

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 30, 2013

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

I. **CALL TO ORDER:** Chair Shubert-Kwock called the meeting to order at 9:34 a.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Anthony Borge
- Howard Lum
- Craig Takamine
- Ken Kitamura

ABSENT MEMBERS:

- Leslie Mullens
- Barbara Bennett
- Kyoko Kimura

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF August 19, 2013 MEETING MINUTES

Vice Chair Borge made a motion to adopt the August 19, 2013 meeting minutes as amended, Mr. Takamine seconded the motion, and the Board members unanimously agreed.

Chair Shubert-Kwock welcomed and introduced Mr. Ken Kitamura from DBEDT. Mr. Kitamura is another DBEDT alternate voting member.

III. OLD BUSINESS

A. Small Business Statement after Public Hearing for HAR Title13 Sections 230-4 Penalties and Prosecution, 230-8 Definitions, 230-21 Definitions, 230-22 Twelve-month rule, 230-25 Particular categories, 230-27 Permittee required to report change of residence, 230-28 Appeals (DLNR)

Mr. Takamine reviewed the small business statement after public hearing and agreed with the proposed changes, noting that the amendments will benefit small business. He also reviewed the written testimony of Mr. Ed Gaffney, President of Hawaii Fishing & Boating Association, and was concerned over Mr. Gaffney’s allegations that the public hearing process was undertaken in violation of many of the required procedures, such as “not having public meetings on the bulk of the proposed rule amendments.”

Mr. Clifford Inn, Boating Safety Education Program Specialist from DLNR’s Division of Boating and Ocean Recreation (DOBOR), was provided a copy of Mr. Gaffney’s testimony; he stated that he respectfully disagreed with the written testimony. Mr. Inn explained that DLNR goes above and beyond the requirements to conduct public meetings, and publishes the meetings accordingly, while following the appropriate processes and procedures. Further, DLNR is not allowed to take short-cuts or deviate from the required internal, legal

processes. DLNR is frequently accused of going outside the law, which is simply not the case. In response, Chair Shubert-Kwock requested that DLNR send Mr. Gaffney a letter and update him on the correct internal processes, and also requested that Mr. Gaffney know that his input is of value to DOBOR. Mr. Inn stated DLNR is in regular contact with Mr. Gaffney who is in DLNR's Big Island office quite often, and responded affirmatively to the chair's requests.

Mr. Takamine made a motion that this request go to the Governor for approval. Mr. Lum seconded the motion, and the Board members unanimously agreed.

B. Small Business Statement after Public Hearing for HAR Title 15 Chapter 315 Mortgage Credit Certificate Program (DBEDT)

The Governor signed off on these rules on October 23, 2013; they will become effective November 2, 2013. Therefore, no action was taken by the Board.

IV. NEW BUSINESS

A. Repeal of HAR Title 12 Chapter 45.2 State Fire Code, Sections 1 through 154 and Adoption of Title 12 Chapter 45.3 State Fire Code (DLIR)

Vice Chair Borge stated that he spoke with Mr. Lloyd Rogers, Administrative Assistant to the State Fire Council, prior to the board meeting regarding the proposed rules, which will update the existing State Fire Code and are based on the National Fire Code. The prior State Fire Code was dated 2006 and adopted in 2010.

Mr. Socrates Bratakos, Battalion Chief of the Honolulu Fire Department and Vice President of the Building Code Council, introduced Mr. Rogers, and Mr. Sheldon Yasso, Captain of the Honolulu Fire Department, and member of the State Fire Council Prevention Committee. Mr. Bratakos explained that all businesses, whether small or large, will be affected by the new State Fire Code. Compliance with the Fire Code is the responsibility of business owners; owners must maintain all building and fire safety features and appliances in an operable condition. The proposed changes will include the exemption of existing structures from compliance with retro-fitting requirements, and the deletion of all permit and fee requirements, which will be enforced by the respective County ordinances.

