

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 28, 2015

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 9:33 a.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Wayne Tanaka
- Kyoko Kimura
- Harris Nakamoto
- Mark Ritchie

ABSENT MEMBERS:

- Barbara Bennett
- Ashley Takatani

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF DECEMBER 10, 2014 MINUTES

Ms. Kimura made a motion to accept the December 10, 2014 minutes, as amended. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 6, Enterprise Zones, and the Small Business Statement After Public Hearing, promulgated by DBEDT

Mr. Wayne Thom, Community Economic Development Manager from DBEDT's Business Development & Support Division, stated that no one showed up at the December 4, 2014 public hearing, which was advertised heavily, and no testimonies were received.

It was explained that after the public hearing, some inconsistencies were found by DBEDT and during the review of the proposed amendments at the County Coordinator's meeting. As a result, corrections were made to the proposal and discussed during the meeting by Mr. Ritchie. The general reason for the corrections were mainly to assist with any misinterpretation or ambiguity of the rules. For example, when a county or zone is terminated, it would mean all of the companies in the seven-year program will be grandfathered in; however, if the zone expires after the mandated 20 years, the language could have been interpreted that the companies would not be grandfathered into the program. Since the 20-year cycle is coming up for some of the zones, anyway, it was

decided to clean-up and clarify the language. Changes made to the rules after the public hearing were deemed to be non-substantive; therefore, the proposed changes need not require another public hearing.

Currently, there are approximately 300 businesses enrolled in the Enterprise Zone program; there have been about 1,000 companies enrolled since the program was initiated. There are 95 to 100 enrolled from the Big Island, 150 from Oahu, and 30 from Kauai. Some of the ways the program is solicited is through “word of mouth,” by the County representatives, DBEDT’s website (i.e., maps), and presentations made at small business fairs.

Vice Chair Tanaka made a motion to recommend to the Governor to approve the proposed amendments for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Recommendations to the following rules and Small Business Statement After Public Hearing, promulgated by DHS:

1. Proposed Adoption of HAR Title 17 Chapter 1719.1, State Funded Aged, Blind and Disabled Program

Ms. Aileen Befitel, Program Specialist for DHS’s Med-QUEST Division, explained that the public hearing was held on January 5, 2015, with a total of fifteen people attending; ten provided testimonies that were of a positive nature. One testimony related to the enrollment date of the Hawaii Health Connector; however, Ms. Befitel explained that DHS does not control the Health Connector and cannot change the date. It was confirmed that only state monies are used in the program, no grants.

Mr. Nakamoto made a motion to support the approval of the adoption of the rule amendments. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

2. Repeal of HAR Title 17 Chapter 1722.3, Basic Health Hawaii

See above B. 1.

Mr. Nakamoto made a motion to support the approval of the adoption of the rule amendments. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

3. Proposed Adoption of HAR Title 17 Chapter 1731, Premium Assistance Program

See above B. 1.

Mr. Nakamoto made a motion to support the approval of the adoption of the rule amendments. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 110, Physical Therapy, and the Small Business Statement After Public Hearing, promulgated by DCCA

As no one from DCCA was in attendance, Ms. Kimura explained that this Board reviewed these amendments prior to the public hearing where there was no opposition to the rules. The main purpose of the amendments is to require physical therapist assistants to become licensed and regulated under the State's licensure. It was noted that outlying, rural areas such as in some of the neighbor islands would benefit from this amendment as it would allow the public access to care, due in part to a shortage of physicians.

Ms. Kimura made a motion to pass the amended rules to the Governor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 60.8, Haena Community-Based Subsistence Fishing Area, Kauai, and the Small Business Statement After Public Hearing, promulgated by DLNR

Mr. David Sakoda, Marine Law Fellow from DLNR's Division of Aquatic Resources, explained that a public hearing was held on October 3, 2014, of which over 200 people attended. Over 99% of the total testimonies received were in full support of the proposed amendments.

One suggestion made at the public hearing came from a commercial fisher for an exemption to allow for the commercial harvest of two fish species, ta'ape and mu. DLNR considered this request but did not modify its rules because it would be nearly impossible to enforce, and the bag net or surround net methods used by commercial fishers has the potential to result in significant bycatch. In addition, while ta'ape and mu school in deeper waters, they often swim inshore to feed and are caught on hook-and-line by shorefishers, which may provide important subsistence resources for residents. While DLNR chose not to include this request in the rules, it was noted that DLNR will work closely with this fisher to come up with amendments in the future to incorporate this exemption.

Chair Borge stated that ta'ape is a nice, colorful fish for an aquarium, but it is not a good eating fish, and it is unfortunately over-populating and driving out other species. He also stated was that the proposed rules make a good model for other Hawaii islands as it benefits not only residents but agencies and tourists.

Mr. Richie made a motion to move the rules to the Governor for adoption. Vice Chair Tanaka seconded the motion, and the Board members unanimously agreed.

E. Discussion and Action on Proposed Amendments to HAR Title 5 Chapter 11, promulgated by Department of the Attorney General

Ms. Shari Wong, Deputy Attorney General, stated that everything went smoothly at the public hearing with one person attending, and no changes were made to the final proposed rules.

Mr. Nakamoto made a motion to send the proposed rules to the Governor for adoption. Vice Chair Tanaka seconded the motion, and the Board members unanimously agreed.

- F. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 60 Section 10, Minimum Prices in the Honolulu Milk Shed, and Chapter 60 Section 10, Minimum Prices in the Hawaii Milk Shed, and the Small Business Impact Statement After Public Hearing, promulgated by DoAg

Chair Borge stated that these rules have been signed off by the Governor and adopted.

No action was taken by the Board.

IV. LEGISLATIVE MATTERS

- A. Discussion and Action on Senate Bill 12, "Relating to the Small Business Regulatory Flexibility Act"

Senate Bill 12 was introduced by Senator Roz Baker, and provides the small business regulatory review board with a separate line item within the budget of DBEDT. If it goes through the session, funding would be provided specifically for this Board. There is also a companion bill, House Bill 266, which has the same exact wording, and introduced by Representative Angus McKelvey. It is unknown as to whether the proposal represents new monies, or monies that will be carved out of the current proposed budget. Chair Borge explained that although the monies requested are nominal, it will at least provide this Board with a base to make it a little easier to function. It was expressed that board members can provide his or her own individual testimony in support of these bills.

Ms. Kimura made a motion for this Board to give authority to Chair Borge and Vice Chair Tanaka to provide testimony in "support" of both Senate Bill 12 and House Bill 266, Relating to the Small Business Regulatory Flexibility Act. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

- B. Distribution of the following: 1) List of Governor Ige's Cabinet Members (2015); 2) 2015 State of Hawaii Legislative Session Calendar; 3) Hawaii State Legislative Telephone and Fax Directors; and 4) Hawaii State Senate and House of Representative Committee Assignments

The members reviewed the distributed lists.

V. ADMINISTRATIVE MATTERS

- A. Discussion on the Board's Power Point Presentation, Fact Sheet, and Update on the Board's Current and Future Outreach Opportunities to Hawaii Small Businesses to Promote this Board's Mission, in accordance with Chapter 201M, Hawaii Revised Statutes

Chair Borge stated that as soon as current photographs are received from board member, Ms. Takatani, they will be incorporated into the power point presentation. It was

recommended that the Fact Sheet include a contact telephone number and website address.

In regards to the future outreach opportunities, Mr. Nakamoto explained that the Hawaii Restaurant Association has requested that this Board attend one of its board meetings to discuss its purview. Also, there is an opportunity on radio station KPRP, 650 AM, for this Board to have a five to ten minute information spot to discuss this Board, its mission and any other major points. There is no cost for radio spot, and it can be pre-taped, done weekly, monthly, or whenever the Board would like. Overall, this suggestion was well received by the members.

Mr. Henrique Regina introduced himself to the members, noting that he was asked to attend this meeting by the Hawaii Chamber of Commerce to observe the work of this Board.

Chair Borge introduced Mr. Reg Baker, recently appointed to a three-year term to the United States Small Business Administration Regulatory Fairness Board for Region 9. He is the first person from Hawaii to be named to this Board, which covers Hawaii, Arizona, California, Nevada, Guam and American Samoa. The Fairness Board covers all the rules and regulations affecting small businesses coming from the federal government, and monitors how they are enforced.

Mr. Baker expressed that he would like to solicit as much feedback as he can from this Board, as he has been asked to engage in as many business organizations, state agencies, and other interested parties as possible to report back to the SBA in Washington. Mr. Baker is a partner at PKF Pacific Hawaii, LLP, and a CPA firm, and former executive vice president of the Hawaii Medical Assurance Association. He is also currently working with the Hawaii Chamber of Commerce to build up the Chamber's Business Council for networking opportunities.

He has extended his services and an offer to include him in wherever this Board believes it is appropriate and for any collaborative efforts. He noted that there is a "Round Table" discussion group with *Pacific Business News* that discusses small business regulatory issues and has extended an invitation to this Board to be included.

B. Discussion and Update on the Board's Budget Request to the State Legislature for Fiscal Years 2016 and 2017

Mr. Ritchie stated that he was informed that DBEDT supports having a budget for this Board.

C. NEXT MEETING – The next meeting is scheduled for Thursday, February 12, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.

D. ADJOURNMENT – Ms. Kimura made a motion to adjourn the meeting, and Vice Chair Tanaka seconded the motion; the meeting adjourned at 11:57 a.m.