

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

April 18, 2019

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building
(State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present. All those attendees interested in testifying will be allotted three minutes.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- Mark Ritchie

ABSENT MEMBERS:

- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. INTRODUCTION OF NEW BOARD MEMBERS

Chair Borge welcomed the Board's two new members; Mr. Jonathan Shick is from Oahu and Mr. James (Kimo) Lee is from the Big Island. The Board now has a very good distribution of talent throughout neighbor islands and Oahu.

Chair Borge advised the new members to review the Board's statute, Chapter 201M, HRS, and to take the Office of Information Practices' (OIP's) online Sunshine law tutorial as Sunshine law governs State board meetings and board members' interactions.

III. APPROVAL OF MARCH 21, 2019 MINUTES

Mr. Ritchie made a motion to accept the March 21, 2019 minutes, as amended. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Title 8, Department of Liquor Control, Subtitle 1, Liquor Commission, promulgated by Department of Liquor Control, County of Maui:

- a. Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui; and
- b. Chapter 102, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui

Discussion Leader Ms. Albitz stated that none of the proposed rule changes will make it more difficult for businesses to operate. Thus, it was agreed that the overall changes will benefit small businesses.

Vice Chair Cundiff made a motion to move the proposed rules to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

- c. Discussion and Action on Proposed New HAR Title 16, Corporate Governance Annual Disclosure, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Ms. Martha Im, Chief Examiner at DCCA's Insurance Division, explained that the proposed rules represent the National Association of Insurance Commissioners' (NAIC's) CGAD Model Act and CGAD Model Regulation which require that an insurer or group of insurers provide a confidential disclosure regarding its corporate governance practices to the lead state and/or domestic regulator on an annual basis. The rules will therefore set forth procedures for filing and for the required contents of the corporate governance annual disclosure.

In response to discussion leader Mr. Ritchie's question as to whether the rules had a small business impact, Ms. Im replied that DCCA opted to bring the rules in front of this Board for its consideration because a definitive answer could not be made as to whether or not the rules would impact small business; in general however, it would be the larger companies that would be impacted. It was noted that the rules do not have a chapter number because there is currently a bill being heard in the legislature that would create the rules; as such, they are expected to be finalized upon the approval of the measure.

Overall, the rules are intended to show that the insurance companies are financially sound and that there are no surprises in the event an insurance company falters. Further, the rules represent an accreditation requirement of the NAIC, effective January 1, 2020.

Mr. Ritchie made a motion to move the proposed new rule to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

- d. Discussion and Action on Proposed Amendments to Title 16 Chapter 185 Annual Audited Financial Reporting, promulgated by DCCA

Ms. Im, Chief Examiner at DCCA's Insurance Division, explained that the rule amendments represent various minor changes by NAIC, which reflect internal controls that are required for insurance companies to be organizationally independent from management. Insurance companies are also required to report at least annually to the audit committee on the results of internal audit activities. Ms. Im, again, explained that because it was unclear as to

whether the rule changes would result in small business impact, DCCA opted to bring them in front of this Board for consideration.

Discussion leader Mr. Ritchie acknowledged that the rule changes appear to be housekeeping measures and that there was likely only “big business” impact. Chair Borge added that if when the rules are heard at the public hearing there is any input from small business, that it would be appreciated if DCCA would relay the input to this Board.

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

e. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 186, Certificate of Need Program, promulgated by Department of Health (DOH)

Ms. Sue Radcliffe, Administrator, and Mr. Darryl Shutter, Regulatory Branch Chief from DOH’s State Health Planning and Development Agency explained the certificate of needs program and the proposed revisions to the program’s requirements. The purpose of the rules is to establish a health planning and resources development program to promote accessibility for all residents of the state to quality health care services at reasonable cost.

Although the rules have not been updated since 1998 there are no new fees or fines. Mr. Shutter stated that in the past several years about 450 applications were processed; most, if not all, of the businesses that applied are considered small business based on the Board’s definition. However, there are a few larger businesses such as the hospitals that would be affected by the changes.

