gives the Small Business Regulatory Review Board authority to require a second public hearing if the Board believes an agency has not complied with the requirements of HRS Chapter 201M.

We do not understand how a second public hearing will help resolve the problem described in the bill. Small businesses are given ample opportunity to comment on the proposed rules before, during and after the public hearing. Moreover, they will continue to have the opportunity to comment on the proposed rules until the Governor approves the rules. So we don't understand the purpose of a second public hearing.

In any case, the problem described in the bill is essentially a disagreement between the Board and an agency. This type of disagreement should be resolved strictly between the Board and the agency. They should meet and discuss the issue in dispute with an open mind. There are normally two sides to an issue. It may turn out that Board is correct; on the other hand, it may turn out that the agency is correct. Either way, the issue is effectively resolved.

On August 17, 2010, we submitted a memo to the Governor requesting approval to hold public hearings on Chapter 19-147, "Ignition Interlock Devices", Hawaii Administrative Rules. In that memo, we stated that the proposed rules will have no impact on small business as required by Administrative Directive No. 09-01.

However, the Board informed us on September 7, 2010 that they disagreed with our stated position. They believed that the proposed rules would have an impact small business. To its credit, the Board invited our departmental Management Analyst to make a presentation in support of our position at its regular October 13, 2010 meeting. Upon listening to our presentation and asking questions, the Board reversed its position and voted unanimously to allow us to proceed with our public hearings.

This is an example of how a disagreement between the Board and an agency can be effectively resolved through a simple open-minded discussion—without the need for an additional public hearing. It should be noted that it would cost at least \$2000 to conduct an additional public hearing in accordance with HRS Chapter 91. This would be an indefensible expense under present economic conditions especially if the hearing is not necessary.

We would like to make one final point. Declining to make a rule change requested at a public hearing is not necessarily a wrong action. When an agency receives such a request, it reviews the request, evaluates it in terms of costs and benefits, and makes a determination on whether or not to accept the request. An agency may decide not to accept a requested rule change if it concludes that the request is not justified based upon a realistic evaluation of pertinent facts. It would be irresponsible for an agency to accept any requested rule change without question.

Thank you for the opportunity to present our views on this bill.

