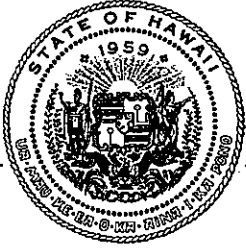


# SB 12

Measure Title: RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

Report Title: Small Business Regulatory Review Board; Department of Business, Economic Development, and Tourism; Line Item; Budget

Description: Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism.



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

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**LUIS P. SALAVERIA**  
Director  
Department of Business, Economic Development and Tourism  
before the  
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY**  
Wednesday, February 4, 2015  
2:45 PM  
State Capitol, Conference Room 016

In consideration of  
**SB12**  
**RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.**

Chair Wakai, Vice Chair Slom, and Members of the Senate Committee on Economic Development and Technology.

The Department of Business, Economic Development and Tourism (DBEDT) supports the intent of SB12 provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget.

This bill would entitle the Small Business Regulatory Review Board (SBRRB) to a separate line item within DBEDT's budget.

DBEDT supports the work of the SBRRB and agrees that a budget line item for operational expenses would give board members the opportunity to plan their activities.

Should the Legislature decide to appropriate funds to support the operations of the board in the State budget, this bill would not be needed. DBEDT is available to work with your Committee staff to provide any information requested by the Committee.

Thank you for the opportunity to offer these comments.

WRITTEN ONLY

TESTIMONY BY WESLEY K. MACHIDA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT  
AND TECHNOLOGY  
ON  
SENATE BILL NO. 12

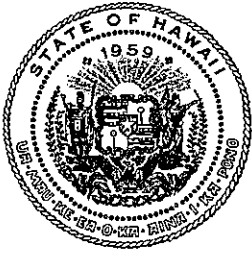
*comments*

February 4, 2015

RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Senate Bill No. 12 requires the Small Business Regulatory Review Board to have a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The Department of Budget and Finance points out that the bill is unclear because the State does not budget on a line item basis but rather on a program ID basis. If the intent of this bill is to create a separate program ID within the statewide program structure for the Small Business Regulatory Review Board, then this would set a precedent because it is generally the responsibility of the Executive Branch to create a program ID. Further, every biennium we have a process where departments can propose changes to the program structure.



## SMALL BUSINESS REGULATORY REVIEW BOARD

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Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586 2594  
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David Y. Ige  
*Governor*

Luis P. Salavaria  
*Director, DBEDT*

### Members

Anthony Borge  
*Chair*  
*Maui*

Wayne Tanaka  
*Vice Chair*  
*Oahu*

Barbara Bennett  
*2<sup>nd</sup> Vice Chair*  
*Kauai*

Kyoko Kimura  
*Maui*

Harris Nakamoto  
*Oahu*

Ashley Leahey  
*Maui*

Director, DBEDT  
*Voting Ex Officio*

### MEMORANDUM

TO: Chair Wakai, Vice Chair Slom, and Members of the Committee on Economic Development and Technology

FROM: Anthony Borge, Chair  
Small Business Regulatory Review Board

DATE: Wednesday, February 4, 2015 – Room 16 at 2:45 p.m.

SUBJECT: **SB 12 – Relating to the Small Business Regulatory Flexibility Act**

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On behalf of the Small Business Regulatory Review Board (SBRRB), I am providing testimony in **strong support** of Senate Bill 12, Relating to the Small Business Regulatory Flexibility Act. This measure would provide for a separate line item for the SBRRB within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB members are comprised from small businesses throughout the State that volunteer their time and meet monthly, spending countless hours reviewing existing, new, and modified administrative rules that impact small business. They analyze hundreds of pages of proposed rules to determine if there are better ways to make them less complex and costly for small firms.

There is presently no budget reserved for the SBRRB's operations. However, statutorily, the board is required to have "at least one representative from each county." (Currently, there is one member from Kauai, two from Maui, and one vacancy from the Big island.) Annual expenses for travel alone approximate \$15,000, plus postage and mailing of agenda packets total \$1,000; these figures represent the bare minimum required to sustain the SBRRB's operations.

The SBRRB is also required to review requests from small business owners for review of any rule adopted by a state agency, and organize and hold conferences on problems affecting small business. Without a budget, the SBRRB volunteers have been unable to provide outreach to the small business community to provide a valuable, needed service to enhance, promote and defend the continued growth of small businesses in Hawaii.

Thank you for allowing the SBRRB to testify in strong support of Senate Bill 12.



**Testimony to the Senate Committee on Economic Development and  
Technology**

**Wednesday, February 4, 2015 at 2:45 P.M.  
Conference Room 016, State Capitol**

**RE: SENATE BILL 12 RELATING TO THE SMALL BUSINESS REGULATORY  
FLEXIBILITY ACT**

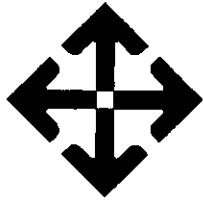
Chair Wakai, Vice Chair Slom, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **supports** SB 12, which entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Small Business Regulatory Review Board is an integral part in getting input from the small business community on rules and regulations that may affect them. As you know, many small business owners do not have the time to track all the rules, which is where laws are put to force in detail. The board has been understaffed for many years. We believe that a line item may help the board obtain regular funding.

