

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

February 20, 2013

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

I. **CALL TO ORDER:** Ms. Mullens called the meeting to order at 9:40 p.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Anthony Borge
- Mary Alice Evans

ABSENT MEMBERS:

- None

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. DISCUSSION AND ELECTION OF ACTING CHAIR FOR FEBRUARY 20, 2013

Mr. Borge made a motion for Ms. Shubert-Kwock to be the Acting Chair for today's board meeting. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

III. APPROVAL OF THE DECEMBER 10, 2012 MINUTES FOR 9:30 a.m., and 1:00 p.m. MEETINGS

Mr. Borge made a motion to accept the December 10, 2012 minutes from the 9:30 a.m. meeting, as amended. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

Ms. Mullens made a motion to accept the December 10, 2012 minutes from the 1:00 p.m. meeting, as presented. Mr. Borge seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Proposed Amendments to HAR Title 11 Chapter 54 Water Quality Standards, and HAR Title 11 Chapter 55 Water Pollution Control (Department of Health (DOH))

Mr. Alec Wong, Engineer from the Clean Water Branch at DOH, discussed the purpose of the rule amendments for HAR Chapter 11 Water Quality Standards and HAR Title 11 Chapter 55 Water Pollution Control, and introduced staff members from the Clean Water Branch.

Under Chapter 54, amendments include: 1) grammatical and formatting changes to streamline the rule's language and requirements, 2) modification of content and technical requirements such as the addition of EPA-required anti-degradation language to comply with Section 316 of the Clean Water Act, 3) use of a new EPA-developed alternative statistical test method (the Test of Significant Toxicity, TST) for determining toxicity effects of effluents from NPDES (National Pollutant Discharge Elimination System) permittees, and 4) updates of various references cited in the chapter.

Under Chapter 55, amendments include: 1) compliance with federal regulations, and 2) issuance of NPDES general permits. Currently, there are no NPDES general permits because the coverage for discharges to State waters expired on October 21, 2012. The businesses impacted by these changes, contractors and construction companies, will benefit by the NPDES general permit coverage. It was noted that DOH follows the minimum federal requirements.

Mr. Borge made a motion for both administrative rules to proceed to public hearing as soon as possible. Mr. Lum seconded the motion, and the Board members unanimously agreed.

B. Proposed Amendments to HAR Title 18 Chapter 235 Income Tax Law, Adoption of HAR Title 18 Chapter 235-12.501T and HAR Title 18 Chapter 235-12.5-06T, Relating to Renewal Energy Technology Income Tax Credit; Citations (Department of Taxation (DoTax))

Mr. Ted Shiraishi Administrative Rules Officer introduced Ms. Mallory Fujitani, Public Information Officer and Legislative Coordinator from DoTax. Mr. Shiraishi explained that the proposed rules include an income tax credit for solar and wind renewable energy technology systems that are installed and placed in service during a taxable year. Wind energy systems qualify for a credit of twenty percent and solar energy systems qualify for a credit of thirty-five percent of actual costs. The credit for wind energy systems is capped at \$1,500 per system for single-family residential property, \$200 per unit per system for multi-family residential property, and \$500,000 per system for commercial property. For solar energy systems primarily used to heat water for household use, the credit is capped at \$2,250 per system for single-family residential property, \$350 per unit per system for multi-family residential property, and \$250,000 per system for commercial property. For all other solar energy systems, including photovoltaic, the credit is capped at \$5,000 per system for single-family residential property, \$350 per unit per system for multi-family residential property, and \$500,000 per system for commercial property.

The proposed rules allow "total output capacity" requirements for solar energy systems such as photovoltaic systems. However, the rules provide exceptions for systems that do not meet the total "output output capacity" requirement where only one system has been installed and placed in service on one property, where more than one system has been installed and placed into service on a property, and where only one system does not meet the total output capacity requirement. These rules are expected to benefit Hawaii businesses, in general.

Ms. Mullens made a motion for the rules to proceed to public hearing. Mr. Borge seconded the motion, and the Board members unanimously agreed.

C. Proposed Amendments to Title 4 Chapter 143 Coffee (Department of Agriculture (DOA))

Ms. Jeri Kahana, Acting Administrator at DOA, explained that the proposed rule amendments are the result of Act 328, SLH 2012. The Act makes the offense of false labeling in regards to the geographic origin of Hawaii grown coffee a class C felony, authorizes DOA to adopt administrative rules relating to the inspection and documentation of the geographic origin of Hawaii-grown coffee beans, and removes the requirement that all Hawaii-grown green coffee beans shall be inspected and certified by DOA unless otherwise specified by DOA.