In response to Chair Shubert-Kwock's comment that there may have been fire code violations in Chinatown, Mr. Bratakos stated that possible fire code violations in Chinatown are often inspected with building owners cited, if necessary. Over the past year, several inspectors were sent to Chinatown for overcrowding of certain bars/nightclubs. Chair Shubert-Kwock complimented Mr. Bratakos on the enforcement of the rules. Mr. Rogers noted that as the draft "repealed" rules should have reflected Sections 12-45.21 to 12-45.2-145, instead of 12-45.2-154, this was corrected.

Vice Chair Borge made a motion to recommend that the Board approve the request to go out to public hearing. Mr. Takamine seconded the motion, and the Board members unanimously agreed.

B. HAR Title 11 Chapter 25 Rules Relating to Certification of Public Water System Operators (DOH)

Ms. Jodi Yamami from the Compliance Section of DOH's Safe Drinking Water Branch in the Environmental Management Division at DOH, explained that these administrative rules are intended to protect public health by regulating public water systems such as drinking water fountains from contamination, and to set standards for certification of personnel, as anyone making decisions about the quantity or quality of water must be certified. The Board of Certification of Public Water System Operators (Board), consisting of five members, developed the proposed amendments, of which, three major changes are proposed: 1) continuing education units, 2) initial certification period after an examination, and 3) certification fees.

Of the 132 public water systems that provide water for human consumption, 26 are considered small businesses. Five of the 26 small businesses own multiple public water systems. According to Ms. Yamami, while the first two proposed changes are not expected to have any small business impact, 21 small businesses will be affected by the certification fee increase. Fifteen of the 21 small businesses are utility companies that have their rates regulated by the State of Hawaii Public Utilities Commission (PUC). The remaining 6 small businesses do not sell their water for profit and are not regulated by the PUC. The proposed fee increases for renewal, certification application, and exam registration would have the greatest impact on small businesses.

The proposed increase in certification fees is the first increase in 20 years. Ms. Yamami explained that the Board looked at the actual costs and fees of certification programs from different states. Upon their review, 7 fees were proposed with 3 expected to impact small business; these are: 1) renewal fees, which will increase from \$10 per year to \$20 per year; 2) certification application fees, which will increase from \$20 per year to \$30 per year; and 3) exam registration fees, which will increase from \$30 per year to \$70 per year. Four other fees that are not expected to have any small business impact are reciprocity fees, operator-in-training fees, temporary certification fees, and provisional certification fees.

It was noted that small businesses were involved in the rule-making process indirectly. This is because, of the five member board, two are employed by and represent small businesses; one is employed by Hawaii Water Service Company, Inc., which is the small business that is most affected. In developing the fees, the Board reviewed the actual costs that the implementing agency incurs, which the Board believed was crucial in determining the fee schedule in order to make the program financially prudent. Vice Chair Borge noted that the increase in the fees will likely be transferred to the customers.

Vice Chair Borge made a motion that the Board approve this request to go out to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

VII. ADMINISTRATIVE MATTERS

A. Proposed 2014 Board Meeting Schedule

Chair Shubert-Kwock stated that this board had previously discussed that the third Wednesday of the month was the best day to hold board meetings. Recently, however, due

to changes in some of the board members' schedules, there has been a lack of commitment to attend the agreed upon board meeting dates. This has had an impact on the members, particularly those who commute from neighbor islands, and it causes a substantial amount of extra work. She would like to emphasize and encourage the members to commit to keeping the third Wednesday open for the board meetings, absent an emergency. She stated that members should not be accommodating those members who have a conflict with the board meetings because of scheduling other meetings.

A reminder will be sent to all the board members confirming the dates of the board meetings, which will also be discussed at the next board meeting.

B. Final Draft of Board's Brochure and Evaluation Survey, for outreach purposes

Upon review of the final draft brochure, DBEDT staff was asked to print and mail 50 copies to each board member for distribution. It was also suggested that copies of the brochure be sent to the State agencies and the media such as *Honolulu Business*, *Pacific Business News*, *Honolulu Star Advertiser*, and other business publications.

Vice Chair Borge made a motion to accept the brochure, as is. Mr. Lum seconded the motion, and the Board unanimously agreed.

Upon review of the final draft evaluation survey, it was discussed that the surveys, which are totally optional, will be available during the board meetings for individuals to take and return back to the Board.

