

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

December 13, 2017

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:01 p.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Kyoko Kimura
- Harris Nakamoto
- Nancy Atmospera-Walch
- Reg Baker
- Mark Ritchie

ABSENT MEMBERS:

- None

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Jennifer Waihee-Polk

II. APPROVAL OF NOVEMBER 15, 2017 MINUTES

Ms. Kimura made a motion to accept the November 15, 2017 minutes, as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13, Chapter 74, License & Permit Provisions and Fees for Fishing, Fish, and Fish Products, promulgated by Department of Land and Natural Resources (DLNR)

Mr. Alton Miyasaka, Acting Commercial Fisheries Program Manager at DLNR, explained that the Board of Land and Natural Resources recently voted to reduce the proposed fee increase from \$150 to \$100 per annum based on concerns of mostly part-time commercial fishers that testified at the public hearing. He also noted that because the “catch” report will change from monthly to weekly, DLNR is expecting that some of the fishers may drop out due to this change.

The board members wished Mr. Miyasaka well on his upcoming retirement.

Mr. Ritchie made a motion to forward the current proposed amendments to the Governor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Testimony from Mr. Bryan Marks, Advanced Fire Protection, LLC, regarding proposed new HAR Title 12, Chapter 44.1, Testing, Certifying and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems, promulgated by Hawaii State Fire Council / Department of Labor and Industrial Relations (DLIR)

Messrs. Ed Suzuki and Lloyd Rogers, Administrative Specialists from the Hawaii State Fire Council at DLIR, addressed the concerns brought forth by Mr. Marks regarding the proposed new administrative rule.

Mr. Suzuki stated that two years ago when the promulgation of the rules began as many small businesses as possible were contacted to discuss changes to the rules and once the rules were finalized in its present form the businesses were again notified. The responses made by the State Fire Council to Mr. Marks' comments and concerns will be forwarded to him.

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

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to Title 12, Subtitle 8, Hawaii Occupational Safety and Health Division (HIOSH), promulgated by DLIR, as follows:

- i. Part 1, General Legal and Administrative Provisions for Occupational Safety and Health
 - a. Chapter 50, General Provisions and Definitions
 - b. Chapter 52.1, Recording and Reporting Occupational Injuries and Illnesses
 - c. Chapter 56, Program Fees and Library Policies, General Safety and Health Requirements
- ii. Part 2, General Legal and Administrative Provisions for Occupational Safety and Health
 - a. Chapter 60, General Safety and Health Requirements
- iii. Part 3, Construction Standards
 - a. Chapter 110, General Safety and Health Requirements
- iv. Part 5, Occupational Safety and Health Standards for Shipyard Employment
 - a. Chapter 170, Shipyards
- v. Part 6, Marine Terminals
 - a. Chapter 180, Marine Terminals
- vi. Part 7, Safety and Health Regulations for Longshoring
 - a. Chapter 190, Longshoring
- vii. Part 8, Other Safety and Health Standards
 - a. Chapter 208, Other Safety and Health Standards

Mr. Norman Ahu, DLIR's HIOSH Administrator, introduced his staff Ms. Nicole Bennett and Ms. Kristin Takaba and discussed the function of HIOSH and the proposed rule changes. The amendments, which are expected to become effective mid-2018, entail both housekeeping measures and adoption of the federal standards. The state's standards must be as effective as or better than the federal standards, and every year HIOSH must submit a report to the federal government to show that the State is in compliance; DLIR is currently delinquent in its submission to the federal government.

HIOSH provides ongoing training and presentations to businesses and associations throughout Hawaii regarding the implementation, enforcement and impact of the rules. Ongoing training, specifically with regards to silica, is currently being done; silica is like asbestos in that one may become inflicted by its use years later from cancer and lung problems. Mr. Ahu stated that the silica standard is not new to the rules and although Hawaii's standards have been determined to be better than the federal standards, if it does not meet the federal silica standards, the federal government may cease funding the federal grant to the State.

