

LATE TESTIMONY

Testimony of Thomas J. Smyth, CECD

**Before the
Committee on Economic Revitalization & Business**

Thursday, February 3, 2011, 8:00 a.m. Conference Room 312

On

HB 980 Relating to the Small Business Regulatory Review Board

Chair McKelvey, Vice Chair Choy and Committee Members:

Having worked with the original Small Business Regulatory Review Board (SBRRB) from its inception, I believe that adding to their powers the requirement to review Administrative Rules to ensure that the underlying statute is still appropriate is more than they can manage with existing resources.

Administrative rules are normally drafted by the agency responsible for implementing the underlying law. Often their Deputy Attorney General has a major role in drafting the rules, and at least thoroughly reviews the draft rule to ensure conformance. If the draft rule affects businesses of 100 employees or fewer, it is sent to the SBRRB for review. The SBRRB is primarily concerned with the economic and administrative impact of the proposed rule and often meets with the drafting agency to ensure they understands the purpose and intent of the rule and to ensure that it has the least possible impact consistent with the underlying law. Finally, the governor approves the draft rule for public hearing and then the Attorney General reviews the final rule to ensure conformity.

When a law sunsets or is otherwise terminated, including by judicial action, the related rule remains in effect until the agency goes through its individual repeal. It is important that the rule not automatically terminate when the law does because that could seriously impact those affected by the rules, such as beneficiaries of health or human services.

While it is useful for the SBRRB to consider the status of the underlying law, they do not have the legal expertise to make this judgment for the very wide range of rules they review. I believe that if the rule-making agency does the review on an annual basis and then lets the board know the status, that will suffice.

Thank you for the opportunity to testify.