

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 17, 2019

Conference Room 405 - Leiopapa A Kamehameha, State Office Tower, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Nancy Atmospera-Walch
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF DECEMBER 12, 2018 MINUTES**

Vice Chair Cundiff made a motion to accept the December 12, 2018 meeting minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS – After Public Hearing**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 8 Chapter 101 Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, promulgated by Department of Liquor Control, County of Maui

Discussion leader, Ms. Albitz, stated that Maui’s Department of Liquor Control showed no impact to small businesses on its statement likely due to having no “negative” business impact. Chair Borge reminded the members that the rules benefit small businesses as it related to public benefits where board members of non-profit organizations would have been required to submit background checks to be granted a temporary license; the changes also deal with concessions for condos that operate as hotels serving liquor on the premises.

Chair Borge added that the Department of Liquor Control did a good job at addressing concerns raised by the stakeholders. Ms. Albitz concurred stating that in the past, restaurants had to wait three to six months to prove that thirty percent of business revenue represented food to receive a class 2 restaurant license; in the current proposal, restaurants are not subject to the three to six month waiting period.

Vice Chair Cundiff made a motion to move the proposed rules for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 11, Chapter 200 and Proposed New Chapter 200.1, Environmental Impact Statement Rules, promulgated by Department of Health (DOH)

Discussion leader and Second Vice Chair Yamanaka expressed an appreciation for the extensive outreach DOH performed while promulgating the rule changes.

Mr. Scott Glenn, Director of DOH's Office of Environmental Quality Control, reminded the members he came before this Board in March 2018 and since then nine public hearings were conducted throughout the state. There was a wide range of turnout but because of the tremendous amount of outreach prior to the public hearings where many of the concerns had been addressed, there was a sense from DOH's Environmental Council (EC) that that was the reason why there was minimal commentary at the hearings; therefore, most of the concerns were already addressed.

Mr. Glenn highlighted seven main concerns discussed at the public hearings and noted EC's response to these concerns, which included changes to the definition of an environmental assessment, statutory triggers not defined in the rules, and the proposal of an exemption for the demolition of buildings that was not possible for buildings' eligibility for historic register. DOH is looking into an implementation phase of the new rules because many stakeholders are not yet ready to comply with some of the internal procedural requirements outlined in the rules. Therefore, DOH will discuss with the Governor's Office specific target dates for the rules; however, it will still be up to the Governor when and if the rules are signed off.

Second Vice Chair Yamanaka made a motion to move the proposed rules to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Correspondence from Mr. Edward Underwood, Administrator, Division of Boating and Ocean Recreation (DOBOR) at Department of Land and Natural Resources (DLNR), dated January 9, 2019, regarding HAR Title 13, Chapter 231, Operation of Boats, Small Boat Harbors, and Use of Permits for all Navigable Waters, Section 50 through 70

Ms. Albitz stated that Mr. Edward Underwood, DOBOR Administrator at DLNR, responded to this Board's request from the December 12, 2018 board meeting. Chair Borge reminded the members that Mr. Wesley Moore, a small business owner providing surf lessons on the Island of Hawaii, expressed concerns regarding the existing commercial permitting process and the limited number of permits for small businesses to grow and thrive in Hawaii; it was noted that Mr. Moore is interested in expanding his business to surf off the boat ramps.

Chair Borge acknowledged that overall it is very difficult to start up a business, particularly on neighbor islands due to limited available permits. He reminded the members that at last month's meeting, Mr. Underwood stated that there are a limited number of commercial

permits, and that a statute change may likely be necessary to accomplish Mr. Moore's concerns; Ms. Albitz also noted that there are currently more permits than required.

Regarding what the Board may be able to do under its statute, Deputy Attorney General Polk-Waihee explained that the Board can make a recommendation to an agency or the legislature regarding the need for a rule change or legislation. Given that, Mr. Ritchie suggested that a recommendation by this Board should mention Mr. Moore's concerns, in general, and that while DLNR may be unable to address the concerns through rule changes, a legislative amendment may be needed.

Ms. Albitz made a motion to send a letter to Ms. Suzanne Case, Chairperson of the Board of Land and Natural Resources and to Mr. Edward Underwood, Administrator, DOBOR / DLNR, with copies sent to Governor David Ige, Senate President Ronald Kouchi and House Speaker Scott Saiki expressing the Board's concerns. Chair Borge seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Discussion on the Status of the Board's current budget request for fiscal years 2019 and 2020

Chair Borge recently attended a hearing of Ways and Means for a briefing of DBEDT's divisions and attached agencies to discuss DBEDT's current budget requests. Although many questions were posed from some of the legislatures to the other agencies and divisions, there were no questions posed to Chair Borge who was requesting \$10,000. The following day, Mr. Carl Nagasako, DBEDT ASO Administrator, represented this Board at a briefing held by the State's Finance Committee.

As the Board's request goes through the legislative process, members are encouraged to provide testimony.

B. Discussion and Action on Upcoming 2019 Legislation regarding "zero-based budgeting" in which state agencies would start each two-year budget cycle from scratch and justify every dollar requested

Second Vice Chair Yamanaka attended a chamber meeting recently where House Representative Mark Nakashima explained that the legislature will be attempting to lay the groundwork this year on legislation regarding "zero-based budgeting." He expressed how it might relate to this Board, such as when the Board receives administrative rules from agencies for fee increases and how it might relate to an overall effectiveness and efficiency. However, at this point in time, there appears to be no such legislation for this Board to review.

Chair Borge added that judging from the budget briefings that were conducted prior to the opening of the legislative session, there will likely be many concerns over accountability of the requested monies by the agencies. Deputy Director Polk-Waihee cautioned the members to think generally about concerns of "small business" and/or if the request ties into this Board.

- C. Update on the Legislative Proposal to Chapter 201M, HRS, for the 2019 Hawaii Legislative Session – Clarify the powers of the Small Business Regulatory Review Board by adding that the Board may consider any request from small business owners for review of a rule that is proposed and amended as well as adopted by a state agency, and to change “ordinance” to “rules” when making recommendations to the county council or the mayor for appropriate action

Chair Borge reminded the members that when this bill was heard last year, at the end of the legislative session, the chair of the judiciary committee did not place it on the agenda for a hearing; so, the bill died.

The Governor did not include the bill this year in his administrative package; no reason was given. If the members are interested in having the bill re-introduced as there are no funds being requested, any legislator may be approached to introduce it.

Vice Chair Cundiff made a motion to approach a State legislator to introduce the same bill that was introduced last year. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

- A. Update on the Board’s Upcoming Advocacy Activities and Programs in Accordance with the Board’s Powers under Section 201M-5, HRS

DBEDT staff announced that a new, temporary employee (89-days) is in the process of being approved and expected to begin work on February 1, 2019.

The Board has still not gotten any updates on the nomination of new board members from the Governor.

It was noted that Mr. Ford Fuchigami is now the Governor’s Chief of Staff and Mr. Mike McCartney is DBEDT’s Director.

- VI. NEXT MEETING** – The next meeting is scheduled for Thursday, February 21, 2019, Conference Room 405, 235 South Beretania Street, Leiohale Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.
- VII. ADJOURNMENT** – Vice Chair Cundiff made a motion to adjourn the meeting and Ms. Albitz seconded the motion; the meeting adjourned at 10:50 a.m.