Testifier Mr. Gregg Serikaku, Executive Director of PAMCA (Plumbing & Mechanical Contractors Association of Hawaii) is not opposed to the rule proposals and he appreciates HIOSH's efforts in assisting and training its members. However, he explained that there are several lawsuits regarding silica against the federal government across the mainland. Thus, while silica is a real danger and PAMCA's membership has been through many presentations, his major concern is that if the lawsuits result in certain modifications to the standards, it could potentially add a lot of costs and changes to the procedures. He added that PAMCA will take advantage of the training and presentation services offered by HIOSH.

Testifier Ms. Shannon Alivado, representing GCA of Hawaii (General Contractors Association of Hawaii), explained that GCA has submitted testimony requesting that this Board assist in deferring action at this time on the silica proposal; at least, until HIOSH is able to adequately provide outreach for training, education, and enforcement on the silica regulation. The regulations have a major impact on small business. This is because of the many "unknowns" of the GCA's members who perform work for the federal government, and particularly for the smaller contractors with twenty-five and under employees where there has been a lack of outreach to the industry.

Testifier Mr. Blake Parson, Executive Director for SMCA (Sheet Metal Contractors Association of Hawaii) stated that while SMCA is most appreciative of HIOSH's outreach, the important part of the rules is the education and training, specifically for silica. SMCA members will be better served if the proposed rules and regulations are properly implemented rather than if the regulations are effective and improperly understood. He urged this Board to support a delay in the effective date of the silica regulation and to encourage HIOSH to implement programs and initiatives to help small businesses to better understand how to comply with the onerous regulations.

Testifier Mr. Walter Chu, PhD., a safety and health professional and consultant in the State of Hawaii, has forty-five years of experience in the occupational safety and health profession and most of his clients are small businesses. Mr. Chu stated that while OSHA's "one-size fits all" is based on at least fifty states across the country, Hawaii is clearly unique because it

has employers of various sizes, cultural differences, weather variations, and methods and techniques of work which are not considered by OSHA. Further, compliance with OSHA standards and the administrative rules is costly and the “as effective as” criteria has been a controversial issue for forty years. He believes it is up to the State to speak-up and demand that Hawaii be allowed to run its own programs based on Hawaii’s particular needs.

Additional testimony from SAH (Subcontractors Association of Hawaii) was submitted with similar and/or the same sentiments as the other testifiers.

The Board discussed that HIOSH do more outreach prior to the public hearing to be sure there is open transparency and people are aware of the changes to the rules. Vice Chair Cundiff noted that one of the items this Board has been pushing for is “stakeholder involvement” and commended the organizations and small businesses for providing testimony “before” the public hearing. A concern with going to public hearing now is that after the public hearing the rules follow a “rubber stamp” process.

Furthermore, if there is time, the Board would prefer that the stakeholders come together and provide input and receive the required training and education “prior” to the public hearing. Therefore, it would be in the best interest of the small business stakeholders for HIOSH to reserve holding the public hearing until a summary of the rule amendments have been fully vetted regarding concerns posed by the testifiers.

Upon hearing from the testifiers and the Board members, Mr. Ahu explained that in accordance with the federal standards, HIOSH has been deficient for years, and in the past the federal government took over portions of HIOSH. Although HIOSH is currently delinquent in its federal reporting requirement and the need to move forward with its public hearings, he is willing to invite the stakeholders to have a discussion on the standards, and then after the meeting, report back to this Board prior to moving to public hearings.

Chair Borge reiterated Vice Chair Cundiff’s sentiments and concurred with Mr. Ahu that HIOSH meet with the stakeholders to work out the concerns with the proposed rule amendments, and then come back again in front of this Board before going to the public hearing.

Action on this item was deferred.

B. Discussion and Action on Requested Proposed Amendments to the Department of Transportation’s HAR Title 19, Chapter 20.1, Commercial Services at Public Airports, and HAR Chapter 38.1, On-Demand Taxi Service at Public Airports, submitted by Ms. Dale Evans, CEO, Charley’s Taxi and Limousine

Ms. Dale Evans explained that she was in front of this Board representing the taxi cab owners who are considered “small businesses.” A pilot project created by the State Department of Transportation began on December 1, 2017 whereby Uber and Lyft drivers can operate at the airports. She added that not only are the taxi cab drivers impacted, but she believes that seniors, disabled, and low-income residents are also harmed; as a result, the taxi industry is being negatively impacted.

