

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 27, 2016

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:02 p.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Barbara Bennett
- Nancy Atmospera-Walch
- Robert Cundiff
- Phillip Kasper
- Garth Yamanaka
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- Kyoko Kimura

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. **APPROVAL OF December 9, 2015 MINUTES**

Second Vice Chair Bennett made a motion to accept the December 9, 2015 minutes, as presented. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments and Compilation to Hawaii Administrative Rules (HAR) Title 12, Subtitle 8, Part 11, Elevators and Related Systems, promulgated by Department of Labor and Industrial Relations (DLIR) on Chapter 229, General, Administrative and Legal Provisions; and Chapter 230.1 Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices, promulgated by Department of Labor and Industrial Relations (DLIR)

Mr. Leonard Hoshijo, Deputy Director at DLIR, explained that the proposed amendments include increased fees for certain inspections and safety tests, which will affect building owners, tenants, and all businesses responsible for elevators and related equipment. The last increase in fees was four years ago. The proposed amendments will be effective 2017; the rules allow the DLIR director to change fees to ensure the self-sufficiency of the Boiler & Elevator Branch.

Mr. Hoshijo stated that the fee increases were relatively modest, and are expected to result in better safety and better functioning of the elevators and equipment. There are also two new fees, a \$200 fee for new equipment and a \$300 inspection fee for “hydraulic elevators of the roped-holeless type.” Some of the cost-saving changes will help small businesses without the capacity to meet the requirements; it will also eliminate the need to upgrade certain existing elevators and related systems at potentially enormous costs. It was noted that the most recent rule change inadvertently required very expensive fire recall and related upgrades to existing equipment, which could in some stances cost hundreds of thousands of dollars. Thus, the proposal will also make it easier for DLIR to apply consistent interpretations of fire-related provisions by avoiding confusion that results in severe economic impact on small businesses.

Chair Borge stated that streamlining the rules and involving the stakeholders in the promulgation of the changes were very positive; he understood that the increase in fees is warranted in order to provide the level of service required. In terms of whether the level of services would improve in regards to the increase in fees, it was noted that the higher fees will allow for an increase in staffing to this self-sustaining operation.

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

B. Discussion and Action on Proposed Amendments to the Rules of Practice and Procedure of the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund Commission, by Adding New Chapter V, Report Process, Relating to the Process of Receiving Proposals, and Analyzing and Recommending Land or Property Entitlements for County Council Approval, promulgated by the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund Commission, promulgated by the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund Commission, County of Kauai

Ms. Jodi Higuchi Sayegusa, Deputy County Attorney, and Mr. Kaaina Hull, Deputy Director of Planning, explained the history and background of the proposed new rules. The rules propose to acquire land and/or property entitlements using the Public Access, Open Space, and Natural Resources Preservation Fund for preservation purposes, which will have to comply with the process detailed under proposed Chapter V. Any proposal will be initially analyzed and issued a recommendation by the County of Kauai Planning Department, then by the Public Access, Open Space, and Natural Resources Preservation Fund Commission. If the proposal is recommended for approval, it will be reviewed by the Kauai County Council within either the Commission’s Biennial Report or the Dossier Recommendation. It was noted that some of the proposals may involve acquisitions of land or entitlements where small businesses operate. The current projected annual income from the funds is approximately \$500,000.

Second Vice Chair Bennett stated that, in terms of small businesses, the rules will bring consistency and clarity along with public accessibility. The businesses that may be potentially impacted are those that contain historic or valuable natural resources on the property or on adjacent or nearby properties. But, the City Council has the ultimate say to

agree or object to the businesses' proposals. While the rules will offer clarity to the process, any adverse effects on small businesses are expected to be minimized by detailing the procedures and improving upon the efficiency of the processes. However, it was noted that there can be an "eminent domain" situation of an unwilling landowner.

Chair Borge stated that, overall, the Kauai Planning Division performed its "checks and balances" while promulgating the rules and the fee of one half of one percent does not appear to be excessive. However, in regards to Kauai's infrastructure, there should be some balancing to perform the "right thing" in terms of the natural beauty and economic development. After the public hearing, Chair Borge requested that this Board receive written feedback and actual comments and testimony made particularly by the small business community.

Second Vice Chair Bennett made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 3, Chapter 181, International Energy Conservation Code, 2015 Edition, promulgated by Department of Accounting and General Services (DAGS) and Department of Business, Economic Development and Tourism (DBEDT)

Mr. Howard Wiig, Energy Analyst from DBEDT, explained that the purpose of the rule amendments is to update the State Energy Conservation Code by repealing the "International Energy Conversation Code, 2006 Edition" and creating the 2015 Edition. By doing so, it will result in a thirty plus percent energy savings to consumers and businesses; the next update is expected in three years (2018). He noted that every proposed amendment resulted in rigorous third-party engineering critique and analysis; the impact to small business relates to the cost of construction which is expected to be balanced by the overall energy savings.

Chair Borge explained that there are two parts to the rules, the residential code and the commercial code. In regards to the overall expected cost, Mr. Wiig explained that a hired consultant, who is a leading energy code expert, assisted with a study that indicated, "less than a 1 percent increase in total construction cost to comply with the new energy code requirements;" a copy of the analysis was requested.

Chair Borge also explained that it was positive that Puerto Rico and Hawaii are now in separate tropical codes, which is not the best, but certainly much better than using the international code. He recommended that the members of the State Building Code Council initiate the process to secure their eligibility to be able to vote within the 12 voting slots allocated for Hawaii. This will give us a voice to provide input with respect to the formulation of the International Codes at a national level that may be better suited for our geographical location and unique climate zones.

Mr. Ritchie made a motion to move the amendments to public hearing. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 53, Fees, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Ms. Celia Suzuki, Licensing Administrator from the Professional and Vocational Licensing Division (PVLD), and Ms. Daria Loy-Goto, Complaints and Enforcement Officer, from the Regulated Industries Complaints Office (RICO) at DCCA, provided background on PVLD, and explained the purpose of the proposed rule, which is to increase the fees of many of the vocational licenses. Also explained was that fees have not been increased for over twenty years, and that DCCA is attempting to update its data base and to adjust to the increase in costs.

It was confirmed that the proposed sixteen percent (16.0%) increase was not decided on lightly and that any recommendations from this Board are appreciated. It was also confirmed that every seven years fees would be increased by 16.0%, based on the Consumer Protection Index. Mr. Cundiff suggested that justification for the proposed fee increases be fully explained to those impacted stakeholders prior to and/or during the upcoming public hearing. Chair Borge further suggested that the stakeholders be shown the benefit of the increases with some measurements and assurances that an improvement would result.

Deputy Attorney Ahn stated that under the Hawaii State Ethics Code, if a rule has a direct financial impact on a member's business, including a member's spouse and children, the Board members would be required to recuse themselves. As such, Messrs. Kasper and Yamanaka, and Ms. Atmospera-Walch recused themselves.

No official action was taken due to a lack of a voting quorum, which is five members.

E. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 14, Insurance Holding Company System, promulgated by DCCA

Mr. Lance Hirano, Chief Financial Analyst from DDCCA, provided the history of these rules and the purpose for creating "standards." The proposed rule amendments will establish new reporting requirements and clarify existing reporting requirements for insurance companies within a holding company system. The proposal stems from the 2009 financial crisis, which will help identify the risks and impacts while allowing the insurance commissioner to make further inquiry into the risks. Further, certain insurance codes under Article 11 of the Hawaii Revised Statutes assist the State's Commissioner in regards to the purchase of an insurance company.

Mr. Hirano stated that the rule amendments are not expected to adversely affect small businesses as insurance companies are currently subject to rules requiring the reporting of insurance holding company system transactions. However, there may be some small businesses impacted by these amendments; but, those businesses would still have to follow the federal regulatory practices.

Mr. Ritchie made a motion to move the amendments to public hearing. Ms. Atmospera-Walsh seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 13, Chapter 86.1, Sea Cucumber Management, promulgated by Department of Land and Natural Resources

The subject rules were signed off by the Governor and adopted on January 11, 2016 due to the need to expedite the rule-making process.

Ms. Atmospera-Walsh made a motion to support the adoption of the rules. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

- B. 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

Chair Borge stated that these rules have already been adopted; they are on the agenda because the Board did not have a chance to review the rules at the last meeting. Although the rate increase on the facilities reserve charge is high, in view of the received testimonies at the public hearing, Chair Borge suggested that some type of metric or performance audit be implemented going forward. This audit, which would be transparent to the community, would include the justification for future rate increases relating to additional infrastructure, improvements to be taken, and how the improvements are expected to impact small business.

Ms. Atmospera-Walsh made a motion, conditioned upon Second Vice Chair Bennett concurring with the recommendation, that a performance audit be conducted of the entire Department of Water that would include justification for future rate increases relating to providing additional infrastructure, improvements to be taken, and how the improvements are expected to impact the general stakeholders including the small business community. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

- b. New Part 5, Facilities Reserve Charge in the County of Kauai

See Section B. a.

- c. Section III, Facilities Reserve, Part 3, Rules and Regulations for Establishing Standards for Subdivision Water Systems

See Section B. a

C. Update on Meeting with Department of Transportation (DOT) regarding December 2015 Discussion on whether 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

Chair Borge stated that he and Mr. Cundiff (in place of discussion leader Ms. Kimura), and Ms. Palcovich met with DOT staff to discuss concerns posed by Ms. Dale Evans, President of Charley's Taxi, at the last Board meeting. Mr. Cundiff indicated that, overall, the meeting went very well as it conveyed the concerns of the small businesses as brought forth by Ms. Evans.

Subsequently, a memorandum was sent to DOT Deputy Director Ross Higashi requesting the following: 1) current annual cost of the dispatching service for the taxi operators versus the revenue derived from the \$5.00 pick-up fee; 2) future review and possible update of HAR Chapter 19-38.1, "On-Demand Taxi Service at Public Airports," and HAR 19-20.1, "Commercial Services at Public Airports" to incorporate advancement in technologies, changes in the market and passengers' needs; and 3) Copy of the master plan that was developed by DOT pursuant to Act 163, Hawaii Sessions Law, 1994.

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on the following:

a. Monthly e-Newsletter

Ms. Palcovich sent out the Board's first e-Newsletter just prior to the Board meeting. Please review it and let Ms. Palcovich know if any changes are needed for the upcoming e-Newsletters.

b. Board Members' Terms Expiring June 2016

Chair Borge announced that the terms of Ms. Atmospera-Walch, Ms. Kimura, and Mr. Cundiff will be expiring on June 30, 2016. While the members should expect to hear from the Governor's Office, Ms. Palcovich was asked to follow-up with the Boards and Commissions Office.

c. Update on Board's Budget Request for the 2016 Legislative Session

Discussed in Section VI. Legislative Matters.

Director Salaveria stopped by the meeting and thanked each member for their hard work and all they do throughout the year.

d. June Board Meeting Date Change

The June Board meeting date has been changed from June 15th to June 29th.

e. Upcoming Board meetings to include State Departments' Small Business Offices

Chair Borge explained that within the Department of Health, there is support for small businesses to help with the Clean Water Act. Thus, he suggested that an invitation be extended to the person in charge of this Act, sometime in the near future, to discuss exactly what they do and how they interact with small businesses. He inquired as to how many other agencies there might be within the State agencies that are advocates for small business.

Chair Board stated that Mr. Tim Lyons, President of The Legislative Center, informed him of H.B. 1912, Relating to Administrative Rules that creates a task force to review all of the state's administrative rules. A recent study titled, "The Need for Modernizing Hawaii's Informal Rule making Procedure," was created within the William S. Richardson School of Law in the spring of 2014; a copy of the study was requested for this Board's review.

VI. LEGISLATIVE MATTERS

A. Discussion, Status, and Action on the following:

a. House Bill 774 HD1 SD1 "Relating to Small Business"

This measure makes an appropriation to DBEDT for this Board to hire additional staff. It was passed through the 2015 legislative session, but died in conference. The Hawaii Chamber of Commerce is in support of the Board budget request.

Mr. Cundiff made a motion to support this measure. Ms. Atmospera-Walch seconded and the Board members unanimously agreed.

b. Senate Bill 1188 "Relating to Small Business"

This measure makes an appropriation to DBEDT for this Board to hire additional staff; it is the companion bill to House Bill 774 HD1 SD1.

Mr. Cundiff made a motion to support this measure. Ms. Atmospera-Walch seconded and the Board members unanimously agreed.

c. Senate Bill 1236 SD1, "Relating to the Hawaii Public Procurement Code"

This bill establishes the small business office to administer the state's small business program, and requires this Board to adopt rules to define "small business." Ms. Palcovich will check to see if this Board supported the measure last year.

- VII. NEXT MEETING** – The next meeting is scheduled for Wednesday, February 17, 2016, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.
- VIII. ADJOURNMENT** – Mr. Cundiff made a motion to adjourn the meeting and Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 3:40 p.m.