Thank you for the opportunity to testify.



# The Hawaii Business League

1188 Bishop St., Ste. 1003, Honolulu, Hawaii 96813

Phone: (808) 533-6819 Facsimile: (808) 533-2739

February 4, 2015

Testimony To: Senate Committee on Economic Development and Technology  
Senator Glenn Wakai, Chair

Presented By: Tim Lyons  
President

Subject: S.B. 12 - RLEAING TO THE SMALL BUSINESS REGULATORY  
FLEXIBILITY ACT.

Chair Wakai and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization. We support this bill.

When the Small Business Regulatory Flexibility Act was passed it was hailed as "hallmark legislation" throughout the small business community in the United States of America and at one point it reached its "hayday" however, since that time it has been neglected, abused, and thrown in the back seat where it has not been able to accomplish its intended purposes.

Much of that is due to the lack of resources within the department and we believe that this bill will at least provide for a policy that the Small Business Regulatory Review Board should get some kind of funding.

Based on that and with the hopes that this Board can rejuvenate itself, we very much support this bill.

Thank you.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 01, 2015 9:36 AM  
**To:** EDT Testimony  
**Cc:** glennshiroma@hawaiiantel.net  
**Subject:** Submitted testimony for SB12 on Feb 4, 2015 14:45PM

**SB12**

Submitted on: 2/1/2015

Testimony for EDT on Feb 4, 2015 14:45PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn Shiroma	Individual	Oppose	No

Comments: DBEDT Small Business Regulatory Review Board should be REPEALED. SBRRB is ONLY an advisory board with no teeth.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

*\* Additional testimony follows*



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 02, 2015 11:20 AM  
**To:** EDT Testimony  
**Cc:** glennshiroma@hawaiiantel.net  
**Subject:** Submitted testimony for SB12 on Feb 4, 2015 14:45PM  
**Attachments:** 1029 S Memo 15-1 SBRRB Memo Op re Act 68.pdf

**SB12**

Submitted on: 2/2/2015

Testimony for EDT on Feb 4, 2015 14:45PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn Shiroma	Individual	Oppose	No

Comments: DBEDT Small Business Regulatory Review Board should be REPEALED. SBRRB is ONLY an advisory board with no teeth. SBRRB has failed to enacted SLH2014 Act 68 (SB2249) which resulted in Office of Information Practices issuance of 1029 S Memo 15-1 SBRRB Memo OP RE ACT 68. SBRRB continues to violate Hawaii Sunshine Law until this day.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

*\* - See attached memo from Office of the Lieutenant Governor / Office of Information Practices.*



NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LIEUTENANT GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE LIEUTENANT GOVERNOR**  
**OFFICE OF INFORMATION PRACTICES**

CHERYL KAKAZU PARK  
DIRECTOR

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250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
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E-MAIL: [oiip@hawaii.gov](mailto:oiip@hawaii.gov)  
[www.oiip.hawaii.gov](http://www.oiip.hawaii.gov)

The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR). This is a memorandum opinion and will not be relied upon as precedent by OIP in the issuance of its opinions or decisions.

**MEMORANDUM OPINION**

**Requester:** Anthony Borge, Chair  
**Board:** Small Business Regulatory Review Board  
**Date:** October 29, 2014  
**Subject:** Small Business Regulatory Review Board's (SBRRB) Review of Other Agencies' Rules (S RFO-G 15-1)

**Request for Opinion**

Requester asked for an opinion about whether Act 68, 2014 Hawaii Session Laws (Act 68),<sup>1</sup> applies to SBRRB when posting notices of meetings during which SBRRB will be discussing other agencies' draft rules.

Unless otherwise indicated, this opinion is based solely upon the facts presented in Requester's e-mail correspondence dated July 16, 2014.

**Opinion**

Act 68 applies to SBRRB. Therefore, when SBRRB will review proposed rules at a meeting, SBRRB may comply with the Sunshine Law's notice requirement by providing statements about the rules to be reviewed in accordance with Act 68.

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<sup>1</sup> Senate Bill No. 2249, S.D. 1, H.D. 1, enacted as Act 68, 2014 Session Laws, [http://www.capitol.hawaii.gov/session2014/bills/SB2249\\_HD1\\_.htm](http://www.capitol.hawaii.gov/session2014/bills/SB2249_HD1_.htm) (last visited Oct. 6, 2014).

## **Statement of Reasons for Opinion**

Act 68 amended section 92-7(a), HRS, which is entitled “Notice” and requires that a “board shall give written public notice of any regular, special, or rescheduled meeting[.]” HRS § 92-7(a) (2012). The amendment added a new notice provision to section 92-7, HRS:

If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a) (1) (A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6.

