

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

March 18, 2015

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:00 p.m. with a quorum present.

MEMBERS PRESENT:

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

ABSENT MEMBERS:

- Ashley Takitani Leahey

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF FEBRUARY 12, 2015 MINUTES

Mr. Harris made a motion to accept the February 12, 2015 minutes, as presented. Vice Chair Tanaka seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 99, Real Estate Brokers and Salespersons, promulgated by DCCA

Discussion leader, Ms. Kimura explained that the proposed amendments relate to updating and clarifying the existing rules, as well as extending the required educational hours of the licensees. One person submitted testimony at the public hearing; no subsequent changes were made to the rules.

Vice Chair Tanaka made a motion to support the adoption of the rule amendments. Mr. Ritchie seconded the motion, Ms. Kimura abstained from voting, and the remaining five members voted in favor of the motion; the motion passed.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 78, Cosmetology, Section 2, Definitions, and Section 59, Enrollment, promulgated by DCCA

As no one from DCCA was in attendance at the meeting, discussion leader Ms. Kimura explained that many of the proposed amendments will allow DCCA's Board of Barbering and Cosmetology to comply with the Code of Federal Regulations, implemented by the U.S. Department of Education (USDE). Under this Code, states are required to regulate beauty schools by showing that the laws and rules of the licensing authority differentiate between licensing approvals provided to secondary versus postsecondary institutions.

Compliance of the rules will allow Hawaii-licensed beauty schools to continue to be recognized by the USDE and ensure that students who attend these schools can continue to participate in federal student aid programs. Overall, it was believed that any small business impact should be positive, particularly in regards to the "quality" of a business; however, the members expressed an interest in hearing what, if any, concerns small businesses may provide during the public hearing.

Ms. Kimura made a motion that the proposed amendments proceed to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 12 Chapter 41, Hawaii Labor Relations Board Rules of Practice and Procedure, promulgated by DLIR

Ms. Linda Goto, Hearings Officer, and Ms. Sesnita Moepono, board member from Hawaii Labor Relations Board (HLRB), discussed the purpose of the proposed amendments, which is to add two new subchapters.

The subchapters will: 1) authorize a procedure to streamline certification of a labor organization or individual to represent certain private sector employees pursuant to signed authorizations by a majority of employees where no other representative is certified as the exclusive bargaining representative, and 2) establish a mandatory procedure for facilitating initial collective bargaining agreements between an employer and a newly organized or certified representative. This measure provides workers, who seek to organize a more level playing field with streamlining of the union certification process, and enables workers to form unions when a majority of the employees sign union authorization cards.

It was explained that the proposed card check procedure is when employees collect authorization cards and submit the cards with a petition to HLRB requesting that they be recognized as a bargaining unit; the petition must provide certain facts for qualification purposes. Upon an investigation, HLRB sends the petition to the employer; subsequently, the procedure for facilitating initial collective bargaining agreements would then be certified.

Ms. Goto explained that the rules are procedural rather than substantive in nature. She noted that historically HLRB has not consulted with organizations when promulgating the amendments in an attempt to maintain neutrality and to adjudicate disputes of businesses. The rules only cover employers with \$5 million in revenues, and with a concentration on agriculture. HLRB currently has three board members and four staff members.

Ms. Kimura made a motion acknowledging that the proposed amendments have major impact on small business, that they proceed to public hearing to be heard, and that the State's Department of Agriculture is approached for comments regarding any effect the amendments might have on the State's diversified agriculture program. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed New HAR Title 16 Chapter 35, Secure and Fair Enforcement for Mortgage Licensing Act, promulgated by DCCA

Ms. Iris Ikeda, Commissioner of DCCA's Division of Financial Institutions, explained that the proposed rules will allow DCCA to be in compliance with the Secure and Fair Enforcement for Mortgage Licensing Act, which created the mortgage loan recovery fund. It requires licensees to make payments to the fund upon initial licensing and license renewal; the fund has attained \$750,000 as a maximum funding level. The rules are needed to implement the Commissioner's statutory authority to adjust or cease the fund's fee collection. In addition, the rules will require that before suspending or reducing the collection of the fund's fees for the next licensing cycle, the State's Commissioner must make a finding that collection of the entire fee in the next licensing is not reasonably needed in order for the fund to pay its obligations as they become due.

The small businesses affected by the rules are mortgage loan originator-individuals and mortgage loan service-companies that pay into the mortgage loan recovery fund; there are currently approximately 1,500 active licensees/businesses with less than four employees. The rule, overall, is expected to be positive for small businesses.

Ms. Kimura made a motion to recommend that the proposed amendments proceed to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. LEGISLATIVE MATTERS

A. Discussion, Update and Action on Senate Bill 1236, SD1, Relating to the Hawaii Public Procurement Code

Chair Borge explained that Senate Bill 1236, SD1, which establishes the small business office at DBEDT, passed the first reading but did not survive the legislature's first cross-over.

B. Discussion, Update and Action on Senate Bill 12 and companion, House Bill 266, Relating to the Small Business Regulatory Flexibility Act

Chair Borge explained that both of these bills, which provide this Board with a separate line item within budget's DBEDT, passed first readings, but did not survive the legislature's first cross-over.

C. Discussion, Update and Action on House Bill 774 HD1, Relating to Small Business

Chair Borge explained that House Bill 774 HD1, is still alive; it makes an appropriation to DBEDT for this Board to hire additional staff. The bill is being heard today (March 18, 2015) at 2:45 p.m., in the Senate's Economic Development and Technology Committee. Chair Borge will be attending the hearing and submitting testimony on behalf of this Board.

VI. ADMINISTRATIVE MATTERS

A. Discussion on this Board's Outreach to the Small Business Community, and the RegAlert project, an electronic email alert system for the announcement of proposed and amended administrative rules impacting small business

Chair Borge explained that the RegAlert information, previously mailed out to the board members, represents one of the previous board's well-thought out, well-researched goals to assist small business. Going forward, RegAlert will take time and additional staff to help facilitate the program.

In regards to outreach of this Board, it was suggested that specific instances of how this Board is effective be expressed in the Board's annual report. Chair Borge stated he will be introducing himself to the new State directors to discuss the mandates of this Board.

VII. NEXT MEETING – The next meeting is scheduled for Wednesday, April 15, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 9:30 p.m.

VIII. ADJOURNMENT – Second Vice Chair Bennett made a motion to adjourn the meeting and Mr. Harris seconded the motion; the meeting adjourned at 2:30 p.m.