

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
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MEMORANDUM

TO: Chair McKelvey, Vice Chair Ichiyama and Members of the Committee on Consumer Protection and Commerce

FROM: Anthony Borge, Chairperson
Small Business Regulatory Review Board

DATE: Tuesday, February 14, 2017 – 2:00 PM

SUBJECT: HB75 HD1 – Relating to the Small Business Regulatory Flexibility Act Strongly Oppose – Room 329

David Y. Ige
Governor

Luis P. Salaveria
Director, DBEDT

Members

Anthony Borge
Chair
Oahu

Harris Nakamoto
Vice Chair
Oahu

Kyoko Kimura
2nd Vice Chair
Maui

Robert Cundiff
Oahu

Nancy Atmospera-Walch
Oahu

Garth Yamanaka
Hawaii

Director, DBEDT
Voting Ex Officio

On behalf of the Small Business Regulatory Review Board (SBRRB), I am providing testimony in strong opposition of HB75 HD1, Relating to the Small Business Regulatory Flexibility Act (RFA). This measure extends the time given to an agency to submit a small business impact statement to the department advisory committee on small business and to the SBRRB, and gives the SBRRB an opportunity to submit comments to the Governor within ten days after the proposed rules are submitted to the Governor for approval for public hearing.

Specifically, this measure removes the requirement that when proposed rules affect small business that a small business impact statement is submitted to the department's advisory committee and the SBRRB "before the rules are submitted to the Governor for approval for public hearing." Instead, the small business impact statement would be submitted and "ready to be filed with the lieutenant governor pursuant to section 91-4."

The ten day period does not allow adequate time for the SBRRB to review and provide comments to the agencies on the small business impact statement. Under section 91-4, when proposed rules are sent to the Governor for signature, they are ready for adoption, and "shall become effective ten days after filing with the lieutenant governor." By this time, the draft rule is well set and if the SBRRB had major concerns, another public hearing would be required at a cost of several thousand dollars and several months of lost time.

Further, the initial intent of the Legislature and purpose of the RFA was to provide that a small business impact statement is prepared and submitted to the SBRRB as early as practicable in the rule drafting process. This allows for a dialogue between the drafting agencies, the SBRRB, and the small business community prior to taking any final steps.

Additionally, the timing of this proposal would conflict with Section 201M-3, HRS, which requires an agency to submit a "small business statement" after public hearing for any proposed rule that affects small business. Thus, the proposed measure would require both a "small business impact statement" and a "small business statement after the public hearing" at virtually the same time.

Thank you for allowing the SBRRB to provide testimony in strong opposition of HB75 HD1.



Chamber of Commerce HAWAII
The Voice of Business

LATE

**Testimony to the House Committee on Consumer Protection & Commerce
Tuesday, February 14, 2017 at 2:00 P.M.
Conference Room 329, State Capitol**

**RE: HOUSE BILL 75 HD1 RELATING TO SMALL BUSINESS REGULATORY
FLEXIBILITY ACT**

Chair McKelvey, Vice Chair Ichiyama, and Members of the Committee:

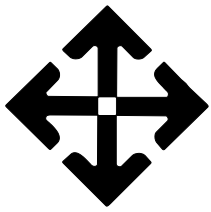
The Chamber of Commerce Hawaii ("The Chamber") **expresses serious concerns on** HB 75 HD1 which extends the time given to an agency to submit a small business impact statement to the Departmental Advisory Committee on Small Business and the Small Business Regulatory Review Board. Gives the Board the opportunity to submit comments to the Governor within ten days after the proposed rules are submitted to the Governor for approval for public hearing.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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.

We have concerns that this measure will shorten the time available for both the SBRRB and the small business community to provide comment and input. The ten day period does not allow adequate time for the SBRRB to review and provide comments to the agencies on the small business impact statement.

The initial intent of the Legislature and purpose of the RFA was to provide that a small business impact statement is prepared and submitted to the SBRRB as early as practicable in the rule drafting process. This allows for a dialogue between the drafting agencies, the SBRRB, and the small business community prior to taking any final steps.

Thank you for the opportunity to testify.



The Hawaii Business League

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LATE

February 14, 2017

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 75, HD 1 - RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of The Hawaii Business League, a small business service organization. We are opposed tremendously to this bill.

