

**SB 1498**

**EDT**



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## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of

**RICHARD C. LIM**

**Interim Director**

Department of Business, Economic Development, and Tourism  
before the

### **SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY**

Wednesday, February 9, 2011

1:15 PM

State Capitol, Conference Room 016

in consideration of

**SB 1498**

### **RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.**

Chair Fukunaga, Vice Chair Wakai and Members of the House Committee on Economic Development & Technology.

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB 1498, which seeks to rectify the issue of rules adopted by state agencies that are not amended or repealed to reflect changes to statutes being implemented by the rules. DBEDT also supports the idea of having the SBRRB and other state agencies work together to develop internal procedures to expedite rulemaking actions that deal solely with amendments to and repeal of rules to conform to current statutes.

Currently, HRS 201M-7, "Periodic review; evaluation report," directs state agencies that have rules affecting small business to submit a list of those rules to the Small Business Regulatory Review Board (SBRRB) on odd-numbered years. SB 1498 would make state

agencies more accountable by having them identify rules that impact small business and ensure that the agencies conform to the current statutes implemented by those rules on an annual basis.

By developing internal procedures to expedite the amendments to or repeal of rules to conform to current statutes, small businesses would be running their business based on the most up-to-date rules.

Thank you for the opportunity to offer these comments.

**Testimony of Thomas J. Smyth, CEcD**

**Before the  
Committee on Economic Revitalization And Technology**

**Wednesday, February 9, 2011, 1:15 p.m. Conference Room 016**

**On**

**SB1498 Relating to the Small Business Regulatory Review Board**

Chair Fukunaga, Vice Chair Wakai 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 understand 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.