The Act also requires that no Hawaii-grown coffee beans is to be shipped outside of the area of the geographic origin unless marked with or contain documentation of geographic origin by DOA. In addition, amendments require Hawaii-grown green or natural coffee be marked with the exact grade or lower grade, and repeals the mandatory certification of coffee by making it voluntary; thus, those who wish may request certification services. Ms. Kahana stated that the Kona coffee industry reported that coffee berry borer damage has resulted in diminished quality that may jeopardize the region's position in the global coffee market.

Ms. Mullens made a motion for the proposed rules to proceed to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

D. Correspondence from Dora Beck, P.E., Acting Director, County of Hawaii, Department of Environmental Management, dated January 22, 2013, regarding "Small Business Impact Statement Education of Tourists Update," under Ordinance 12-1, Section 1, Article IV, Rules Relating to Plastic Bag Reduction

Ms. Bennett partially read the subject correspondence to the members and explained that County of Hawaii Deputy Corporation Counsel, Ivan Torigoe, took heed to the board's recommendation that the impact of the plastic bag reduction to tourists should be addressed. She stated that it was commendable for the County to send this letter to the Board and address this matter after it was discussed at the last board meeting.

V. LEGISLATIVE MATTERS:

A. Delegation of Authority to a Board Member and/or Staff to Submit Testimony at the State Legislature on behalf of the Board

Mr. Borge made a motion for DBEDT staff to draft testimony on behalf of the board for the Chair or Acting Chair's review for submission to the Hawaii State Legislature. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

Ms. Mullens made a motion to delegate Mr. Borge to represent and present testimony for the board to the State legislature. Ms. Shubert-Kwock seconded the motion and the Board members unanimously agreed.

- B. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015

The Board approved to support this measure.

- C. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014

The Board approved to support this measure.

- D. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016

The Board approved to support this measure.

- E. Governor's Message No. 529, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014

The Board approved to support this measure.

- F. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016

The Board approved to support this measure.

- G. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

The Board approved to support this measure.

VI. Discussion of the following Board Administrative Matters:

- A. Review of correspondence to State agencies requesting information required for Periodic Review; Evaluation Report, pursuant to Section 201M-7, Hawaii Revised Statutes (HRS)

The members reviewed the board's past correspondence to the State agencies regarding Section 201M-7, HRS.

Upon review, Ms. Mullens made a motion to amend and update the 2012 correspondence to the agencies. Mr. Borge seconded the motion, and the Board members unanimously agreed.

B. Review Board's Brochure for update and outreach purposes

The members reviewed the prior brochure used by this board and recommended several changes to it. After hearing several suggestions, Ms. Bennett indicated she had enough feedback to amend the brochure, and will bring those changes back to the members at the next meeting for review.

While discussing the board's purpose and mission, when Mr. Lum questioned how small businesses come before this board, it was indicated that when there is a proposed rule or rule amendment that impacts small business there is a specific process by which an agency will create a small business impact statement. Deputy Attorney General Ahn stated that this process reflects a majority of the rules that will come before this board. Separate from that are complaints from small businesses about the rules where small businesses may come directly to DBEDT staff or a board member.

There is another process in the board's statute where a small business will first go to an agency about an existing rule. Once an agency is contacted by a small business, it is required to respond back to that small business, with a copy of the response sent to this board. If the small business is unhappy with the response from the agency, they will then come to this board. This process may be another option when referring a small business that has concerns with an existing administrative rule; the process outlined in 201M-6, HRS, petition for regulatory review.

C. Review of Board's "Member" Webpage

The members reviewed the webpage from the Board's website and requested that email addresses be removed; DBEDT staff will remove them immediately.

D. Review of Public Agency and Meetings Records (Sunshine Law), Chapter 92, HRS

Ms. Bennett commented that she needs to become acquainted with the Sunshine Law as it applies to this Board. Deputy Attorney Ahn explained that, as a general rule, if there is official board business, a board member must not discuss it outside the public meeting. However, there are some exceptions, specifically in regards to this Board, where two, three or four board members are allowed to discuss board business outside a public hearing as long as there is no commitment to vote; for example, a proper number of members may discuss the selection of board officers outside a board meeting.

E. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making

Ms. Mullens has found that setting ground rules and common values help move meetings and discussions along and also make the time together more valuable and effective. Recommended tools to effectuate ground rules include meeting agreements, guiding principles, and a strategic checklist. Ms. Mullens reviewed "best practice" meeting agreements that this board may consider, such as "it is important to speak with integrity, to say only what you mean, to express what you really mean, to ask questions, and to communicate clearly in order to avoid misunderstandings."

Further, she noted that, based on these ground rules, it is essential to be impeccable with your word, to not make assumptions, to not take anything personally, and to always do your best.

Ms. Bennett stated that she has been involved in so many strategic planning sessions that to attend another strategic-type planning session does not seem relevant or important to her; it is more relevant to her to learn on a month-to-month basis about what this board's business is. Ms. Evans stated that all boards need a framework so they can operate efficiently and with structure, particularly when a board is governed by statute; Mr. Lum suggested that everyone review the handout for discussion at the next meeting, Ms. Kimura stated this board should have basic rules to make the meetings more effective; Mr. Borge also stated it is important to have structure and a foundation to get through the meetings. Acting Chair Shubert-Kwock added that, as board members, it is important to be flexible and patient in order to act prudently when topics are brought forth at the meetings; she thanked Ms. Mullens for bringing this information to the meeting.

Ms. Mullens guided the members through a discussion to establish meeting agreements for general guiding principles and values. Some of those agreements discussed are: 1) one speaker at a time; 2) a three-minute limit of testimony depending on the circumstances and number of testifiers; 3) the creation of agency guidelines for a standardized small business impact statement; and 4) to be on time and to be prepared.

This agenda item is deferred and will be continued at the next meeting.

VII. Election of a Board Chair, pursuant to Section 201M-5(d), HRS, and Election of Vice Chair and Second Vice Chair

Acting Chair Shubert-Kwock stated that it is important for this Board to have a chair. Ms. Bennett concurred, and stated that she believed there may have been a misunderstanding at the last board meeting regarding her nomination of a board chair. She wanted to clarify that she did not have any pre-conceptions about this board or about nominating a chair. While she nominated Ms. Shubert-Kwock to be the chair because of her past experience with this Board, Ms. Bennett said she understood that Ms. Evans had contacted Ms. Mullens and asked her to be the chair ahead of the meeting; Ms Mullens responded that this was inaccurate.

Ms. Mullens stated that she would like to be chair of this board because it is a place where she can contribute very effectively. She can help this board because, in her profession, she organizes meetings and workshops and she helps businesses to re-group and to stay on track and on task.

Acting Chair Shubert-Kwock stated that she would like to be chair of this board because of her familiarity with this board and because she has been on other boards. She is very open to others' input, would do the proper homework, and would do the job well as she is passionate about small business. She also wants to promote the mission of this board to have a name in the community for small businesses to trust. She noted that

she was disappointed and distressed when Ms. Evans pulled her aside, brought her into her office, told her that she did not think she should be chair, and that she should withdraw. She also noted that even though this board is independent and should make decisions as an independent entity, she was intimidated by Ms. Evans because she perceived Ms. Evans to be wearing her “deputy director hat.” Ms. Evans responded to Ms. Shubert-Kwock that when they talked during the lunch break at the last meeting, she had explained that because Ms. Shubert-Kwock had such passion for small business that she would be more effective and could use her time more efficiently as a member and as an advocate for small business as opposed to being a chair.

Ms. Evans made a motion that Ms. Mullens be made Chair, and Ms. Kimura seconded; Mr. Lum made a motion that Ms. Shubert-Kwock be made Chair, and Mr. Borge seconded. Ms. Bennett, Mr. Lum, Mr. Borge and Acting Chair Shubert-Kwock voted for Ms. Shubert-Kwock, and Ms. Evans, Ms. Kyoko and Ms. Mullens voted for Ms. Mullens. As a result, the motions did not pass.

This agenda item is deferred until the next board month.

In order to maintain continuity, DBEDT staff will work with the acting chair of the board meeting until the next board meeting.

VI. ADJOURNMENT

Mr. Borge made a motion to adjourn the meeting at 2:32 p.m.; Ms. Kimura seconded and the board members agreed.

IX. NEXT MEETING

Scheduled for 9:30 a.m., Wednesday, March 20, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI