Approved: 8-19-13

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING
June 19, 2013
Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

I. CALL TO ORDER: Ms. Shubert-Kwock called the meeting to order at 9:33 a.m., with a quorum present.

MEMBERS PRESENT:
- Chu Lan Shubert-Kwock
- Barbara Bennett
- Leslie Mullens
- Howard Lum
- Kyoko Kimura
- Anthony Borge
- Craig Takamine
- Mary Alice Evans

ABSENT MEMBERS:
- None

STAFF: DBEDT — Dori Palcovich
Office of the Attorney General — Margaret Ahn

II. ELECTION OF A TEMPORARY CHAIR

Mr. Borge made a motion for Ms. Shubert-Kwock to be the Temporary Chair for today's board meeting. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

III. APPROVAL OF MAY 15, 2013 MEETING MINUTES

Ms. Evans made a motion to adopt the May 15, 2013 minutes, as amended. Mr. Borge seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS

A. Small Business Statement After Public Hearing for HAR Title 16 Chapter 115 Professional Engineers, Architects, Surveyors and Landscape Architects (DCCA)

Ms. Kyoko Kimura stated that the architects were all in favor the amendments.

Ms. Kimura made a motion to send the rules to the Governor for approval. Mr. Lum seconded the motion, and the Board members unanimously agreed.

V. NEW BUSINESS

A. Proposed Amendments to HAR Title 13 Chapter 231 Operations of Boats, Small Boat Harbors, and Permits, Chapter 251 Waikiki and Ka'anapali Ocean Waters, Chapter 253 Registration and Permit Fees, Section 13-256-3 Commercial Operator Permit

Requirements, and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements (DLNR)

Acting Chair Shubert-Kwock noted that the board received quite a bit of written testimony on these proposed rules and introduced Mr. Ed Underwood, Administrator from DLNR's Division of Boating and Recreation (DOBOR. He explained that these rules and other related rules have been in the rule-making process since 2006; the proposed amendments will clarify all the definitions, amend the rules through lawsuits and will treat every commercial operator in Hawaii the same in terms of all operators paying the same commercial use permits and fees. The proposed commercial use permit fee is either $200 or three percent (3.0%) of gross receipts per month, whichever is greater. There is a need to limit boat ramps due to the over abundance of usage resulting in health and safety issues and due to people parking their vehicles in prohibited areas.

Mr. Underwood confirmed that In terms of limiting the total number of permits that can be given out at specific places, it would cap the boat limit. No permits are being taken away, but grandfathered in, and if a business is sold, that permit would transfer with it. Although the rules have been amended to treat each of the commercial operators the same, Ms. Bennett noted that she would rather see the rules customized for "across the board" regulations and compliances for the neighbor island operators to relate specifically to the neighbor island's individual boating challenges. Mr. Underwood explained that during the rule-making process, DLNR had over fifty outreach meetings with the neighbor islands, where the stakeholders were involved and aware of the proposed rules and processes. Although it would be possible to go to each site and perform an environmental assessment, since DOBOR is a state-wide facility the rules essentially mirror statewide. He also noted that it is very difficult to accommodate each special interest group, and that DOBOR's main focus is on the natural resources. Ms. Mullens noted that even though each individual company is being treated the same in terms of how many permits they may have, there was a study conducted for each individual harbor which customizes per island, per ramp, and per harbor. Mr. Borge stated that the limit of the two permits is per business and it is transferred with the company, however, that language is currently not in the rules. Mr. Underwood responded that the language will be incorporated into the rules prior to going out to public hearing.