Ms. Kimura reminded Ms. Evans that this Board was created to assist with small business regulations; however, this Board may support the businesses that are negatively impacted by rules and regulations. It was noted that prior to this meeting, DOT director contacted DBEDT staff and explained that DOT had only created a pilot program and was not amending or creating new rules.

Ms. Kimura made a motion for this Board to convene an executive session under Section 92-5(a)(4), HRS, to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities regarding Ms. Evans' concerns; Ms. Walsh-Atmospera seconded the motion and the motion was unanimously passed.

The Board went into executive session at 12:28 p.m.; the executive session ended at 12:47 p.m.

The Board members confirmed that it is not within this Board's purview to tell an agency if they can or cannot create a pilot program. However, it is within the Board's purview to request that an agency "level the playing field" and provide fair and equitable treatment to all small businesses in the implementation process of the program.

Mr. Baker made a motion for DBEDT staff to draft a letter to DOT that entails: 1) the Board's purview under Chapter 201M, HRS; 2) concerns and suggestions regarding Uber/Lyft taxi airport access and fairness; and 3) a copy of Ms. Evans' correspondence to accompany the letter. Ms. Atmospera-Walsh seconded the motion, and the Board members unanimously agreed.

V. LEGISLATIVE MATTERS

A. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2018 Hawaii State Legislative Session

Second Vice Chair Yamanaka made a motion to delegate authority to Chair Borge and Vice Chair Cundiff to submit testimony and/or testify on behalf of this Board during the 2018 Legislative Session. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

VI. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's Draft 2017 Annual Report Summary for Submission to the Hawaii State Legislature pursuant to Section 201M-5(f), HRS

Mr. Nakamoto made a motion to approve the draft 2017 Annual Report Summary for submission to the Hawaii State Legislature. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

B. Findings and Recommendations by the Board's Investigative Taskforce regarding the Development and Redesign of the Board's Website including Content, Features, and Short- and Long-Term Goals in accordance with Section 92.2.5 (b)(1), HRS

Mr. Ritchie explained that the website taskforce met and came up with the functionality of the type of website that would be best for this Board; as follows:

- The "regulation review card" is to have an ability to receive testimony on upcoming meetings as well as to receive information on existing regulations;
- A feature to show how rules are made through the rule-making process;
- A link to the State's Legislative website where statutes and bills are viewed;
- The design of the website will have less of a government look with more pictures and graphics;
- Dates of the agencies' public hearings will be accessed from the website's calendar;
- A sign-up e-mail link to receive monthly agendas and to monitor specific rules will be offered;

Vice Chair Cundiff added that the purpose of the new website is to draw small business owners and people to it, and to have much more information on it so that the users can get more involved and become more interactive.

The overall summary of findings and recommendations were well-received by the members.

C. Discussion and Action on the Board's Nomination(s) of Proposed Board Members for Submission to the Governor including Mr. Stu Burley and Mr. Will Lydgate, in accordance with Section 201M-5(b)(3), HRS

Chair Borge explained that Mr. Stu Burley sits on another DBEDT board, Aerospace Advisory Committee, and because of this, he would be ineligible to sit on both boards. Although the board can nominate him as a member, Mr. Burley would need to step down from the other board to be qualified as a member of this board.

Vice Chair Cundiff made a motion to approve and submit the nominations of Mr. Stu Burley and Mr. Will Lydgate as members of this Board to the Governor's Boards and Commissions Office for the Governor's review and approval. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

D. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

Chair Borge reminded the members that Mr. Baker has scheduled January 25, 2018 as the day this Board is scheduled to be on his weekly live-streamed show, "Hawaii Business with Reg Baker." If any members can be part of this show, let DBEDT staff know.

Chair Borge and Mr. Baker met with Budget and Finance Director Wesley Machida, and Deputy Director Laurel Johnston to discuss this Board's budget request for: 1) an updated website and 2) operating expenses. Director Machida will speak to DBEDT Director

Salaveria to see what can be done with regards to the budget request; Chair Borge will also speak to Director Salaveria.

VII. NEXT MEETING – The next meeting is scheduled for Wednesday, January 24, 2018, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VIII. ADJOURNMENT – Ms. Atmospera-Walch made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 1:20 p.m.