This bill and its accompanying H.D. 1 defeats the very purpose of the Small Business Regulatory Review Board. As proposed it would require the Board to attached its comments to proposed rules when they are sent to the Governor for approval for public hearing.

The idea of the Small Business Regulatory Review Board was for government agencies to work with the small business community through designated representatives in order to obtain feedback and discussion on regulatory actions prior to them taking effect. The problem with doing it at the time of a public hearing is that agencies are very reluctant to change their rules regardless of what facts and

figures the public hearing might bring out. This is because of course, the rules have gone through AG review and any substantial change will require another AG review which could take months or years. The whole process is flawed. This bill makes it even worse and we would like to respectfully request that the Committee consider a resolution forming a governmental and private industry task force to look at the Hawaii Administrative Procedures Act to study its current efficiencies, positive procedures and negative procedures and recommend any changes should they be necessary prior to the next legislative session.

In the interim we would request that this bill be held.

Thank you.



COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair
Rep. Linda Ichiyama, Vice Chair

Rep. Henry J.C. Aquino Rep. Chris Todd
Rep. Ken Ito Rep. Ryan I. Yamane
Rep. Calvin K.Y. Say Rep. Beth Fukumoto
Rep. Gregg Takayama

LATE

NOTICE OF HEARING

DATE: Tuesday, February 14, 2017
TIME: 2:00 PM
PLACE: Conference Room 329

**TESTIMONY OF THE OCEAN TOURISM COALITION SPEAKING IN
STRONG OPPOSITION TO HB 75, HD1**

Chair McKelvey, Vice Chair Ichiyama, and Members of CPC

My name is James E. Coon, President of the Ocean Tourism Coalition **speaking in STRONG OPPOSITON of HB 75, HD1** The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities. I was a charter member of the first Small Business Regulatory Review Board (Board) and speak from that experience. The Small Business Regulatory Flexibility Act (SBRFA) was promulgated to help small business have a venue to avoid unnecessary and redundant regulation. HB75,HD1 should not be passed because it will significantly jeopardize the effectiveness of the Small Business Regulatory

Flexibility Act (SBRFA). In the original SBRFA the agency submitted the proposed rules to the Board BEFORE the proposed rules were submitted to the Governor for public hearing. This gave both the agency and the board time to have some dialogue and make substantive changes and comments to the small business impact statement before going to the Governor for public hearing.

The current HB75,HD1 seeks to let the agency submit proposed rules to the Governor to go out to public hearing Before the Governor has the report from the SBRRB. HB75,HD1 proposes that the Board to submit a small business impact statement only after the agency has submitted the proposed rules to the Governor to go out to public hearing “ **The board shall submit any comments on the proposed rules to the governor within ten days after the rules are submitted to the governor for approval for public hearing.** ” This goes directly against the purpose of SBRFA, which is to ensure that agency rules are effective but minimally burdensome on the small businesses of Hawaii. If passed, HB75, HD1 may allow an agency to delay the submittal of the impact statement until the rule will effectively become law. This is because once the Governor has approved the rules to go to public hearing under the antiquated Hawaii Administrative Procedures Act (HAPA) the rule promulgation process has to start all over again if

“any substantive change” is made in the rules package. As a result, rules that could do significant harm seldom if ever are changed in the public hearing stage and may not receive the proper vetting that the SBRFA was meant to ensure. Accordingly, HB75, HD1 should not be passed because it allows agencies to circumvent the laws that make the SBRFA an effective tool in preventing harm to the small businesses of Hawaii. **Please do not pass this HB 75, HD1 which will effectively gut the SBRFA and cause great harm to the already overburdened small business of our Great State.** If you do pass HB 75, HD1 add additional language that prohibits the Governor from passing the rules out to public hearing until the SBRRB Board has submitted its recommendations and they have been reviewed and accepted by the Governor. Furthermore that the agency submitting the rules will have adequately addressed the small business concerns raised by the Board.

Sincerely,

A handwritten signature in black ink that reads "James E. Coon". The signature is written in a cursive style with a large, sweeping initial "J".

James E. Coon, President,

Ocean Tourism Coalition