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

V. LEGISLATIVE MATTERS

A. Update on the following Legislative Measures:

a. Senate Bill 1348 SD1 HD1, Relating to the Small Business Regulatory Review Board

Chair Borge noted that this measure, which has been in front of the legislature for a few years now, clarifies the intent of the small business regulatory review board when reviewing state and county administrative rules and ordinances that impact small business; the measure also appropriates an undisclosed amount of funds.

The bill is in the process of going into “conference committee.” While the Senate conferee members have been named, House conferees have not yet been announced. Chair Borge encouraged the members to write to the conferees to support the measure once all are named. It was noted that the most current draft still has “ordinances” in the body of the bill despite the Board requesting that “ordinances” be deleted from the statute.

- b. Governor's Message 559, Submitting for Consideration of the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2022

The Senate confirmed Mr. Shick's nomination on April 12, 2019; congratulations to Mr. Shick.

Chair Borge mentioned that subsequently, the Governor will have a swearing-in ceremony sometime this year honoring all the newly confirmed board members.

- c. Governor's Message 624, Submitting for Consideration for the Gubernatorial Nomination of Mr. James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2020

The Senate confirmed Mr. Lee's nomination on April 12, 2019; congratulations to Mr. Lee.

- d. Governor's Message 625, Submitting for Consideration for the Gubernatorial Nomination for Mr. Garth Yamanaka to the Small Business Regulatory Review Board for a term to expire June 30, 2023

The Senate confirmed Mr. Yamanaka's nomination on April 12, 2019; congratulations to Mr. Yamanaka.

VI. 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

- a. Meetings with Board Members and State Department Directors

Chair Borge explained to the newest members that each Board member is assigned as a "discussion leader" for a state agency where the member believes he/she may have knowledge and expertise when reviewing proposed and new administrative rules. The "discussion leader" oversees the discussion of the respective rules at the monthly board meetings.

Mr. Nakamoto met with the director of DOH; he indicated that DOH is extremely receptive to the outreach of the stakeholders as well as the process of coming before this Board. Mr. Yamanaka met with Department of Taxation, and Ms. Albitz and Chair Borge met with Department of Labor and Industrial Relations; both meetings went well.

- b. Changes to the Board's Website

Mr. Ritchie stated that the website taskforce will be meeting on a bi-weekly basis with Hawaii Information Consortium (HIC) for the next few months. HIC is currently doing a nice, organized job and an up-to-date status was discussed.

HIC has not yet started to create the “email sign-up” section for agendas, etc. Chair Borge re-affirmed that automatic sign-ups for agendas was a very good tool for the small business community to utilize. It is expected that the new revamped website will be finalized by fiscal year end June 30, 2019.

c. Hawaii Small Business Fair at Leeward Community College on May 4, 2019

Mr. Ritchie distributed flyers for the upcoming small business fair at Leeward Community College, sponsored in part by DBEDT; the fair is from 8:30 a.m. to 1:15 p.m.

Various workshops are offered with approximately 35 exhibitors, including various state agencies and non-profit service organizations. About a third of the attendees are not yet businesses but are thinking about it, and the other two thirds already have small businesses but are looking to expand. There are generally about 300 attendees that show up.

Mr. Ritchie also mentioned that DBEDT is very interested in sponsoring similar small business fairs on the neighbor islands. He asked that if any of the neighbor island members see an opportunity for a similar fair to let him know.

d. Maui Small Business Conference at Maui Arts & Cultural Center on May 8, and 9, 2019

DBEDT staff will be attending the Maui Small Business Conference once again this year. As DBEDT was offered a “complimentary table” to distribute brochures, it will be taken advantaged of to distribute not only this Board’s literature but also some of the other small business programs offered at DBEDT. The conference is very well done with excellent speakers with an opportunity to do outreach on a neighbor island.

VII. NEXT MEETING – The next meeting is scheduled for Thursday, May 16, 2019, in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VIII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Ms. Albitz seconded the motion; the meeting adjourned at 10:50 a.m.