In regards to the written testimonies, Ms. Bennett requested that Mr. Underwood explain the testimony from Ms. Jherrie Rubeyiat. He stated that Ms. Rubeyiat is one of the recreational tenants in Wailua and Sweetie Pie is the name of her boat. Further, the $500,000 liability insurance is mandated by DAGS's risk management for all state facilities. Thus, it would likely increase the premium by about $10 a year, resulting in a total premium of $100 per year. Regarding Captain Zodiac's written testimony, which referred to setting a maximum for ramp permits at two (2) per business entity or sole proprietor, Mr. Underwood stated that whatever the amount of ramp permits this company will have when the rules become effective will be grandfathered into the rules; although the rules did not include this verbiage, the rules will be changed to reflect this prior to going out to public hearing. Ms. Mullens stated that the testimonies appeared to be a misunderstanding in the proposed rules, and she suggested that DOBOR provide the stake-holders with a one-page summary of the rule changes so there would be a better understanding and clarification as to what the rules are proposing.

Mr. Underwood stated that two more chapters of rules will be forthcoming to this Board; one involves fees. Acting Chair Shubert-Kwock reminded Mr. Underwood about the after public hearing report regarding these rules.

Ms. Mullens made a motion to recommend to the Governor that the proposed rules go to public hearing. Ms. Evans seconded the motion, and the Board members unanimously agreed.

B. Proposed Amendments to HAR Title 17 Chapter 1700 Overview through HAR Title 17 Chapter 1745 Funeral Payments Program (DHS)

Ms. Kookie Moon-Ng, DHS's Administrator of Med-QUEST's Policy & Program Office, introduced Med-QUEST's program specialists, Ms. Evelyn Yamamoto, who is the "lead" specialist on the proposed rule package, and Ms. Aileen Befitel, who regularly comes before this board with proposed Med-QUEST rules. Ms. Moon-Ng explained that the proposed rules are the result of the Affordable Care Act (ACA), also known as Obamacare, which expands Medicaid coverage for millions of low-income Americans; whereas currently the coverage is limited to only certain populations. ACA represents the most significant government and regulatory expansion of the United States healthcare system since the Congressional passage of Medicare and Medicaid in 1965. Overall, ACA will raise Medicaid income requirements, provide new coverage populations, and insure health coverage for all citizens through a health insurance marketplace.

It was explained that Hawaii is considered to be an "early adopter state," as it is expected to adopt the ACA rules by October 1, 2013. This will allow the State to provide access and coverage to its citizens who are not currently covered. As a result, the Med-QUEST Division has been challenged with the goal of completing the rules. Upon completing and complying with the federal rules, it will result in the continued receipt of federal funding totaling approximately $800 million. Therefore, being an "early adopter" will allow those who enroll on October 1, 2013 to receive coverage on the same day rather than wait three or four months, which is the current process.

Specifically, the proposed rules represent twenty-two chapters to be repealed and incorporated into newly promulgated chapters. Seventeen proposed chapters, which are affected by ACA will remove definitions, delete references to obsolete programs, repeal certain chapters, and other housekeeping measures. Another twenty-six newly-created chapters will align the current Medicaid program with the provisions of ACA by adopting a simplified approach to increase public understanding and access to the program.

The impact of the proposed rules is both congressional and federal. The rules contain categorical, financial, and resource eligibility requirements, freedom of choice, enrollment, benefits and disenrollment, appeal and notice mandates of ACA. Ms. Moon-Ng believed there is no negative small business impact but a positive affect because once the rules are in place, more people will be covered and thus expand upon the venue for business interests. Further, the small business medical providers are very satisfied with the proposed amendments. With the implementation of these rules, the physician providers need not go into ten different chapters based upon what program a patient is enrolled in to see what services are provided; they only need to go into one chapter.

Ms. Evans stated that based on the small business impact statements provided to this board, which essentially shows no small business impact but are to comply with the federal law, they did not have to come before this Board. Ms. Moon-Ng explained that her division will always come to this board because she believes this board is very important to the Med-QUEST Division. As long as she is in the division, all of the rules will come to this board because there is input from this board that the division does not want to miss. Ms. Bennett stated the presentation to this board was incredible and applauded the Med-QUEST Division, Ms. Mullens stated it was a herculean effort and thanked Ms. Moon-Ng, and Ms. Evans stated that the division did an amazing job. Acting Chair Shubert-Kwock believed providing the proposed rules to this board is an opportunity to learn and to share back with the community so it is very productive for public relations purposes and very fruitful.

Ms. Evans made a motion to recommend that the Board approve the request to go out to public hearing. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

VI. ADMINISTRATIVE MATTERS

A. Consultation with Board's attorney concerning the board's powers, duties, immunities, privileges and liabilities regarding discussions during board meeting recesses (An executive session may be called, pursuant to Section 92-5(4), Hawaii Revised Statutes

Ms. Bennett made a motion to go into executive session and Mr. Borge seconded; Ms. Bennett, Mr. Borge, Mr. Takamine, Ms. Shubert-Kwock, and Ms. Kimura voted in favor, Mr. Lum, Ms. Mullens and Ms. Evans abstained. The motion was passed under Section 92-5(4), Hawaii Revised Statutes, and the Board went into executive session at 11:11 a.m.; the executive session ended at 11:31 a.m.

B. Review second draft of Board's proposed Brochure and Evaluation Survey
The members reviewed the proposed third draft brochure and second draft evaluation survey. Several changes were proposed for both items, and the members' picture was taken for the brochure. Subsequent drafts will be presented to the members at the next board meeting.

C. Board member discussion leader assignments for the State Departments and Counties' administrative rule review

The members reviewed and updated the list of discussion assignments for the State Departments.

D. Recommendation and approval of an investigation task force to write a report regarding this Board's immediate clerical and budgetary needs for submission to the Governor and Legislature

Deputy Attorney General Ahn explained that if this Board wants to create an investigative taskforce, a motion to appoint certain members in needed with less than a quorum, or up to four, and the tasks must be specific. This item was deferred until the next meeting.

E. Discussion of HAR Title 3 Chapter 10 Travel Rules, as applied to Board members (DAGS)
Acting Chair Shubert-Kwock indicated this item was placed on the agenda as it relates to the expectation of neighbor island members to do board business and to complete the agenda items, instead of arbitrarily running off to another meeting that is not board-related.

F. Leslie Mullens to facilitate discussion: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making

This item will no longer be discussed.

VII. ELECTION 201M-5(d), HRS, AND ELECTION OF VICE CHAIR AND SECOND VICE CHAIR

Mr. Borge made a motion to nominate Ms. Shubert-Kwock as Chair, and Ms. Bennett seconded. Ms. Bennett, Mr. Lum, Mr. Borge, Mr. Takamine, and Ms. Shubert-Kwock voted in favor. Ms. Kimura made a motion to nominate Ms. Mullens as Chair, and Ms. Evans seconded. Ms. Kimura and Ms. Evans voted in favor, and Ms. Mullens abstained. Upon voting, the motion for Ms. Shubert-Kwock to become Chair was passed.

Ms. Shubert-Kwock made a motion to nominate Mr. Borge as Vice Chair, and Mr. Takamine seconded. Ms. Shubert-Kwock, Mr. Takamine, Mr. Lum, Ms. Mullens, and Mr. Borge voted in favor of the motion. Ms. Bennett made a motion to nominate Ms. Mullens as Vice Chair, and Mr. Lum seconded. Upon voting, the motion for Mr. Borge to become Vice Chair was passed.

Mr. Takamine made a motion to nominate Ms. Mullens as Second Vice Chair, and Mr. Lum seconded. Mr. Takamine, Mr. Lum, Ms. Bennett, Ms. Evans, and Ms. Kimura voted in favor of the motion. Ms. Shubert-Kwock made a motion to nominate Ms. Bennett as Second Vice Chair, and Mr. Borge seconded. Upon voting, the motion for Ms. Mullens to become Second Vice Chair was passed.

X. ADJOURNMENT – Ms. Mullens made a motion to adjourn the meeting at 12:45 p.m., Mr. Borge seconded the motion, and the Board members unanimously agreed.

IX. NEXT MEETING – Scheduled for 9:30 a.m., Wednesday, July 17, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI.

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