Act 68, 2014 Hawaii Session Laws. Act 68’s legislative history states that this Act’s purpose is “to improve the administrative rulemaking process by allowing proposed rules to be described in public meeting agendas under the Sunshine Law in the same manner as currently provided in public hearing notices under administrative rulemaking procedures.” H. Stand. Comm. Rep. No. 1125-14, 27<sup>th</sup> Leg., 2014 Reg. Sess., [http://www.capitol.hawaii.gov/session2014/CommReports/SB2249\\_HD1\\_HSCR1125-14\\_.htm](http://www.capitol.hawaii.gov/session2014/CommReports/SB2249_HD1_HSCR1125-14_.htm) (last visited Oct. 2, 2014).

Act 68 provides a manner by which a board can describe proposed rules on its agenda that “meets the requirements for public notice” under the Sunshine Law, but it does not require a board’s notice to be provided only in this manner when the board will consider proposed rules at its meeting. Act 68; see H. Stand. Comm. Rep. No. 1125-14, 27<sup>th</sup> Leg., 2014 Reg. Sess., [http://www.capitol.hawaii.gov/Session2014/CommReports/SB2249\\_HD1\\_HSCR1125-14\\_.htm](http://www.capitol.hawaii.gov/Session2014/CommReports/SB2249_HD1_HSCR1125-14_.htm) (last visited Oct. 2, 2014) (explaining that Senate Bill No. 2249, enacted as Act 68, is “allowing” proposed rules to be described in public meeting agendas in the same manner as in hearing notices for rulemaking). Thus, when a board is preparing its agenda to give notice of its consideration of proposed rules at a meeting, the board is responsible for providing sufficient notice to the public by either describing the rules in sufficient detail in the agenda itself (or as an attachment filed with and incorporated in the agenda), or by providing notice of the rules as an agenda item in the manner described by Act 68.

As OIP understands, there is no issue as to whether SBRRB is a “board” subject to the Sunshine Law’s open meeting requirements, including the notice provisions in section 92-7, HRS. See HRS §§ 92-2 (2012) (providing the definition of the term “board”); 201M-5 (Supp. 2013) (setting forth SBRRB’s duties and powers). Thus, section 92-7, HRS, as amended by Act 68, applies to SBRRB. Furthermore, OIP finds that Act 68 applies even when a board such as SBRRB is reviewing another

agency's rules because neither Act 68 nor its legislative history limits the application of this new notice provision to a board's review of its own proposed rules.<sup>2</sup>

Notably, under Act 68's notice provision, a board's notice is sufficient if it contains "a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6." Act 68 (emphasis added). Section 91-2.6, HRS, requires that "all state agencies, through the office of the lieutenant governor, shall make available on the website of the office of the lieutenant governor each proposed rulemaking action of the agency and the full text of the agency's proposed rules or changes to existing rules." HRS § 91-2.6 (2012). Consequently, when SBRRB will consider another agency's proposed rules at a meeting, SBRRB can provide notice of its rules review in accordance with Act 68 only when the other agency's proposed rules are already made available on the Lieutenant Governor's website by the other agency as required by section 91-2.6, HRS.

If the other agency's proposed rules are not available on the Lieutenant Governor's website, then SBRRB is unable to meet the criteria for sufficient notice under Act 68 and, therefore, should not provide notice of its rules review in the manner set forth in this Act. In such instances SBRRB should "list all of the items to be considered" in its agenda, as required by section 92-7(a), HRS. Alternatively, OIP recommends that at the time that agencies forward draft rules for SBRRB's review under chapter 201M, HRS, SBRRB should advise the agencies to make their draft rules available at the Lieutenant Governor's website so that SBRRB may then be able to provide notice of its rules reviews in accordance with Act 68 by referring to the text of the draft rules posted at this website.

### **Right to Bring Suit to Enforce Sunshine Law and to Void Board Action**

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS §

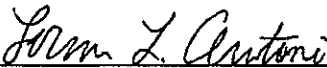
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<sup>2</sup> The Department of Business, Economic Development and Tourism and OIP had testified in support of the passage of S.B. No. 2249. These agencies' testimonies stated that this bill would assist SBRRB in its preparation of its agendas with regards to providing notice about other agencies' rules that SBRRB will be reviewing at its meetings. [http://www.capitol.hawaii.gov/Session2014/Testimony/SB2249\\_SD1\\_TESTIMONY\\_JUD\\_03-18-14\\_.PDF](http://www.capitol.hawaii.gov/Session2014/Testimony/SB2249_SD1_TESTIMONY_JUD_03-18-14_.PDF) (last visited Oct. 6, 2014).


92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

**OFFICE OF INFORMATION PRACTICES**

  
\_\_\_\_\_  
Lorna L. Aratani  
Staff Attorney

APPROVED:

  
\_\_\_\_\_  
Cheryl Kakazu Park  
Director