Vice Chair Borge made a motion to accept the evaluation survey, as is. Mr. Takamine seconded the motion, and the Board members unanimously agreed.

C. Board Business Cards

Chair Shubert-Kwock distributed her SBRRB business card, as a sampler, which was printed by DBEDT. She believes it would be beneficial for other board members to have business cards, as well, for outreach purposes. Ms. Palcovich noted that Chair Shubert-Kwock's business cards were created from a kit that prints 200 cards and costs approximately \$15. Although State correctional centers are currently used to print business cards, which generally print a minimum number of cards, (i.e., 500), for about \$40 to \$50, it was suggested that the members provide DBEDT staff with their contact information so business cards may be printed from the \$15 kits.

Vice Chair Borge made a motion to accept the business cards. Mr. Lum seconded the motion, and the Board members unanimously agreed.

D. Press Release, announcing board members and 2013 & 2014 officers

Chair Shubert-Kwock thanked Ms. Palcovich and DBEDT for creating the press release. Going forward, when letters and memos are sent out from this Board, the press release will be included.

Regarding the press release contact list, Vice Chair Borge suggested that the list be expanded to include agencies such as Hawaii Food Industry Association and LISH. Chair Shubert-Kwock noted that this contact list is not conclusive; thus, board members were asked to send Ms. Palcovich additional names and addresses of agencies that may be included on the list.

Vice Chair Borge made a motion to accept and increase the list of contacts for outreach purposes. Mr. Takamine seconded the motion, and the Board members unanimously agreed.

E. Draft introduction letters to State agencies to schedule meetings

Chair Shubert-Kwock explained that the proposed introduction letters to the State agencies will allow the agencies to identify who is assigned as their SBRRB discussion leader so they are aware of who they need to contact and if there should be any questions.

Vice Chair Borge made a motion to accept the draft letters for submission to the State departments. Mr. Takamine seconded the motion, and the Board unanimously agreed.

F. RegAlert, electronic email alert system for announcement of proposed and amended administrative rules impacting small businesses

Chair Shubert-Kwock stated that the RegAlert service is currently inactive, but she would like to see if this Board would be willing to re-activate it as the small business community would benefit from it. Because it would involve a lot of work to re-activate, however, DBEDT's assistance would be needed. Vice Chair Borge concurred and stated that this project would take more research and follow-through in order to send out correct and timely information. Mr. Kitamura stated that the use of social media, such as Twitter or Facebook, may be linked to the Governor's office which may be re-tweeted; however, the information sent must be fresh. Mr. Takamine also voiced concern as to whether or not the RegAlerts could be submitted in a timely manner. Mr. Lum noted that even if this project was re-activated, caution is needed as sufficient resources are necessary to implement the service so it would not be over-whelming or on the other hand, under-whelming. Additional assistance from the State's informational technology area would likely be needed to assist with this project. It was also suggested that a temporary taskforce may be considered to provide more structure and ascertain guidelines.

The Board deferred this item until the next board meeting so those members who were not in attendance today could have an opportunity to review the RegAlert packet, as well as for all members to re-address this project in order to come up with ideas, recommendations, and guidelines should this service be reactivated.

G. Recommendation and approval of an investigative task force to write a report regarding this Board's immediate clerical and budgetary needs for submission to the Governor and 2014 Legislature

Mr. Kitamura stated that this Board's proposed budget request for clerical support for fiscal year 2015 was approved by DBEDT's Director. The request has now gone to the Department of Budget and Finance for its review and approval. If approved, it would take effect July 1, 2014.

Mr. Lum made a motion to draft a letter to the Department of Budget and Finance to support the proposed budget request for part-time clerical support and travel expenses for this Board for fiscal year 2015. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

H. Chair's Report – Exhibit A

Chair Shubert-Kwock discussed the activities of the Chair Report for the months of August and September; its purpose is to share with the members the various meetings, and communications that transpired and conducted by and between the chair and DBEDT staff.

VI. ADJOURNMENT

Mr. Lum made a motion to adjourn the meeting at 11:06 p.m. Mr. Takamine seconded the motion, and the Board members unanimously agreed.

IX. NEXT MEETING

Next meeting is scheduled for 9:30 a.m., Wednesday, November 20, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii.