

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

December 9, 2015

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:04 p.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Harris Nakamoto
- Kyoko Kimura
- Nancy Atmospera-Walch
- Robert Cundiff
- Garth Yamanaka
- Mark Ritchie

ABSENT MEMBERS:

- Barbara Bennett
- Phillip Kasper

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. **APPROVAL OF November 18, 2015 MINUTES**

Ms. Kimura made a motion to accept the November 18, 2015 minutes, as amended. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing on the Proposed Amendments by the Board of Water Supply, County of Kauai, as follows:
- a. Section VII, Facilities Reserve Charge, Part 4 Fixing Rates for the Furnishing of Water Service in the County of Kauai
 - b. New Part 5, Facilities Reserve Charge in the County of Kauai
 - c. Section III, Facilities Reserve, Part 3, Rules and Regulations for Establishing Standards for Subdivision Water Systems

The review of the amendments after public hearing were deferred until the next Board meeting.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 95, Pharmacists and Pharmacies, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader, Ms. Kimura, explained that the proposed rules allow students enrolled in the first year of an accredited college, who are pharmacy interns, to be issued a pharmacy intern permit. Ms. Lee Ann Teshima, Executive Officer for the Board of Pharmacy at DCCA, added that the national trend is to allow an intern to gain work experience in the community. Another major change to the rules may likely impact small businesses positively as it allows a pharmacy to transfer a prescription to another pharmacy if the initial prescription was not filled; this allows the public to go to a pharmacy of its choice. Chair Borge stated that the rule amendments make perfect business sense.

Ms. Kimura made a motion to move the proposed amendments to the Governor for public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action in Determining if the Current Airport Pick-up Fees at Hawaii International Airport are consistent with HAR Title 19, Chapter 38.1, On-Demand Taxi Service at Public Airports, HAR Chapter 20.1, Commercial Services at Public Airports, and are in accordance with Act 163, Session Laws of Hawaii 1994. And, Discussion of Improving upon Dispatching Taxi Service for Passengers through Operational and Enforcement of Rules and Procedures to Upgrade the Level of Customer Service

Ms. Dale Evans, president of Charley's Taxi, explained that the taxi industry, the City and County of Honolulu, and the Department of Transportation's (DOT's) highways and harbors divisions are aware of her plight, and stated that service at the airports and harbors is known to have severe problems for not only taxi drivers but also for DOT workers. She noted that Hawaii has the most taxi driver strikes of any place in the world. In 1963, there were 425 taxis servicing the airport and today there are 400; this decline is the direct result of the fees being charged to the taxi drivers. She added that Honolulu airports are very difficult to manage in relation to any other airport in the U.S.

In 1994, the State Legislature created Act 162, SLH, which among other requirements, states that fees charged to the drivers are to be based on actual cost of operation and for the administration of the system. However, there are no administrative rules for the charged fees, yet a mandated \$5.00 pick-up fee at the Honolulu airports is the highest fee in the world; also, the drivers are prohibited from passing on any costs to passengers as provided by County ordinance. Further, there are no administrative rules for the \$1.00 fee assessed to those drivers equipped with charge card accessibility. In addition, the airport fees in Honolulu are the highest in the country; there are 4,000 airports in the United States and less than 30 cities impose fees on taxi drivers. Ms. Evans added that taxi licenses range from \$1,700 to \$1,800.

Overall, Ms. Evans stated that there are only “general” rules created for the airports, and the harbor has no rules of standards, of operations, or rules of enforcement; this has caused issues when, for example, cruise line passengers come into town. Chair Borge stated that since small businesses make up a majority of the economic base of “tourism” (the number one industry), this Board can be a “voice” to assist in putting forth rules and regulations, particularly in regards to the \$5.00 fee at the airport. In addition, he agreed that the stakeholders must be engaged in the process with DOT in promulgating the rules. Ms. Evans urged that both the operational and financial problems be addressed; she noted that the hospitality industry is also aware of and is concerned with the level of service at Hawaii’s harbors and airports.

Chair Borge suggested that DOT Director Ford Fuchigami be extended an invitation to attend the next Board meeting for fact-finding purposes as to the direction DOT is presently taking regarding harbors and airports in relation to small business. Ms. Kimura also suggested that this Board might begin collecting feedback from the stakeholders, such as HTA (Hawaii Tourism Authority) and HLTA (Hawaii Lodging & Tourism Association) in regards to the issues at hand.

Ms. Kimura made a motion that this Board’s chair (Mr. Borge) and discussion leader (Ms. Kimura) visit DOT Director Ford Fuchigami regarding Ms. Evans’ concerns, as well as collect information from other concerned organizations such as HTA (Hawaii Tourism Authority) and HLTA (Hawaii Lodging and Tourism Association). Ms. Walch-Atmosfera seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to the following rules promulgated by DoTax:

a. HAR Title 18, Chapter 231, Income Tax Law

Discussion leader Mr. Yamanaka, explained that the proposed rule changes allow individuals an option, when assessed a fine, for resolution of his or her tax obligations without having to go through the existing, expensive appeals process. Mr. Herlitz added that it allows for a second look at either an assessment or denial of a tax claim; further, this process would not impact a taxpayer’s right to an appeal.

Mr. Yamanaka made a motion to support the proposed amendments to go to public hearing. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

b. HAR Title 18, HAR Chapter 251, Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax

Mr. Yamanaka explained that he spoke with attorneys that worked on the legislation regarding these amendments which includes allowing qualified car-sharing vehicles to be taxed in 30-minute increments rather than being taxed for a whole day. This will provide more flexibility as well as the ability to charge a lower rate to passengers. It was noted that the amendments are very business-friendly, and the attorneys that worked on this legislation agreed that it was a fair regulation.

Mr. Yamanaka made a motion to support the proposed amendments to go to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on the following:

1. Draft 2015 Annual Report Summary to the Hawaii State Legislature, pursuant to Section 201M-5 (f), HRS

The members reviewed and made changes to the Board's draft 2015 Annual Report Summary.

Mr. Cundiff made a motion to approve the draft 2015 Annual Report Summary with the recommended changes. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

2. Amendments to the Draft Small Business Impact Statement Section 201M-2, HRS, and the Small Business Statement After Public Hearing, Section 201M-3- HRS

The members reviewed the draft small business impact statement and small business statement after public hearing. It was decided that rather than include a series of questions regarding the Consumer Price Index in the small business impact statement, the following verbiage will be added under Section 2.d., "Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, inflation rate, etc.)."

Ms. Kimura made a motion to approve both the small business impact statement and the small business statement after public hearing with the recommended changes. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

3. Draft Monthly e-Newsletter

Deferred to the next meeting.

4. Delegation of Authority to Board Members(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2016 Hawaii State Legislative Session

It was encouraged that each member speak with his or her island's legislators to seek support for this Board.

Mr. Cundiff made a motion to move forward in support of the Board's budget request with an open dollar amount during the 2016 legislative session. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

Ms. Kimura made a motion to delegate Chair Borge, Vice Chair Nakamoto, and Second Vice Chair Bennett to testify on behalf of the Board during the 2016 Hawaii State Legislative Session. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

In regards to the Board's budget request, Chair Borge explained that he was informed by DBEDT's Director that the request was not approved by the Department of Budget and Finance. Chair Borge also spoke with DBEDT's Director regarding obstacles in the travel arrangements that some of the neighbor island members experienced for this month's meeting.

Ms. Atmospera-Walsh updated the members on the small business problem she discussed at last month's board meeting regarding the federal department of labor proposing to change "independent contractors" of care home facilities into "employees." She met with House Representative John Mizuno who spoke with the Attorney General's Office about introducing a bill during the 2016 legislative session regarding guidelines that distinguishes the term "independent contractor" and "employee" from each other.

- VI. NEXT MEETING** – The next meeting is scheduled for Wednesday, January 27, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.
- VII. ADJOURNMENT** – Ms. Kimura made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 3:05 p.m.